that efficient, intelligent relief work can progress in the event of a disaster.

Dr. Mahoney's training of osteopathic physicians, who are the backbone of medical care in rural Missouri, has helped fill a great, unanswered void in my district. His unselfish, tireless dedication to the medical profession has served as an example and an inspiration to all in his field. Mr. Speaker, on behalf of the citizens of Missouri, I would like to commend Dr. William J. Mahoney on his genuine humanitarian concern, and express deep gratitude and a sincere appreciation of his efforts.

SENATE—*Wednesday, July 21, 1976*

The Senate met at 9 a.m. and was called to order by the President pro tempore (Mr. EASTLAND).

PRAYER

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

Behold, I stand at the door, and knock: if any man hear my voice, and open the door, I will come in to him, and will sup with him, and he with me.—Revelation 3: 20.

O God who bids us in this high and holy moment to open our hearts to Thy presence, make us receptive to Thy coming. If Thou dost come to us in the quiet pause, help us to hear Thy still small voice. If Thou dost come in the noisy tumult of the needy throng, may we welcome Thy message. If Thou dost come as one hungry or tired or sick, help us to open our heart-door in compassion. If Thou dost come as one in quest of justice, help us to be just. If Thou dost come as the pleading voice of conscience, give us ears to hear Thy message. However Thou dost speak to us, may we hear Thee, and hearing Thee obey Thee in our labor in this place. When our work is done give us the rest of souls at peace with Thee. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, July 20, 1976, be dispensed with.

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

COMMITTEE MEETINGS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee on Labor and Public Welfare and the Committee on Public Works be authorized to meet during the session of the Senate today for the purpose of considering certain nominations only.

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

Mr. GRIFFIN. Mr. President, I yield back my time.

ROUTINE MORNING BUSINESS

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

U.S. SWIMMERS IN OLYMPIC GAMES

Mr. ALLEN. Mr. President, I commend the U.S. Olympic team for its performance to date in the summer Olympics at Montreal.

In particular, I wish to call attention to the fine performance of the U.S. swimmers, who have won their fifth gold medal. What particularly interests me in addition to the success of our team in many of the meets was the fact that Jennifer Chandler, of Lincoln, Ala.—a very small town in Talladega County, Ala.—retrieved some self-respect, as reported in the Washington Post, for the women in red, white, and blue by overcoming inconsistent East German judging to win the 3-meter springboard event.

Miss Chandler, age 17, totaled 506.19 points for the 10 dives and received her gold medal from Henry Hsu, the International Olympic Committee member from Taiwan.

I commend this young lady who, as I say, comes from a very small town in my home State. Those of us who saw her on television were thrilled with her performance.

She has brought credit to her local community, to her State, and her Nation by her very fine performance.

Mr. President, I ask unanimous consent that that portion of the Washington Post article of July 21, 1976, having to do with Miss Chandler be printed in the RECORD.

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

MONTREAL, July 20.—The United States men's swimming team maintained its 1.000 Olympic batting average tonight as Brian Goodell and John Hencken captured gold medals in world-record time.

That makes five world marks in five races for the fastest, noisiest group that ever terrorized a swimming pool.

Jennifer Chandler of Lincoln, Ala., retrieved some self-respect for the women in the red, white and blue suits by overcoming inconsistent East German judging to win the three-meter springboard event.

Chandler, 17, totaled 506.19 points for the 10 dives and received her gold medal from Henry Hsu, the International Olympic Committee member from Taiwan.

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 MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF THE NATIONAL ENDOWMENT FOR THE HUMANITIES—MESSAGE FROM THE PRESIDENT

The PRESIDENT pro tempore 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:

In accordance with the provisions of the National Foundation on the Arts and Humanities Act of 1965, as amended, I transmit herewith the tenth annual report of the National Endowment for the Humanities for fiscal year 1975.

GERALD R. FORD.

THE WHITE HOUSE, *July 21, 1976.*

MESSAGE FROM THE HOUSE

At 1:59 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the House has passed the bill (S. 2054) to amend sections 203 and 204 of the Communications Act of 1934, with an amendment in which it requests the concurrence of the Senate.

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

H.R. 5503. An act for the relief of Divina Mamuad;

H.R. 7404. An act for the relief of Christine Donnelly;

H.R. 10210. An act to require States to extend unemployment compensation coverage to certain previously uncovered workers, to increase the amount of wages subject to the Federal unemployment tax; to increase the rate of such tax; and for other purposes.

H.R. 10434. An act for the relief of Carlos Montenegro Gorbitz, doctor of medicine, Mrs. Gorbitz, and their two-year-old son;

H.R. 11076. An act for the relief of Ok Ja Choi;

H.R. 11347. An act to authorize conveyance of the interests of the United States in certain lands in Salt Lake County, Utah, to Shriners' Hospital for Crippled Children, a Colorado corporation;

H.R. 12224. An act to amend section 1234 of the Internal Revenue Code of 1954 with respect to the tax treatment of the grantor of options in stock, securities, and commodities;

H.R. 14291. An act to provide for an elective Governor and Lieutenant Governor of American Samoa, and for other purposes; and

H.R. 14311. An act establishing certain accounting standards relating to the Panama Canal Company.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT OF EXECUTIVE BRANCH UNDER THE PRIVACY ACT

A letter from the President of the United States transmitting, pursuant to law, the

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

first annual report for calendar year 1975 entitled "Federal Personal Data Systems Subject to the Privacy Act of 1974" (with an accompanying report); to the Committee on Government Operations, and ordered to be printed.

REPORT OF THE COMPTROLLER GENERAL ON CERTAIN DEFERRALS

A letter from the Comptroller General transmitting, pursuant to law, a report on the 17th special message of the President for fiscal year 1976 (with an accompanying report); jointly, pursuant to the order of January 30, 1975, to the Committees on Appropriations, the Budget, Labor and Public Welfare, the Judiciary, Interior and Insular Affairs, and Foreign Relations, and ordered to be printed.

REPORT OF THE DEFENSE CIVIL PREPAREDNESS AGENCY

A letter from the Director of the Defense Civil Preparedness Agency reporting, pursuant to law, on the acquisitions of emergency supplies and equipment for the quarter ending June 30, 1976; to the Committee on Armed Services.

PROPOSED LEGISLATION BY THE DEPARTMENT OF THE NAVY

A letter from the Secretary of the Navy transmitting a draft of proposed legislation to approve the sale of certain naval vessels (with accompanying papers); to the Committee on Armed Services.

CONTRACT AWARD DATES OF THE DEPARTMENT OF DEFENSE

A letter from the Assistant Secretary of Defense transmitting, pursuant to law, a listing of contract award dates for the period July 15, 1976 to October 15, 1976 (with accompanying papers); to the Committee on Armed Services.

REPORT OF THE SECRETARY OF COMMERCE

A letter from the Secretary of Commerce transmitting, pursuant to law, a report of the Department of Commerce on the administration of the Marine Mammal Protection Act of 1972 (with an accompanying report); to the Committee on Commerce.

REPORT OF THE SECRETARY OF TRANSPORTATION

A letter from the Secretary of Transportation transmitting, pursuant to law, a report on the Central Railroad Company of New Jersey (with an accompanying report); to the Committee on Commerce.

PUBLISHED DETERMINATION OF THE TREASURY DEPARTMENT

A letter from the Secretary of the Treasury transmitting, pursuant to law, a copy of a determination published in the Federal Register relating to imports of leather handbags from Brazil (with accompanying papers); to the Committee on Finance.

NEW SYSTEM OF RECORDS BY THE DEPARTMENT OF THE ARMY

A letter from the Deputy Assistant Secretary of Defense transmitting certain correspondence in connection with a new system of records proposed by the Department of the Army (with accompanying papers); to the Committee on Government Operations.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General transmitting, pursuant to law, a report entitled "The National Assessment of Educational Progress: Its Results Need To Be Made More Useful" (with an accompanying report); to the Committee on Government Operations.

REPORT OF THE OFFICE OF MANAGEMENT AND BUDGET

A letter from the Deputy Director of the Office of Management and Budget transmitting, pursuant to law, a report relating to the report entitled "Seventh Annual Report," by the National Advisory Council on Economic Opportunity (with an accompanying report); to the Committee on Labor and Public Welfare.

PETITIONS

The PRESIDENT pro tempore laid before the Senate the following petitions which were referred as indicated:

Resolution No. 146–1976 adopted by the Legislature of the Northern Mariana Islands; ordered to lie on the table:

"RESOLUTION No. 146–1976

"A resolution relative to conveying sincere, and deep gratitude of the people of the Northern Mariana Islands to the many distinguished guests and visitors for their attendance and participation in the celebration to commemorate the signing of the Northern Marianas covenant from April 21 and 22, 1976

"Whereas, the aspirations and long standing desires of the people and Government of the Northern Mariana Islands were realized when on March 24, 1976, the United States President Gerald R. Ford signed into law H.J.R. 549 in Washington, D.C., thus binding together the peoples of the United States of America and the people of the Northern Mariana Islands and paving and setting the stage for eventual assimilation of the people of the Northern Mariana Islands into the American political family and democratic system of government; and

"Whereas, the signing of the Covenant to Establish the Commonwealth of the Northern Mariana Islands in Political Union with the United States of America constituted the crowning of the efforts of the people of the Northern Mariana Islands and the culmination of a quarter century sustained attempts to become part of the American political family; and

"Whereas, to commemorate this momentous occasion, an appropriate arrangement was made to celebrate the signing of the Northern Marianas Covenant with appropriate public ceremonies on the three major islands in the Northern Mariana Islands, such celebration included the participation and attendance of the many dignitaries and official guests from the United States Government, diplomatic corps and from the other districts of the Trust Territory; and

"Whereas, April 21 and 22, 1976 were set aside to hold the celebration and public events for the commemoration of the signing of the Covenant, for Northern Mariana Islands; and

"Whereas, the people of the Northern Mariana Islands were deeply honored by the presence of many distinguished officials representing the U.S. Government and its Territories including: Philippines Consulate of Guam, Japan Consulate, and the Consulate of the Republic of China;

"Now, therefore, be it resolved by the Fourth Northern Mariana Islands Legislature, Eighth Regular Session, 1976, that by means of this Resolution this Legislature, on behalf of the people and government of the Northern Mariana Islands, hereby convey their sincere appreciation and deep gratitude to the many distinguished official guests, dignitaries, and visitors who attended and participated in the celebration and commemoration of the signing of the Northern Marianas Covenant on April 21 and 22, 1976.

"Be it further resolved that the Speaker certify to and the Legislative Secretary attest the adoption hereof and thereafter transmit copies of the same to The United States President Gerald R. Ford, President of the U.S. Senate, Speaker of the U.S. House of Representatives, Resident Commissioner, Erwin Canham, Admiral Kent Carroll, ComNav. Marianas, Admiral Steven Morrison, U.S.N. Ret., Governor Ricardo Bordallo, His Excellency Felixberto Flores, High Commissioner Edward E. Johnston, Acting High Commissioner Peter T. Coleman, the Presiding Officers of the Congress of Micronesia, all District Administrators and Presiding Officers of all District Legislatures, the Honorable Lucio Turugenan, General Consulate of the Philippines, the Honorable Enti Lui, General Consulate of the Republic of China and to Honorable Hamanaka, General Consulate of Japan."

Resolution No. 167–1976 adopted by the Legislature of the Northern Mariana Islands; to the Committee on the Judiciary:

"RESOLUTION No. 167–1976

"A resolution relative to respectfully requesting the United States Congress to amend the Immigration and Naturalization Act to permit the free entry of people of the Northern Mariana Islands into the United States for education, training, and employment opportunities

"Whereas, through the enactment of Public Law 94–241, the people of the Northern Mariana Islands have been formally accepted to become members of the American Political Family; and

"Whereas, between now and the installation of the new constitutional Government of the Northern Marianas, the people of these islands will not enjoy certain rights which are normally enjoyed by all members of the American Political Family, among these rights are freedom of entry into the U.S. for employment, education, training, etc.; and

"Whereas, at the present time there are many people of the Northern Mariana Islands who are furthering their education in the United States and its territory and possessions; and

"Whereas, under the Immigration and Naturalization Act of June 27, 1952 (66 Stat. 163, *et seq.*), as amended, the citizens of the Northern Mariana Islands as well as citizens of the Trust Territory of the Pacific Islands are required to obtain nonimmigrant visas, to register as aliens, and to notify annually the United States Attorney General of their current addresses, much to their inconvenience; and

"Whereas, under and pursuant to the provisions of the Trusteeship Agreement, the United States as an Administering Authority is required to 'promote the . . . educational advancement of the inhabitants of the Trust territories' and 'to encourage qualified students to pursue a higher education, including training on the professional level'; and

"Whereas, under the recently approved Marianas Covenant wherein the citizens of the Northern Marianas shall become citizens of the United States and thus be entitled to all privileges and immunities of citizens in the several States of the United States, will both take effect unless the Trusteeship Agreement governing the Northern Mariana Islands as well as the other five districts of the Trust Territory of the Pacific Islands is duly terminated; and

"Whereas, it is the sense of the Northern Mariana Islands Legislature that the best interests of its people would be served if the freedom of entry into the United States, its territories, and possessions could be granted at this time;

"Now, therefore, be it resolved by the Fourth Northern Mariana Islands Legislature, Eighth Regular Session, 1976, that the United States Congress be and it is hereby respectfully requested to amend the Immigration and Naturalization Act to permit the free entry of the citizens of the Northern Mariana Islands to the United States for Ed-

ucation, Training, and employment opportunities;

"And be it further resolved that the Speaker certify to and the Legislative Secretary attest the adoption hereof and thereafter transmit copies of this Resolution to the President of the Senate of the United States Congress, the Speaker of the House of Representatives of the United States Congress, the Senators and Congressmen from the State of Hawaii, the Delegate to the United States Congress, the Honorable Won Pat, the Resident Commissioner of the Northern Mariana Islands, Chairman of the Senate Sub-Committee on Immigration and Naturalization and to the Chairman of the House Sub-Committee on Immigration and Naturalization."

Resolution No. 315 adopted by the Legislature of the Territory of Guam; ordered to lie on the table:

"RESOLUTION 315

"Resolution relative to extending the best wishes of the people of Guam on the occasion of the Bicentennial Anniversary of the United States of America

"Be it resolved by the Legislature of the Territory of Guam:

"Whereas, on July 4, 1976, we, the people of the United States of America residing on Guam might witness the most historic event of our lifetime, that is, the official celebration of Bicentennial Day, the 200th anniversary of the declaration of American independence; and

"Whereas, Bicentennial Day is a day that will be celebrated by millions of men, women and children throughout the length and breadth of our land; and

"Whereas, it is a day that will be remembered as one of the most significant of our lifetime; and

"Whereas, quoting our Official Bicentennial Declaration of the people of the United States of America:

" 'On the occasion of the Bicentennial Anniversary of the United States of America, . . . do proudly reaffirm our dedication to the principles of Liberty, Justice and Freedom which led our forefathers to proclaim our nation's Independence two hundred years ago, on this day and in this place.

" 'It is our unshakable belief that these principles, applied to the affairs of each generation by a Government which recognizes that it does indeed derive its just powers from the consent of the governed, will continue to secure our rights of Life, Liberty and the Pursuit of Happiness in the centuries to come as it has in the two centuries gone by.' July 4, 1776—July 4, 1976

"Now, therefore, be it

"Resolved, that the Thirteenth Guam Legislature, on behalf of the people of the Territory of Guam, does hereby request all residents of the Territory of Guam, to at the stroke of the bell at 12:00 noon on July 4, stand for a moment of silence in memory and recognition of many millions of Americans that have died and fought to bring us to this Bicentennial celebration and does hereby join our fellow Americans on the occasion of the Bicentennial Anniversary of the United States of America; and be it further

"Resolved, that the Speaker certify to and the Legislative Secretary attest the adoption hereof and that copies of the same be thereafter transmitted to the President of the United States; Vice President of the United States; American Revolution Bicentennial Administration; Joint Committee on Arrangements for the Commemoration of the Bicentennial of the United States of America; Guam Bicentennial Commission; Guam's Delegate to the United States Congress; Village Commissioners; and to the Governor of Guam."

Senate Joint Memorial 1001 adopted by the Legislature of the State of Arizona; to the Committee on Interior and Insular Affairs:

"SENATE JOINT MEMORIAL 1001

A joint memorial urging the President of the United States and Congress to insure the maintenance of educational support aid under the Johnson-O'Malley Act

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

"Your memorialist respectfully represents:

"Whereas, due to the enactment of the Indian Self-Determination and Education Assistance Act, P.L. 93-638, and the rules and regulations promulgated by the Department of Interior, Bureau of Indian Affairs, pursuant to this act, increasingly less financial aid as provided through the Johnson-O'Malley Act, P.L. 73-167, may be used for basic operational support by recipient school districts; and

"Whereas, in view of the many Arizona school districts which have previously relied on aid from the Johnson-O'Malley Act for use in operational support and in view of the limited financial sources for operational funding, many recipient Arizona school districts now have a serious deficiency in operational funds and this deficiency will continue and will bring serious crises to Indian school districts. Other crises are developing due to an ever increasing student population which simultaneously brings an extreme need for additional capital outlay funding. Therefore, it is the belief of this Legislature that the current and impending crises can be avoided if additional aid is made available to recipient school districts.

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

"1. That the President and Congress of the United States are requested to give their most earnest consideration to ensuring that aid from the Johnson-O'Malley Act, previously available for operational support of school districts, will not be decreased and that increased funding for such operational support and capital outlay will be available for recipient school districts.

"2. That the Secretary of State of Arizona transmit copies of this memorial to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Arizona Delegation to the United States Congress."

Senate Joint Resolution No. 51 adopted by the Legislature of the State of Alabama; to the Committee on Interior and Insular Affairs:

"RESOLUTION 51

"Resolution requesting the location of the Planned Solar Energy Research Institute at Huntsville, Alabama

"Whereas, the federal Energy Research and Development Administration (ERDA) plans to establish a Solar Energy Research Institute (SERI); and

"Whereas, the area of Huntsville, Alabama, has been deemed to offer the ideal blend of technological expertise and environmental conditions; and

"Whereas, Governor George C. Wallace on October 10, 1975, did by executive order establish a statewide committee known as "The Committee to Seek the Establishment of the Solar Energy Research Institute in the Huntsville Area"; and

"Whereas, the governing body of the City of Huntsville is willing to provide 300 acres of an industrial tract at no cost, either on a long term (50 year) lease basis, or in fee simple subject to reverter, to the United States Government for said Solar Energy Research Institute; now therefore,

"Be it resolved by the Legislature of Alabama, both Houses thereof concurring, That recognition is made of the extreme importance of this project and that all reasonable effort be provided by agencies and departments of State government in support of the special SERI Committee.

"Be it further resolved, That copies of this resolution be forwarded to the President and Vice President of the United States of America, Alabama Congressional Representatives, and officials of the Energy Research and Development Administration with the request that their efforts be directed to the location of the Solar Energy Research Institute in the City of Huntsville, Alabama."

HOUSE BILLS REFERRED

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

H.R. 5503. An act for the relief of Divina Mamuad; to the Committee on the Judiciary.

H.R. 7404. An act for the relief of Christine Donnelly; to the Committee on the Judiciary.

H.R. 10210. An act to require States to extend unemployment compensation coverage to certain previously uncovered workers; to increase the amount of wages subject to the Federal unemployment tax; to increase the rate of such tax; and for other purposes; to the Committee on Finance.

H.R. 10434. An act for the relief of Carlos Montenegro Gorbitz, doctor of medicine, Mrs. Gorbitz, and their 2-year-old son; to the Committee on the Judiciary.

H.R. 11076. An act for the relief of Ok Ja Choi; to the Committee on the Judiciary.

H.R. 11347. An act to authorize conveyance of the interests of the United States in certain lands in Salt Lake County, Utah, to Shriners' Hospitals for Crippled Children, a Colorado corporation; to the Committee on Government Operations.

H.R. 12224. An act to amend section 1234 of the Internal Revenue Code of 1954 with respect to the tax treatment of the grantor of options in stock, securities, and commodities; to the Committee on Finance.

H.R. 14291. An act to provide for an elective Governor and Lieutenant Governor of American Samoa, and for other purposes; to the Committee on Interior and Insular Affairs.

H.R. 14311. An act establishing certain accounting standards relating to the Panama Canal Company; to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

S. 2780. A bill to amend the Indian Claims Commission Act of August 13, 1946, and for other purposes (Rept. No. 94-1042).

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

H.R. 7685. An act for the relief of Mildred N. Crumley (Rept. No. 94-1044).

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

S. 2028. A bill to amend the Clayton Act by strengthening and facilitating the carrying out of antitrust and procompetitive policies by agencies of the Federal Govern-

ment, and for other purpose (Together with minority views) (Rept. No. 94-1045). Referred to the Committee on Commerce for not to exceed 30 days.

REFERRAL OF S. 2028 TO COMMERCE COMMITTEE

Mr. KENNEDY. Mr. President, I ask unanimous consent that S. 2028, to amend the Clayton Act by strengthening and facilitating the carrying out of antitrust and procompetitive policies by agencies of the Federal Government, be referred to the Committee on Commerce for a period of 30 days.

This bill was reported favorably by the Committee on the Judiciary; I have just filed the report on behalf of that committee. The chairman of the Commerce Committee has indicated his committee's interest in reviewing the potential application of this legislation to some of the regulatory agencies within that committee's jurisdiction. This can best be accomplished through this referral of the bill to that committee for a time certain, so that there will still be an opportunity for the Senate to consider the bill this session. That is why I am requesting that the bill be referred to the Committee on Commerce for a period of 30 days.

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

AUTOMOTIVE TRANSPORT RESEARCH AND DEVELOPMENT ACT OF 1976—CONFERENCE REPORT (REPT. NO. 94-1043)

Mr. TUNNEY submitted a report from the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 13655) to establish a 5-year research and development program leading to advanced automobile propulsion systems, and for other purposes, which was ordered to be printed.

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. NELSON (for himself and Mr. HASKELL):

S. 3680. A bill to authorize supplemental studies of alternative energy futures and to direct the publication of a report thereon, to establish an energy projection planning committee, and to supplement the authority of the Energy Research and Development Administration. Referred to the Committee on Interior and Insular Affairs.

By Mr. JACKSON (for himself and Mr. FANNIN) (by request):

S. 3681. A bill to guarantee certain obligations of the Guam Power Authority. Referred to the Committee on Interior and Insular Affairs.

By Mr. EASTLAND:

S. 3682. A bill for the relief of Dr. Oscar J. Briseno; and

S. 3683. A bill for the relief of Dr. Juan Bautista Lopez Ruiz. Referred to the Committee on the Judiciary.

By Mr. BAKER (for himself and Mr. BROCK):

S. 3684. A bill to amend the Federal Aviation Act of 1958, as amended, to broaden the power of the Civil Aeronautics Board to grant relief by exemption in certain cases, and for other purposes. Referred to the Committee on Commerce.

By Mr. HANSEN:

S. 3685. A bill to suspend until the close of June 30, 1977, the duty on certain docorubicin hydrochloride antibiotics and for other purposes. Referred to the Committee on Finance.

By Mr. MOSS:

S. 3686. A bill for the relief of Jonathan Winston Max; and

S. 3687. A bill for the relief of Gerald F. Myers. Referred to the Committee on the Judiciary.

By Mr. MOSS (for himself, Mr. MCGEE, and Mr. STONE):

S. 3688. A bill to amend title 13, United States Code, to provide for a mid-decade census of population, and for other purposes. Referred to the Committee on Post Office and Civil Service.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NELSON (for himself and Mr. HASKELL):

S. 3680. A bill to authorize supplemental studies of alternative energy futures and to direct the publication of a report thereon, to establish an energy projection planning committee, and to supplement the authority of the Energy Research and Development Administration. Referred to the Committee on Interior and Insular Affairs.

SUPPLEMENTAL ENERGY PLANNING AND POLICY ACT OF 1976

Mr. NELSON. Mr. President, I introduce the Supplemental Energy Planning and Policy Act of 1976, and ask unanimous consent that it be referred to the Committee on Interior and Insular Affairs. The Senator from Colorado (Mr. HASKELL) is joining as a cosponsor.

The purpose of this bill, in a nutshell, is to direct the Energy Research and Development Administration—ERDA—to prepare a series of projections of the consequences of a phaseout or drastic reduction of nuclear power development, should that happen to become the national policy as a result of any combination of technological, societal, natural, or accidental circumstances.

This legislation has been drafted by the professional staff of the Select Committee on Small Business in connection with an ongoing study by the committee of the subject of energy research and development and small business. Techical experts have been consulted extensively in the drafting process.

PROPOSITION 15

Proposition 15, the "Nuclear Safeguards Initiative" on the June 8 California primary ballot, was defeated by a margin of 2 to 1. Nevertheless, the "To be or not to be" question for our nuclear energy establishment's continued existence and growth is clearly not settled once and for all.

Similar ballot questions—passage of which could result in the imposition of difficult or impossible conditions on the construction and operation of nuclear powerplants—will be on the general election ballots in Oregon and Colorado this November. It now seems likely that efforts currently underway to get similar questions on the ballot in Washington, Montana, and Arizona will succeed, and nuclear questions are at least a possibility to face voters this fall in Missouri, Michigan, Maine, and Ohio as well.

A recent Harris poll found that 63 percent of the American public favored more nuclear powerplants, and 19 percent were opposed. But other public opinion polls have given different results, one even showing 40 percent of the public had no firm opinion on the issue. A recent sample of opinion of the members of the Federation of American Scientists found 62 percent of those responding—about 700 scientists or 10 percent of the membership—favored either a moratorium on construction of new nuclear plants or a phaseout of existing reactors.

UNANSWERED QUESTIONS

In the light of all the antinuclear political activity that is going on, it is astonishing but true that there has not yet been an official study aimed at providing the most complete, best possible answer to the question: What would happen to us if we shut down our nuclear powerplants or stopped building more?

What would be the job impacts? What would happen to costs of other fuels? What would be the trade impacts? What would be the effects on capital investment? What alternatives do we have to replace the energy those nuclear plants are producing and scheduled to produce? What are the environmental consequences of each such alternative? What could we do, if anything, to reduce our national energy inputs enough to take up the slack of a nuclear phaseout?

What are the technically feasible maximum amounts of energy that synthetic fuels, solar and geothermal technologies could provide, if the public and private sectors were to unite in maximizing any or all of those energy sources on a crash basis? What percentage of those ultimate amounts could be obtained from each of those sources by 1985 and 2000, and with what capital, environmental, employment, and social costs and benefits?

These are vital questions to which we must obtain better, more widely understood, and widely accepted answers than we now have.

THE "ERDA-48" REPORT

When Congress passed the Federal Nonnuclear Energy Research and Development Act of 1974, which was signed by the President on December 31, 1974, to become Public Law 93-577, ERDA was given the opportunity and the funds authorization to provide answers to some of those questions, but not all.

Pursuant to the mandate of that law, ERDA prepared a two-volume report entitled "A National Plan for Energy Research, Development & Demonstration: Creating Energy Choices for the Future." That report, dated June 28, 1975, now commonly referred to by its serial number, ERDA-48, is still much discussed and has been updated once and changed

primarily in the direction of a greater emphasis on conservation.

In ERDA–48, the observation is very sensibly and properly made:

It is no longer possible to generate a single projection of the Nation's energy future and expect a majority to accept it as a basis for planning.

Accordingly, the report included six alternative projections, or "scenarios," as they were called.

The six alternative energy futures projected in ERDA–48 were broad-ranging, but not one of them dealt with the question that is on all those State election ballots this year: the possibility of a nuclear phaseout or a severly lowered ceiling on nuclear power. It is true that the fifth scenario of the ERDA–48 six was called "Limited Nuclear Power," but it envisaged a 550-percent increase in the national use of fission electric power between 1975 and 1985, while the ballot questions, if adopted, could result in a sharp decrease.

THE AIM OF THE BILL

The aim of the present bill is to give ERDA the direction and the modest funding authorization required to prepare 10 additional scenarios, which would face the possibility and tell us the consequences of a zero-nuclear future after 1985, or a future in which nuclear powerplants would be permanently limited to a total of 200. The 10 scenarios would explore a number of alternative ways of dealing with those situations, through combinations of conservation, efficiency, domestic fossil-fuel development, and solar and geothermal energy development, at various levels of intensity for each.

In order to assure that the report prepared pursuant to this legislation would gain the widest possible credence and readership, the bill would provide for the study to be prepared within ERDA by, and as the responsibility of, a special five-member committee of experts, the Energy Projection Planning Committee. The members of that committee would be appointed by the President and confirmed by the Senate. Four members would be "persons having well recognized professional credentials in the field of energy, of whom two shall be persons generally recognized as proponents of nuclear power development and two as opponents thereof." The nuclear-proponent pair and the nuclear-opponent pair would each include one scientific or engineering expert and one economic expert. Those four, after their appointments, would prepare a list of three or more persons, any one of whom would be acceptable to all four. From that list, the President would nominate and the Senate confirm the committee's chairman.

INTERIOR COMMITTEE HEARINGS

This measure was originally prepared as a floor amendment to the ERDA authorization bill, S. 3105. However, a decision was made not to bring it up in that manner, because the Interior Committee was at that time scheduled to begin hearings on ERDA's long-range planning function, the precise subject of this legislation. Those hearings are beginning on Thursday, July 22, and will continue next week and resume after the August recess. I hope that this measure may be helpful to the committee and receive its consideration during those hearings.

Since the measure was prepared there have been released two reports of the Brookhaven National Laboratory on the subject of the economic impact of a nuclear phaseout. I have not had an opportunity, nor has staff, to study those reports as yet, but we are reliably informed that neither of them accomplishes the purposes of this proposed legislation, which calls for a study of various alternative ways of taking up the energy slack created by a nuclear phaseout. The Brookhaven studies and reports, as we understand, do not address the alternatives in the same way or in the detail this measure would provide for. Of course, the Interior Committee will want to consider those reports in the light of this proposal, and this legislation in the light of those reports.

During the extensive work that was done in preparation of this measure, the staff obtained authorization to note that Ralph Nader is in agreement with the idea of a study of the type contemplated by this proposal, under the direction of a committee of the kind the bill would establish. We also have a letter from Dr. Ivars Gutmanis, director of the Center for Resources Analysis, National Planning Association, stating that he finds—

the research effort specified in this amendment to be of critical importance to the entire planning effort of the energy supply-demand relationships in the United States.

Inquiries and cosponsorship requests on this measure are being handled by Ray Watts, general counsel of the Small Business Committee; telephone 224–8492.

Mr. President, I ask unanimous consent that there be printed in the RECORD at this point the following documents: First, text of the bill entitled the "Supplemental Energy Planning and Policy Act of 1976"; second, a section-by-section summary of the measure; third, a series of "Questions and Answers" about the measure; fourth, two tables—table 1 and 2—showing in summary form some of the principal assumptions and results of the six ERDA–48 scenarios of alternative energy futures, as they relate to total energy use and various types of energy resources use in 1985 and 2000; fifth, two additional tables—table 3 and table 4—showing the energy total and energy resources parameters that ERDA would be directed to incorporate in the 10 additional 1985 and year 2000 scenarios mandated by the bill; sixth, a letter from Dr. Ivars Gutmanis of the professional staff of the National Planning Association commenting on this proposed measure, in its earlier but substantively identical form as an amendment; seventh, a June 8, 1976, ABC network news editorial by Howard K. Smith; and eighth, a June 11, 1976, Washington Post editorial headed "California and the Atom."

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

S. 3680

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

SHORT TITLE AND DEFINITIONS

SEC. 1. (a) This act may be cited as the "Supplemental Energy Planning and Policy Act of 1976".

(b) For the purposes of this act—

(1) the term "Administrator" means the Administrator of the Energy Research and Development Administration;

(2) the term "solar energy" includes all the meanings and technologies included within the definition of that term in section 3 (1) of the Solar Energy Research, Development, and Demonstration Act of 1974 (88 Stat. 1431; 42 U.S.C. 5552) and also within the definitions of the terms "solar heating", "solar heating and cooling" and "combined solar heating and cooling" in section 3 (1) and (2) of the Solar Heating and Cooling Demonstration Act of 1974 (88 Stat. 1070; 42 U.S.C. 5502);

(3) the term "quads per year" means energy use or production of one quadrillion British Thermal Units per year;

(4) domestic fossil fuel energy includes coal, oil, and gas technologies;

(5) the term "nuclear power" includes fisson technologies; and

(6) the term "ERDA–48" means the report, in two volumes, submitted to the President and the Congress on June 28, 1975 by the Administrator pursuant to section 6 of the Federal Non-Nuclear Energy Research and Development Act of 1974 (88 Stat. 1881; 42 U.S.C. 5905) under the title, "A National Plan for Energy Research, Development & Demonstration: Creating Energy Choices for the Future (ERDA–48)".

SUPPLEMENTAL PLAN FOR ENERGY RESEARCH AND DEVELOPMENT

SEC. 2. (a) Not later than 240 days after the date of the enactment of this Act, the Administrator shall transmit to the Congress a comprehensive plan, prepared by the Energy Projection Planning Committee established by section 10 of this Act, for energy research, development, demonstration and commercialization supplementing ERDA–48.

(b) The supplemental plan required by subsection (a) shall include an analysis and evaluation of future energy projections in addition to those already contained in ERDA–48 and any subsequent reports submitted pursuant to section 15 of the Federal Non-Nuclear Energy Research and Development Act of 1974 (88 Stat. 1894; 42 U.S.C. 5914) prior to enactment of this Act.

(c) The projections required by subsection (b) shall include—

(1) one projection based on moderate conservation combined with intensive use of solar and geothermal energy;

(2) one projection based on moderate conservation combined with increased use of domestic fossil fuel energy;

(3) one projection based on intensive conservation combined with intensive use of solar and geothermal energy

(4) one projection based on intensive conservation combined with increased use of domestic fossil fuel energy;

(5) one projection based on optimum combinations of supply and demand technologies;

(6) four projections based on various levels of increased use of solar energy and intensive conservation;

(7) one projection in which the number of nuclear power plants is limited to 200 and the conservation and improved efficiencies in end use assumed in Scenario 1 of ERDA–48 are assumed to occur; and

(8) any other projections which the Energy Projection Planning Committee determines to be necessary in order to provide Congress and the American people with a wide variety of alternative strategies for future energy resource development and use.

(d) Such plan shall further include recommended strategies to implement such projections.

SUPPLEMENTAL ENERGY PROJECTION PARAMETERS

SEC. 3. (a) (1) The projections required by section 2(c) (1) and (2) shall contain a parameter on total United States energy use not to exceed 100 quads per year before the year 1985 and no more than 140 quads per year before the year 2000.

(2) The projections required by section 2 (c) (3), (4) and (6) shall contain a parameter on total United States energy use not to exceed 90 quads per year before the year 1985 and 115 quads per year before the year 2000.

(b) The projections required by section 2 (c) (1) and (3) shall contain parameters on—

(A) total United States solar energy use of not less than 10 quads per year by the year 1985, and not less than 50 quads per year by the year 2000; and

(B) total United States geothermal energy use of not less than 3.2 quads per year by the year 1985 and not less than 15 quads per year by the year 2000.

(c) Of the projections required by section 2(c) (6)—

(1) one shall contain a parameter on total United States solar energy use of approximately 2 quads per year by 1985;

(2) one shall contain a parameter on total United States solar energy use of approximately 4 quads per year by 1985;

(3) one shall contain a parameter on total United States solar energy use of approximately 6 quads per year by 1985; and

(4) one shall contain a parameter on total United States solar energy use of approximately 8 quads per year by 1985.

(d) The energy projections required by section 2(c) (1), (2), (3), (4), (5), and (6) shall contain parameters on—

(1) total United States nuclear power use not to exceed 0 (zero) quads per year after the year 1985; and

(2) total imports of fossil fuel not to exceed 20 quads per year after 1985.

SEC. 4. The supplemental plan required by section 2(a) shall include, but shall not be limited to, detailed analyses and evaluations, nationally and (as appropriate and practicable) by region, of the qualitative and quantitative impacts of each energy strategy required by section 2(b) and (c) with respect to—

(1) employment (especially occupational displacement);

(2) capital (especially formation, availability, liquidity, and usage);

(3) economic growth and productivity (especially Gross National Product);

(4) environment (especially air and water pollutants, thermal dissipation, solid wastes, and land use);

(5) occupational health and safety (especially deaths, injuries, illnesses and person-days lost);

(6) energy and material resource consumption by source and function;

(7) balance of payments;

(8) balance of trade;

(9) national security;

(10) international economic development;

(11) market, intermarket and industrial competition; and

(12) market and industrial concentration and barriers to new firm entry.

SEC. 5. The Energy Projection Planning Committee shall use, but shall not be limited to, the Reference Energy System developed by the Brookhaven National Laboratory in analyzing and evaluating the energy projections required by section 2(b) and (c).

SEC. 6. For each energy strategy or scenario in ERDA-48 and any subsequent reports submitted pursuant to section 15 of the Federal Nonnuclear Research and Development Act of 1974 (88 Stat. 1894; 42 U.S.C. 5914) prior to enactment of this act, the Energy Projection Planning Committee shall analyze and evaluate, separately for each such strategy or scenario, the effects for the criteria designated by section 4 which were not analyzed or evaluated in ERDA-48 or such subsequent reports.

SEC. 7. The supplemental plan shall include explanations of and justifications for any methodological, technological, economic, social, institutional, environmental and other assumptions made by the Energy Projection Planning Committee in the preparation and evaluation of the supplemental plan and energy strategies required by section 2.

SEC. 8. Concurrently with the transmittal of the supplemental plan, all mathematical calculations and assumptions made by the Energy Projection Planning Committee shall be made publicly available and in a manner that will facilitate independent evaluation of such calculations and assumptions.

SEC. 9. All assumptions and mathematical calculations made in the development of ERDA-48 and any subsequent reports submitted to Congress pursuant to section 15 of the Federal Nonnuclear Research and Development Act of 1974 (88 Stat. 1894; 42 U.S.C. 5914) shall be made publicly available concurrently with the transmittal of the supplemental plan in a manner consistent with sections 7 and 8 of this act.

ENERGY PROJECTION PLANNING COMMITTEE

SEC. 10. (a) There is hereby established the Energy Projection Planning Committee (hereinafter referred to in this section as the "Committee"), which shall be composed of five members, who shall be appointed by the President, by and with the advice and consent of the Senate, as follows:

(1) four members who shall be persons having well recognized professional credentials in the field of energy, of whom two shall be persons generally recognized as proponents of nuclear power development and two as opponents thereof; and

(2) one member who shall be chairman shall be appointed by the President from a list of not less than three recommendations submitted to him by the foregoing members after their appointments. Each person so recommended to the President for appointment as chairman shall be agreed upon unanimously by the four Committee members appointed under subsection (a) (1).

(b) Of the members appointed pursuant to paragraph (1) of subsection (a) as proponents of nuclear power development, one shall be an economic specialist and one a specialist in the physical sciences and/or engineering. With respect to the members appointed pursuant to such paragraph as opponents of nuclear power development, one shall be an economic specialist and one a specialist in the physical sciences and/or engineering.

(c) The President shall call the first meeting of the Committee after four of such members have been appointed.

(d) Any vacancy on the Committee shall not affect its powers, and shall be filled in the same manner as the original position.

(e) Four members of the Committee shall constitute a quorum.

(f) The chairman of the Committee is authorized to obtain from any department, agency, or independent establishment of the Federal Government available information and data deemed useful in the discharge of the Committee's duties, and such departments, agencies, and establishments are authorized and directed to cooperate with the Committee and to furnish information requested by the Committee.

(g) At the request of the Chairman of the Committee, the Administrator shall make available to the Committee such staff personnel, facilities, and equipment as the Chairman deems necessary to enable the Committee to carry out its functions under this Act.

(h) The Chairman of the Committee shall receive compensation at a rate equal to the daily rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code, and the other members of the Committee shall receive compensation at a rate equal to the daily rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day such Chairman or member is engaged in the performance of duties vested in the Committee. All members shall be reimbursed for travel, subsistence, and other necessary expenses incurred in connection with their activities as members of the Committee.

(i) The appointments of individuals to serve as members of the Committee shall be completed within sixty days after the date of the enactment of this Act, and the first meeting of such Committee shall be called by the President prior to the expiration of such sixty-day period.

(j) It shall be the function of the Commitee to prepare and, within two hundred and twenty days following the date of the enactment of this Act, to submit to the Administrator, for transmission by him to the Congress in accordance with section 2 of this Act, a comprehensive plan for energy research, development, and demonstration supplementing ERDA-48 and any subsequent reports submitted to the Congress prior to the enactment of this Act pursuant to section 15 of the Federal Non-Nuclear Research and Development Act of 1974 (88 Stat. 1894, 42 U.S.C. 5914).

(k) The Committee shall cease to exist ninety days after the transmission to the Congress of such supplemental plan pursuant to this section.

(l) There is authorized to be appropriated such sum, not to exceed $2,500,000, as may be necessary to carry out the provisions of this Act.

(m) The Committee shall not transfer by contract, grant, agreement, or by any other arrangement, the operative responsibility for the preparation of the supplemental plan required by section 2 to any other person, governmental department or agency, or other entity.

DISTRIBUTION

SEC. 11. The Administrator shall publicize the existence of the supplemental plan and shall make copies thereof available to the public on request.

REGIONAL HEARINGS

SEC. 12. Not less than thirty days after the supplemental plan is transmitted to the Congress, the Administrator shall commence public hearings with respect to such plan on a broad regional basis. Such hearings shall be conducted over a period not to exceed sixty days.

FINAL PLAN

SEC. 13. Within sixty days after the conclusion of such regional hearings, the Administrator shall report to the Congress the results of such hearings, together with the views and recommendations of the Administrator concerning such supplemental plan.

SECTION-BY-SECTION SUMMARY OF THE "SUPPLEMENTAL ENERGY PLANNING AND POLICY ACT OF 1976"

SEC. 1. Short title—the "Supplemental Energy Planning and Policy Act of 1976"—and definitions. Principal definitions are "solar

energy", which is given a broad meaning; "quads per year", meaning quadrillions of British thermal units of energy used in a year; and "ERDA-48", meaning a two-volume 1975 report on national energy futures under various assumptions, prepared by the Energy Research and Development Administration (ERDA), which this bill would cause to be supplemented. "Nuclear power" is expressly defined to include only fission technologies.

SEC. 2. Subsections (a) and (b) direct the Administrator of ERDA to transmit to the Congress within 240 days of enactment of this bill a comprehensive plan for energy research, development, demonstration and commercialization, supplementing ERDA-48. This supplemental plan is to be prepared by the Energy Projection Planning Committee established by section 10.

Subsection (c) names 10 specific, alternative future energy projections that are to be contained in the supplemental plan. The descriptions of the first 9 are in general, non-numeric terms, such as "moderate" and "intensive conservation," "increased" and "intensive use of solar and geothermal energy," and "increased use of domestic fossil fuel energy." The description of the tenth projection contains numerical parameters of a maximum of 200 nuclear power plants and incorporation of the conservation and improvements in end use assumed in Scenario I of ERDA-48. Subsection (c) authorizes but does not direct the preparation of other projections, as deemed requisite by the Energy Projection Planning Committee.

Subsection (d) requires that each projection include recommended strategies by which it could be implemented.

Sec. 3. This section sets specific, numerical parameters which are to be included in the 10 projections described in section 2(c).

Subsection (a) provides that in the first and second of the 10 projections there shall be parameters on total U.S. energy use of not to exceed 100 quads per year before 1985 and not to exceed 140 quads per year before 2000, while in the third, fourth and sixth through ninth projections the corresponding parameters are to be 90 quads and 115 quads, respectively.

(NOTE.—These numbers may be compared with total U.S. energy use in 1975 of 71 quads and total year 2000 U.S. energy use of 165 quads in the highest of the ERDA-48 projections.)

Subsections (b) and (c) establish parameters for solar energy and geothermal contributions to be included in certain projections, ranging from lows of 2 to highs of 10 quads per year of solar by 1985 and up to 50 quads or more of solar by 2000. Geothermal parameters in certain projections are set at 3.2 quads per year by 1985 and 15 quads or more per year in 2000.

Subsection (d) provides that in all of the first nine projections, there are to be parameters on nuclear power of zero quads per year after 1985 and total fossil fuel imports not to exceed 20 quads per year after 1985.

(NOTE.—For a more detailed description of the 10 scenarios which sections 2 and 3 would require the Energy Projection Planning Committee to prepare, see Question No. 5 in the "Questions and Answers About the 'Supplemental Energy Planning and Policy Act of 1976,'" following this summary. For a tabulation of the parameters set for those projections, see Tables 3 and 4 following the "Questions and Answers.")

SEC. 4. This section directs that the supplemental plan required by section 2 shall include detailed analyses and evaluations, nationally and (where practicable and appropriate) regionally, of the qualitative and quantitative impacts of each energy strategy to be prepared pursuant to section 2 (b) and (c) with respect to certain listed subjects. Those subjects are: employment, capital, economic growth and productivity, environment, occupational health and safety, resource consumption, balance of payments, balance of trade, national security, international economic development, competition within and between markets, market and industrial concentration and barriers to new firm entry. The Energy Projection Planning Committee is authorized to add to this list.

SEC. 5. This section requires the Energy Projection Planning Committee to use, but not necessarily exclusively, the Reference Energy System developed by the Brookhaven National Laboratory in analyzing and evaluating the energy projections required by section 2 (b) and (c).

(NOTE.—The Brookhaven Reference Energy System was used in ERDA-48, so its use in the report required by this bill will facilitate comparison.)

SEC. 6. This section requires the Energy Projection Planning Committee to include in the report required by this measure an amplification of ERDA-48 and any subsequent updates of ERDA-48 to include, for each ERDA-48 scenario, analyses and evaluations of the criteria listed in section 4, to the extent that the original document did not include that information.

(NOTE.—ERDA has thus far issued one update of ERDA-48, which bears the same title and is numbered ERDA 76-1. While ERDA-48 and ERDA 76-1 deal in some detail with environmental and occupational safety and health impacts, for example, they are silent on employment and capital impacts.)

SEC. 7. This section requires that the supplemental plan include explanations of and justifications for the methodology used and any assumptions made by the Energy Projection Planning Committee in the preparation of the energy strategies required by section 2.

SEC. 8. This section requires the Energy Projection Planning Committee to make publicly available, in a manner that will facilitate independent evaluation, the mathematical calculations and assumptions made in the preparation of the supplemental plan. The information is to become available at the same time the supplemental plan is transmitted to Congress.

SEC. 9. This section requires that assumptions and mathematical calculations made in the development of ERDA-48 and in all subsequent update reports thereof similarly be made available to the public, and at the same time, i.e., when the supplemental plan is transmitted.

SEC. 10. This section establishes the Energy Projection Planning Committee.

Subsection (a) provides that the Committee shall have five members, appointed by the President with Senate confirmation. Four members are to have recognized professional credentials in the field of energy and two of the four are to be persons generally recognized as proponents and two as opponents of nuclear power development. Those four, after their appointment and confirmation, are to submit a list of three or more persons who would be acceptable to all four and from that list the President is to nominate and the Senate confirm the Committee's chairman.

Subsection (b) provides that the nuclear-proponent pair of Committee members and the nuclear-opponent pair shall each include one expert in the physical sciences and/or engineering and one economic expert.

Subsection (c) provides that the President shall call the first meeting of the Committee when four members have been appointed.

Subsection (d) provides that a vacancy shall not affect the Committee's powers and shall be filled in the same manner as the original appointment.

Subsection (e) establishes four members as a Committee quorum.

Subsection (f) authorizes the Committee chairman to obtain from Government departments, agencies and independent establishments available information needed by the Committee to discharge its duties.

Subsection (g) provides that the Administrator of ERDA shall make ERDA personnel, facilities and equipment available to the Committee, at its request, as needed to carry out its functions.

Subsection (h) provides that the Committee chairman shall be compensated at a daily rate equivalent to level III and the members of the Committee at daily rates equivalent to level IV of the Executive Schedule (5 U.S.C. 5314, 5315). Reimbursement of travel, subsistence and other necessary expenses is authorized.

Subsection (i) directs that the appointment of individuals to serve as Committee members, and the calling of the first meeting of the Committee by the President, shall occur within a 60-day period following enactment of this title.

Subsection (j) provides that the Committee's function will be to prepare a comprehensive plan for energy research, development and demonstration, supplementing ERDA-48 and any subsequent updates of ERDA-48. The Committee's report of that plan is to be submitted to the Administrator within 220 days following the date of enactment of this title, to be transmitted by the Administrator to Congress pursuant to section 2.

Subsection (k) provides that the Committee shall cease to exist 90 days after transmission to the Congress of the supplemental plan.

Subsection (l) authorizes appropriation of up to $2.5 million to carry out the provisions of this title.

Subsection (m) provides that the Committee is not to transfer by contract, grant, agreement or any other arrangement the operative responsibility for the preparation of the supplemental plan required by section 2.

(NOTE.—It is the intention of this subsection to require that the preparation of the supplemental plan be done "in house" by ERDA personnel under the direct supervision and as the direct responsibility of the Committee.)

SEC. 11. This section requires ERDA to publicize the existence of the supplemental plan and make copies available to the public.

SEC. 12. This section directs the Administrator to convene regional public hearings on the supplemental plan for a period of not to exceed 60 days, beginning at least 30 days after the transmission of the plan to Congress.

SEC. 13. This section directs the Administrator to report to the Congress the results of the public hearings mentioned in section 12, together with his own views and recommendations on the supplemental plan. The Administrator's report is to be submitted to the Congress within 60 days after the conclusion of the regional hearings.

QUESTIONS AND ANSWERS ABOUT THE "SUPPLEMENTAL ENERGY PLANNING AND POLICY ACT OF 1976"

THE BILL IN A NUTSHELL

Question 1. What is the bill, in a nutshell?

Answer. It is a bill to direct the Energy Research and Development Administration (EDRA) to project the consequences of a phaseout or drastic scale-down of nuclear power development, should that happen to become the national policy. The measure would authorize the appropriation of an additional $2.5 million to ERDA. That would finance the preparation of ten (or more) projections of national energy futures. Each would analyze a different method of meeting situations in which nuclear power would either be phased out entirely by 1985 or the total number of nuclear power plants in the country by and after 1985 would be limited to 200, the number now on the low end of

ERDA's planning range. The bill would direct that a careful analysis be made of the feasibility—and the economic and other consequences—of substituting various levels of alternative energy supply (including solar, geothermal and increased use of domestic fossil fuels) and various levels of conservation. The bill would not change our present energy policy in any way. It would simply direct that in case a significant change should occur, we would know more about the probable effects. That is an essential step for sensible contingency planning as well as for sound policy making.

WHAT'S NEW OR DIFFERENT ABOUT IT?

Question 2. Hasn't ERDA already done something approximately like that?

Answer. Yes. The purpose of the bill is to get ERDA to do some additional planning for our national energy future to supplement work it has done previously. Section 6 of the Federal Nonnuclear Energy Research and Development Act of 1974 (Public Law 93-577) required ERDA to . . . transmit to the Congress on or before June 30, 1975, a comprehensive plan for energy research, development, and demonstration.

Section 15 of the same law required ERDA to update the plan annually at the time the President's budget is submitted.

Pursuant to section 6, ERDA transmitted to the Congress on June 28, 1975, a two-volume report now familiarly referred to by its serial number, "ERDA-48," entitled "A National Plan for Energy Research, Development & Demonstration: Creating Energy Choices for the Future." The first update report on ERDA-48 was filed in April 1976 under the same title (1976), with the number "ERDA 76-1."

ERDA-48 projects six alternative energy futures or "scenarios." As ERDA very sensibly and correctly pointed out (vol. 1, p. B-1), "It is no longer possible to generate a single projection of the Nation's energy future and expect a majority to accept it as a basis for planning."

Accordingly, ERDA assumed six different possible sets of contingencies and priorities in our national energy policy and worked out some of the principal economic and technical implications of each. The theory of this amendment is that our energy future is so terribly important that we must have ERDA do some more work of the same kind, both to add some vital details to the six scenarios it has already published and to work out 10 more scenarios, based on different assumptions of policy.

THE SIX SCENARIOS OF ERDA-48

Question 3. What were the six scenarios (alternative energy futures) in ERDA-48?

Answer. The six ERDA-48 scenarios and their major assumptions and results were as follows:

Scenario O—No new initiatives

As the name implies, the first ERDA-48 projection assumed (vol. 1, p. IV-2), "a continuation of current patterns of energy production with shortfalls in domestic supplies made up by imports." The results of this scenario included (1) a national total energy use of 107.3 quads in 1985 and 165.47 quads in the year 2000, (2) a contribution to those totals by fission electric power of 10.1 percent in 1985 and 24.5 percent in 2000; (3) a contribution to those totals by oil imports of 24.2 percent in 1985 and 35.3 percent in 2000; and (4) combined solar and geothermal contributions of 0.7 percent in 1985 and 0.9 percent in 2000.

(NOTE.—A quad is the shorthand term for 1 quadrillion (10^{15}) British thermal units (Btu). Total U.S. energy use in 1975 was 71 quads. The oil transported through the Alaska pipeline in one year at full capacity will amount to 3.4 quads. Another popular description of a quad is that it is the energy equivalent of 472,044 barrels of oil a day for one year. The term "quad" is expressly defined and used in the amendment because it is the basic common-denominator energy measurement used in ERDA-48.)

Scenario I—Improved efficiencies in end use

This scenario "was designed to show the potential of an intensive program of (1) energy conservation through efficiency (i.e., no reduction in services or products) and (2) parallel use of energy resources already potentially available and characterized by considerations of efficiency (e.g., recovery of energy from waste materials and enhanced recovery of oil and gas). Consequently, energy demand is reduced from that projected in Scenario O, but the sources of energy remain essentially the same, with the addition of some previously neglected sources which generally require end-user initiatives for implementation." (Vol. 1, p. IV-2) Principal results in Scenario I included (1) a national total energy use of 96.97 quads in 1985 and 122.48 quads in 2000; (2) a fission-electric contribution of 11.2 percent in 1985 and 16.6 percent in 2000; (3) an oil-imports contribution of 10.8 percent in 1985 and 16.8 percent in 2000; and (4) a combined solar and geothermal contribution of 3.3 percent in 1985 and 9.3 percent in 2000.

Scenario II—Synthetics from coal and shale

The third scenario of ERDA-48 was "based on increasing the limited supply of liquids and gases" and assessed "the impact of drawing on abundant coal and shale resources to produce liquids and gases, as direct substitutes for conventional fuels." (Vol. 1, p. IV-5) Principal results included (1) total U.S. energy use of 107.28 quads in 1985 and 165.42 quads in 2000; (2) a fission-electric contribution of 10.1 percent in 1985 and 24.5 percent in 2000; (3) an oil-imports contribution of 16.2 percent in 1985 and 10.9 percent in 2000; and (4) combined solar and geothermal contributions of 0.8 percent in 1985 and 1.8 percent in 2000. In this scenario, the combined contributions of coal and oil shale to the national energy budget amounted to 22.6 percent in 1985 and 34.9 percent in 2000—higher than in any of the other projections.

Scenario III—Intensive electrification

In this scenario, ERDA-48 examined "how the total energy picture would be affected by an intensive shift to electrification, with (1) maximum use of all sources to generate electric power and (2) maximum reliance on electricity for end uses." (Vol. 1, p. IV-5) Principal results included (1) U.S. total energy use of 106.77 quads in 1985 and 161.16 quads in 2000; (2) a fission-electric contribution of 12.4 percent in 1985 and 27.5 percent (including 2.4 percent from breeder reactors) in 2000; (3) an oil-imports contribution of 16.4 percent in 1985 and 16.6 percent in 2000; and (4) a combined solar and geothermal contribution of 1.9 percent in 1985 and 8.2 percent in 2000.

Note.—In this and in all other scenario summaries in these Questions and Answers, the "solar" percentages include the total of the ERDA-48 categories "solar," "biomass" and "waste materials," which is consistent with the definition of "solar energy" in the bill.

Scenario IV—Limit on nuclear power

In its fifth alternative energy future, ERDA-48 examined "what might be required if for any reason (technological or political) the development of a major technology were constrained. This scenario is constructed to ask the question: 'If a large block of new energy production capability, such as nuclear, were unavailable, how many other new technologies would have to be simultaneously and successfully introduced so as to produce about the same import results as the preceding three scenarios?'" (Vol. 1, p. IV-6). Principal results included (1) total national energy use of 107.05 quads in 1985 and 158.01 quads in 2000; (2) a fission-electric contribution of 10.1 percent in 1985 and 7.2 percent in 2000; (3) an oil-imports contribution of 16.3 percent in 1985 and 13 percent in 2000; and (4) a combined solar and geothermal contribution of 3.6 percent in 1985 and 16.5 percent in 2000.

Scenario V—Combination of all new technologies

The sixth and last of ERDA-48's projections analyzed "a case in which a combination of all major energy packages, including nuclear, are simultaneously commercialized (i.e., improved end-use, synthetic fuels, and electrification)." (Vol. 1, p. IV-6) Principal results included (1) U.S. total energy use of 98.14 quads in 1985 and 137.03 quads in 2000; (2) a fission-electric contribution of 13.5 percent in 1985 and 17.7 percent in 2000; (3) an oil-imports contribution of 8 percent in 1985 and a 4.11-quad (or about 2 million barrels a day) oil surplus in 2000; and (4) a combined solar and geothermal contribution of 4 percent in 1985 and 14.2 percent in 2000.

(NOTE.—In the foregoing summaries of the ERDA—48 scenarios, the quad figures were taken and the percentage figures were calculated from Tables 1 and 2 appended to these Questions and Answers. Those tables, in turn, were derived from tabulations on pages B-6 and B-8 of vol. 1 of ERDA-48. Major excerpts from both volumes of ERDA-48—including all pages here cited—are reprinted in Hearings before the Select Committee on Small Business, U.S. Senate, 94th Cong., 1st Sess., "Energy Research and Development and Small Business—Part 2—Solar Energy (Continued): The Small Business and Government Roles," beginning at page 4846.)

WHY DO WE NEED MORE SCENARIOS?

Question 4. The six scenarios in ERDA-48 sound quite comprehensive, yet the "Supplemental Energy Planning and Policy Act" would have ERDA prepare at least 10 more projections of energy futures. Why?

Answer. There has already been one statewide ballot question (Proposition 15, the "Nuclear Safeguards Initiative," on California's June 8 primary ballot) which, if passed in California and emulated in other industrial States, would cut back nuclear power much farther than in ERDA-48's Scenario IV—Limited nuclear power. Indeed, the effect could be to abolish nuclear energy. Similar questions will definitely be on the Oregon and Colorado general election ballots this November and seem likely to be on the ballots in Washington, Montana and Arizona. Also, in Missouri, Michigan, Maine and Ohio, ballot questions of the same type are a possibility this fall, as organized efforts are under way to meet the requisite formalities in each of those States.

While Proposition 15 was defeated by a 2-to-1 margin on June 8 in California, there is every indication that the effort to reduce or eliminate nuclear power by political pressures on national policy processes will persist. (Howard K. Smith, in an ABC network news editorial telecast on the night of the California voting, June 8, suggested a national referendum on nuclear energy. The text is appended to these Questions and Answers.) Shortly before the June 8 vote, the California Legislature passed and Governor Brown signed three new laws which will have the effect of limiting nuclear energy in the State.

In the continuing national debate over the future of nuclear energy, recurring questions include: (1) What would be the effect on jobs, utility bills, energy availability and other vital parts of our economic lives, if production of electricity by nuclear fission were severely cut back or phased out altogether? (2) How feasible would it be to have

solar, geothermal and other forms of renewable energy replace—or supplement much more substantially—nuclear power in our national energy budget by the end of the century? (3) What would be the public and private capital requirements and the job-creation impacts of various levels of expansion in our national efforts to develop solar and geothermal power? (4) Could the efficiency or waste-reduction method of eliminating or reducing our need for nuclear power and oil imports be pushed farther than in any of the ERDA-48 scenarios, and, if so, with what economic impacts?

The 10 additional energy-future scenarios that this amendment would direct and fund ERDA to make would help provide answers to these and other questions. Those answers will be helpful to both "sides" in the national nuclear energy debate and should contribute to increasing the light and decreasing the heat that is now found in that debate.

THE 10 NEW SCENARIOS

Question 5. What are the main points or assumptions of the 10 new scenarios the bill would direct ERDA to prepare?

Answer. The 10 scenarios are listed in section 2(c) of the bill. Certain assumptions to be made in the new scenarios are set forth in section 3. The mandated assumptions are shown in Tables 3 and 4 appended to these Questions and Answers. Briefly, the new projections are:

SEC. 2(c)(1) scenario. This projection would analyze the effects of moderate conservation combined with intensive use of solar and geothermal energy. Mandated assumptions would include (1) maximum total U.S. energy use of under 100 quads per year through 1984 (and by reasonable implication not much over 100 quads in 1985) and not over 140 quads per year in any year prior to 2000; (2) zero quads per year of nuclear-fission energy in 1986 and all subsequent years; (3) a contribution from solar energy of 10 quads per year (or more)—or about 10 percent of total U.S. energy use—in 1985 and 50 quads per year (or more)—or about 35.7 percent of the U.S. energy total—by 2000; (4) a contribution from geothermal energy of at least 3.2 quads per year—or 3.2 percent of total U.S. energy—in 1985 and at least 15 quads—or 10.7 percent of the U.S. total—by 2000; and (5) total imports of fossil fuels (natural gas as well as oil) not to exceed 20 quads per year after 1985.

(NOTE.—In the Supplemental Planning and Policy Act of 1976 (this bill), the term "solar energy" would be defined to include all the meanings and technologies included within the definition of that term in the Solar Energy Research, Development, and Demonstration Act of 1974 (42 U.S.C. 5552) and also within the definitions of the terms "solar heating," "solar heating and cooling" and "combined solar heating and cooling" in the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5502). Thus, some technologies not "solar" in a narrow technical sense (e.g., waste combustion or conversion and cooling of buildings by nocturnal heat radiation) would be included.)

SEC. 2(c)(2) scenario. The second new scenario would analyze the effects of moderate conservation combined with increased use of domestic fossil fuel energy. Principal assumptions: (1) The ceilings on total national energy use in 1985 and 2000 would be the same as in scenario (c)(1), i.e., somewhat higher ceilings than those in ERDA-48's Scenario I but significantly lower, for the year 2000, than the ceiling in ERDA-48's Scenario II. (2) There would be no nuclear fission input after 1985. (3) There would be no mandated (although ERDA could make optional) solar or geothermal inputs; rather, maximized inputs from domestic fossil fuels would take the place of all post-1985 nuclear energy and some oil and gas imports. (4) Imports of fossil fuels, as in Scenario (c)(1), would be limited to less than 20 quads per year after 1985.

SEC. 2(c)(3) scenario. This scenario would analyze the effects of a maximized conservation policy combined with maximized solar and geothermal energy development. The parameters in this projection would be identical with those in the first, except that significantly lower ceilings would be placed on total national energy use: a maximum of 90 quads per year through 1984 (7.7 percent lower than the lowest 1985 total-energy projection in the ERDA-48 scenarios) and a maximum of 115 quads per year through 1999 (a 6.1 percent reduction from the lowest year 2000 projection in ERDA-48). Because total energy use would be lower while the solar and geothermal parameters would remain the same, their percentage contributions would increase: solar would account for about 11.1 percent of the national energy total in 1985 and over 43 percent in 2000; geothermal's percentage contributions would be over 3.5 in 1985 and about 13 in 2000.

SEC. 2(c)(4) scenario. The fourth projection would examine the effects of the same very low national energy ceilings as in the preceding scenario, but with emphasis on increased use of domestic fossil fuels rather than solar and geothermal. Again, as in the section (c)(2) projection, there are no specific numerical parameters for solar, geothermal or fossil-fuels inputs to the energy budget—only ceilings on the national totals, on nuclear (zero after 1985) and on fossil-fuels imports (20 quads per year after 1985).

SEC. 2(c)(5) scenario. In this projection, ERDA's technicians and the Energy Projection Planning Committee created by this amendment would describe and analyze their own judgments of optimum combinations of supply and demand technologies. There would be no parameters set for total national energy use or for solar, geothermal or domestic fossil-fuels inputs. The same parameters as in the preceding scenarios would be set for nuclear-fission and oil-imports inputs, however: after 1985, zero nuclear and 20 quads per year maximum oil imports.

SEC. 2(c)(6)—four scenarios. Under section 2(c)(6) of the bill, ERDA would make four complete, separate projections based on the "intensive conservation" parameters—U.S. maximum total energy use of about 90 quads in 1985 and about 115 quads in 2000—combined with various levels of solar-energy input by 1985. One projection would assume a solar contribution of 2 quads of solar input per year by 1985, one would assume 4 quads, one 6, and one 8. As these scenarios are intended primarily to assess the feasibility and effects of various levels of solar development in the near-term future, no solar parameters are set for the year 2000 and no geothermal parameters for either 1985 or 2000. The post-1985 zero-nuclear and 20-quads-per-year fossil-fuel imports parameters would apply to all four scenarios.

SEC. 2(c)(7)—scenario. The tenth and final scenario the bill would direct ERDA to prepare would be one assuming a permanent low ceiling on nuclear power development, rather than a complete phaseout. The assumptions would be (1) that the conservation and improved efficiencies in end use projected in Scenario I of ERDA-48 would occur, resulting in total U.S. energy use of about 97 quads in 1985 and about 122.5 quads in 2000; and (2) that there would be a permanent ceiling of 200 on the number of U.S. nuclear fission power plants. Since that number may well be reached by 1985, under ERDA's and the Nuclear Regulatory Commission's existing plans and projections, the fission input in both 1985 and 2000 might be about the same—in the neighborhood of 12.5 quads—although the amendment does not state a quads parameter for fission, only a number-of-plants parameter. (The gross energy input of 200 nuclear plants of an average 1,000-megawatt capacity, operating 70 percent of the time—somewhat better than the 60 percent averaged by existing plants but not an unlikely target for 1985—would be about 12.5 quads per year; the net energy output of those plants would be about 4.2 quads.)

SEC. 2(c)(8)—additional, optional scenarios. The bill would authorize but not direct ERDA and the Energy Projection Planning Committee to prepare any other projections which the committee deemed necessary to provide Congress and the public with a wide variety of alternative strategies for future energy resource development and use.

WHY WERE THESE SCENARIOS CHOSEN?

Question 6. What is the reason for choosing these 10 scenarios instead of others?

Answer. The choice of scenarios was made, in close consultation with technical experts, to identify the levels of solar and geothermal contributions that could possibly be achieved, the actions necessary to do so, and the consequences of doing so. These projections will identify emergency, acclerated and moderate pathways that could be followed in the development of those particular energy sources.

Variations in nuclear, domestic fossil output, conservation and imports contributions to our national energy budget can occur as a result of societal, natural and foreign influences. The significance of these interrelationships will be better understood, thereby clarifying the bases for major Federal policy options by having ERDA prepare the additional projections directed by this amendment.

DERIVATION OF THE FIGURES

Question 7. How were the figures in these 10 scenarios derived?

Answer. The figures were derived from various forecasts of energy demand and various estimates of the theoretically possible, maximum achievable, and most probable levels of solar and geothermal supply contributions for the year 2000. The extreme values—those in the section 2(c)(1) and 2(c)(3) scenarios—were chosen in order to bracket these limits and thereby explore the full range of potential technical, societal, economic and environmental changes that would be needed to accomplish each level, and that would follow from the attainment of each level.

These scenarios should clarify the maximum limits of contribution possible from conservation (including both reduced energy use and increased efficiencies in end use), solar and geothermal sectors. The performance of these analyses under the specifications and conditions contemplated by this bill should serve to narrow the distance between high- and low-side claims for the potentials by clarifying the costs and consequences of each possible choice of goal.

BROOKHAVEN NATIONAL LABORATORY REFERENCE ENERGY SYSTEM

Question 8. Section 5 of the bill would require that the projections prepared pursuant to the bill will use the Reference Energy System developed by the Brookhaven National Laboratory. Why?

Answer. Brookhaven's Reference Energy System was used in the preparation of ERDA-48; therefore, its use in preparing these new scenarios will provide a standard of commonality between the two reports. The Reference Energy System and the reasons for its use are discussed in vol. 1, at page B-1, of ERDA-48.

WHY A COMMITTEE?

Question 9. Why does the bill set up a five-member Energy Projection Planning Committee to manage the new study and issue the report, instead of just having the Administrator of ERDA do it?

Answer. Some proponents of conservation and solar and geothermal energy and some opponents of nuclear power have expressed

suspicion that ERDA is insufficiently committed to conservation and alternative energy development and overly committed to nuclear development. To those people, whether they are right or wrong, a report on the impacts of a scale-down or phaseout of nuclear power prepared under the supervision of ERDA's Administrator alone might not be persuasive, especially if the new scenarios indicated severe economic and employment consequences, insurmountable technical or capital obstacles, or all of these. Conversely, a report indicating complete economic and technical feasibility of some or all of the low- or no-nuclear scenarios might not gain as ready an acceptance from nuclear proponents as it would if those involved in its preparation included recognized pro-nuclear experts. Having the study done by ERDA personnel under the direct supervision of a high-level committee of five well-known experts, two of whom are nuclear proponents, two of whom are nuclear opponents, and the fifth of whom is chairman and esteemed by each of the other four, should significantly increase the likelihood that the ultimate report will be widely read and accepted as full, fair and unbiased.

THE DEADLINE AND THE BUDGET

Question 10. The Energy Projection Planning Committee, using ERDA's staff and resources, is given just 240 days and $2.5 million to do the job required by this amendment. Are those time and money constraints realistic and reasonable?

Answer. Yes. Most of the data required to prepare these new projections are already in ERDA's computers, according to experts familiar with the preparation of ERDA-48. The 240-day deadline was selected on the basis of being distant enough to allow accomplishment of the analyses and early enough to provide a date which Congress and the public could anticipate in making—or deferring—policy decisions. The authorized appropriations, while extremely modest when compared to the economic implications of the decisions this study will assist the country in making wisely, are deemed sufficient to permit analyses of high quality.

TABLE 1.—YEAR 1985—"ERDA-48" SCENARIO RESULTS—ENERGY RESOURCES USED, IN QUADS (10^{15} Btu)

	ERDA-48 Scenario No. —					
	0	I	II	III	IV	V
Total energy use	107.30	96.97	107.28	106.77	107.05	98.14
Coal (including exports)	21.14	18.46	23.28	20.10	19.98	18.13
Oil (domestic and imports)	47.14	34.59	41.43	41.57	41.52	31.95
Natural gas (domestic and imports)	24.00	26.50	26.50	26.50	26.50	26.50
Subtotal (conventional fossil)	92.28	79.55	91.21	91.21	88.00	76.58
Oil shale	0	0	1.00	0	1.00	1.00
Total fossil fuels	92.28	79.55	92.21	91.21	89.00	77.58
Light water reactor (LWR)	10.61	10.61	10.61	12.97	10.60	12.97
Liquid metal fast breeder (LMFBR)	0	0	0	0	0	0
High temp. gas reactor (HTGR)	.24	.25	.24	.24	.25	.25
Total fission	10.85	10.86	10.85	13.21	10.85	13.22
Fusion	0	0	0	0	0	0
Geothermal	.69	.93	.69	1.60	3.20	1.60
Biomass	0	0	.05	0	.05	.05
Waste materials	.10	2.00	.10	.10	0	2.00
Solar	0	.25	0	.31	.57	.31
Total solar, biomass, waste	.10	2.25	.15	.41	.62	2.36
Hydroelectric	3.38	3.38	3.38	3.38	3.38	3.38
Oil imports	25.94	10.49	17.33	17.47	17.42	7.85

Source: Energy Research and Development Administration data, from ERDA-48, vol. 1, p. B-6.

TABLE 2.—YEAR 2000—"ERDA-48" SCENARIO RESULTS—ENERGY RESOURCES USED, IN QUADS (10^{15} Btu)

	ERDA-48 Scenario No.—					
	0	I	II	III	IV	V
Total energy use	165.47	122.48	165.42	161.16	[1] 158.01	[1] 137.03
Coal (including exports)	33.89	22.91	49.77	30.51	45.87	39.11
Oil (domestic and imports)	70.54	40.32	37.71	46.47	46.30	19.77
Natural gas (domestic and imports)	15.40	22.80	22.80	22.80	22.80	22.80
Subtotal (conventional fossil)	119.83	86.03	110.28	99.78	114.97	81.68
Oil shale	0	0	8.00	0	8.00	8.00
Total fossil fuels	119.83	86.03	118.28	99.78	122.97	89.68
Light water reactor (LWR)	36.59	16.50	36.59	36.59	10.97	16.50
Liquid metal fast breeder (LMFBR)	0	0	0	3.90	0	3.90
High temperature gas reactor (HTGR)	3.90	3.90	3.90	3.90	.40	3.90
Total fission	40.49	20.40	40.49	44.39	11.37	24.30
Fusion	0	0	0	.05	.05	.05
Geothermal	1.40	1.40	1.40	6.60	14.93	6.60
Biomass	0	0	1.50	0	1.50	1.50
Waste materials	.10	6.50	.10	.10	0	6.50
Solar	0	3.50	0	6.59	9.59	4.82
Total solar, biomass, waste	.10	10.00	1.60	6.69	11.09	12.82
Hydroelectric	3.65	3.65	3.65	3.65	3.65	3.65
Oil imports	58.34	20.62	18.01	26.77	20.55	(4.11)

[1] Unexplained discrepancies in the column totals for scenarios IV and V are from the source table.

Source: Energy Research and Development Administration data, from ERDA-48, vol. 1, p. B-8.

TABLE 3.—YEAR 1985: "SUPPLEMENTAL ENERGY PLANNING AND POLICY ACT" SCENARIO PARAMETERS: ENERGY RESOURCES USED, IN QUADS (10^{15} Btu)

	Section 2—									
	(c)(1)	(c)(2)	(c)(3)	(c)(4)	(c)(5)	(c)(6-A)	(c)(6-B)	(c)(6-C)	(c)(6-D)	(c)(7)
Total energy use	100.00	100	90.00	90	(*)	90	90	90	90	97.00
Coal (including exports)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Oil (domestic and imports)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Natural gas (domestic and imports)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Subtotal (conventional fossil)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Oil shale	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Total, fossil fuels	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Light water reactor (LWR)	0	0	0	0	0	0	0	0	0	(*)
Liquid metal fast breeder (LMFBR)	0	0	0	0	0	0	0	0	0	(*)
High temperature gas reactor (HTGR)	0	0	0	0	0	0	0	0	0	(*)
Total, fission	0	0	0	0	0	0	0	0	0	12.50
Fusion	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Geothermal	<3.20	(*)	<3.20	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Biomass	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Waste materials	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Solar	(*)	(*)	( )	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Total, solar, biomass, waste	<10.00	(*)	<10.00	(*)	(*)	2	4	6	8	(*)
Hydroelectric	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Fossil fuel imports	>20.00	>20	>20.00	>20	>20	>20	>20	>20	>20	(*)

Source note and key to symbols at end of table 4.

TABLE 4.—YEAR 2000: "SUPPLEMENTAL ENERGY PLANNING AND POLICY ACT" SCENARIO PARAMETERS: ENERGY RESOURCES USED, IN QUADS (10^{15} Btu)

	Section 2—									
	(c)(1)	(c)(2)	(c)(3)	(c)(4)	(c)(5)	(c)(6–A)	(c)(6–B)	(c)(6–C)	(c)(6–D)	(c)(7)
Total energy use	140	140	115	115	(*)	115	115	115	115	123.00
Coal (including exports)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Oil (domestic and imports)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Natural gas (domestic and imports)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Subtotal (conventional fossil)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Oil shale	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Total, fossil fuels	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Light water reactor (LWR)	0	0	0	0	0	0	0	0	0	(*)
Liquid metal fast breeder (LMFBR)	0	0	0	0	0	0	0	0	0	(*)
High temperature gas reactor (HTGR)	0	0	0	0	0	0	0	0	0	(*)
Total, fission	0	0	0	0	0	0	0	0	0	12 50
Fusion	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Geothermal	<15	(*)	<15	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Biomass	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Waste materials	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Solar	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Total, solar, biomass, waste	<50	(*)	<50	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Hydroelectric	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Fossil fuel imports	>20	>20	>20	>20	>20	>20	>20	>20	>20	(*)

*Values to be determined by Energy Projection Planning Committee.

Key to symbols: > Not more than. < Not less than.

Source (Table 3 and table 4): secs. 2 and 3 of proposed "Supplemental Energy Planning and Policy Act of 1976."

NATIONAL PLANNING ASSOCIATION,
Washington, D.C., June 22, 1976.

RAYMOND D. WATTS,
U.S. Senate,
Select Committee on Small Business,
Washington, D.C.

DEAR MR. WATTS: I read with sincere interest the "Supplemental Energy Policy and Planning Act of 1976," a draft amendment to S. 3105. As you know I have had considerable exposure to the energy-related activities because of my recent work for the National Science Foundation, Federal Energy Agency/Department of Labor and the Environmental Protection Agency. In the light of my past experience I find the research effort specified in this amendment to be of crucial importance to the entire planning effort of the energy supply-demand relationships in the United States. I therefore hope that this amendment will be adopted and implemented.

Sincerely yours,

IVARS GUTMANIS,
Director, Center for Resources Analysis.

(COMMENTARY BY HOWARD K. SMITH)

California has been first in the nation to adopt many things—from freeway traffic jams to the invention of the bikini. Today on its ballot is something new again—a plebiscite for or against nuclear power in the present state of the art, called Proposition 15.

There is a case for the nation doing the same: Have a national plebiscite on whether to go nuclear.

As it stands now, we are headed straight for a paralyzing national fuel crisis. Nuclear power is the readiest means of fending it off till better fuels are invented. Yet such are doubts about it that nuclear power is nearly dead in the water. Three years ago 36 new nuclear plants were on order. Last year, cancellations, bred by doubts, cut it down to four on order—and it's doubtful they will now be built.

We need a decision by the whole nation, and we need it fast. How about a five-day, highly publicized and televised debate by the best experts on both sides—then a decision by vote of the whole people: Go nuclear, with all its risks . . . or abandon the atom and launch a searing set of laws to conserve fuel, plus a drastic, crash expansion of the use of coal, the only other quick alternative.

We must do one or the other or face the worst disaster since the Depression. And it is so vital and urgent a decision that we should disregard the lack of precedent and ask the whole nation to decide.

[From the Washington Post, June 11, 1976]

CALIFORNIA AND THE ATOM

California's voters have decided not to rule out nuclear power. But it would be a great mistake to read the results of this referendum as an unqualified and enthusiastic go-ahead for the reactors and their builders. By a proportion of two to one, the voters rejected the famous Proposition 15 with its demand for assurances of a degree of safety that, in practice, no one can really promise. They decisively rejected the self-exploding strategy of trying to enforce conservation by cutting back the supply of energy.

But the defeat of Proposition 15 owes a good deal to the last-minute enactment of state legislation setting new conditions for future nuclear plants. The legislation offered a middle way to those Californians who did not like the prohibitive standards of Proposition 15 but who, at the same time, were uneasy about the prospect of a widespread shift to nuclear energy. As commonly happens when people are confronted with an unattractive yes-or-no, they began looking for a way to say maybe, and up to a point.

Governor Brown signed these new state laws five days before the election. One of them says that, before any additional reactors go into construction, the state must make a finding that safe techniques of waste disposal are available. That finding is subject to review by the legislature; the state has learned that safety is too important to be left solely to engineers. Another of the new laws requires a similar finding regarding the safety of fuel reprocessing plants, if any are to come into the state. The third law establishes a study of the possibility of putting reactors underground. The basic message to the power industry is that California will let it continue to operate the present reactors and complete those now being built—but it has more doubts to discuss before the nuclear system is expanded further.

The state's utilities can live with these new requirements. One of the biggest, Southern California Edison, actively supported them. One benefit of this state legislation is that it presses the federal government to speed up its own consideration of waste disposal policy.

California's choices in this referendum were those faced by the country as a whole. A large part of the debate in California was over the economic effects of halting nuclear development and shutting down the reactors. There would have been little effect if you assume, as some of the debaters did, that there are reliable sources of imported energy—in this case, from coal-fed power plants in the Rocky Mountain states. But if you aren't ready to count on the cooperation of the other states, then you have to accept the possibility of shortages. How great a risk, and how great the shortages, depends wholly upon the public's willingness to conserve energy. This country's capacity for conservation has yet to be seriously tested. With these questions unanswered, the majority in California was, quite sensibly, reluctant to foreclose reliance on nuclear power.

There will be votes on the same issue in other states, beginning this fall with Oregon. The challenge to nuclear development is not going to be settled with any one election. But the California referendum results are probably a pretty close approximation of the whole country's current attitude toward nuclear energy. The present generation of commercial reactors has an exceedingly good safety record so far. But any rapid or unrestrained expansion of the nuclear system would push the country into reprocessing to recycle plutonium—a vastly more dangerous fuel. Even the present reactors present a risk, however small it might be. But to stop using them would require the country to turn heavily to coal, which carries its own threats to public health.

The country is still in the process of sorting out its ideas on this subject, and weighing one possibility against another. Energy policy is in an interim period that will run at least until next year, when a new national administration takes office. Until then, it seems altogether likely that the country would choose to go as California went—to keep nuclear power development moving slowly but not to stop it, to keep raising questions but not to turn off the switch.

By Mr. JACKSON (for himself and Mr. FANNIN) (by request):

S. 3681. A bill to guarantee certain obligations of the Guam Power Authority. Referred to the Committee on Interior and Insular Affairs.

Mr. JACKSON. Mr. President, by request, I send to the desk on behalf of

myself and the Senator from Arizona (Mr. FANNIN) a bill to guarantee certain obligations of the Guam Power Authority.

Mr. President, this draft legislation was submitted and recommended by the Department of the Interior, and I ask unanimous consent that the executive communication accompanying the proposal from the Secretary of the Interior be printed in the RECORD.

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

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., June 11, 1976.

Hon. NELSON A. ROCKEFELLER,
President of the U.S. Senate,
Washington D.C.

DEAR MR. PRESIDENT: Enclosed is a draft bill "To guarantee certain obligations of the Guam Power Authority."

We recommend that the bill be referred to the appropriate Committee for consideration and that it be enacted.

The Guam Power Authority has a financial problem of refunding its short-term debt. In 1972 the Guam Power Authority attempted to float long-term bonds as a part of its long-range financial plan. The usury laws of Guam prevented the payment of interest in excess of 7%. At the time of the attempted sale, however, market interest rates were above the 7% limit, so the bonds did not sell. Thus, short-term notes were issued in anticipation of a raise in the interest ceiling by the Guam Legislature, and in anticipation of a more favorable bond market in the near future. The Guam Legislature subsequently raised the usury rate to 9%.

Primarily due to the energy crisis, the price of oil within 3 months rose from $2.77 per barrel to $12.95 per barrel. As a result of this price increase, the Guam Power Authority suffered temporary losses in current income. Subsequently, Guam's bond rating slipped from AA to BB, which is a non-investment rating. In the period just before the recent typhoon, the Guam Power Authority was operating in the black and medium and long-term prospects were good. However, its short-term financial prospects are far from good. If the Guam Power Authority attempted to enter the bond market on its own at this time, it would be unsuccessful in attracting the necessary capital for repayment of the short-term notes which were due on June 1, 1976 and its other debts, due to its BB rating.

Under the bill, the Secretary of the Interior would guarantee bonds or other obligations of not more than $36 million which would mature not later than December 31, 1978. The Secretary, with the concurrence of the Secretary of the Treasury, may extend the guarantee to December 31, 1980. The guaranteed bonds or other obligations would be sold to the Federal Financing Bank without impact on the Federal budget. The Federal Financing Bank would charge a rate of interest equal to the current average market yield on outstanding marketable obligations of the U.S. of comparable maturities plus 1%.

Section 30 of the Guam Organic Act provides that Guam shall receive the proceeds of all taxes collected under the Internal Revenue laws of the United States together with customs duties and other moneys. The attached draft legislation provides that in the event of non-payment of interest or default in the payment of principal by the Guam Power Authority, the Secretary of the Interior may withhold such sums as he deems necessary for the Section 30 payments to Guam as will reimburse the Department for any loss incurred under the guarantee. In addition, there is authorization for the Congress in any appropriation act to deduct from appropriations which would otherwise go to Guam amounts lost to the United States should the guarantee be called into effect. The legislation authorizes the Secretary to place such restrictions as he deems appropriate on the loan to the Guam Power Authority.

The Office of Management and Budget has advised that there is no objection to the presentation of this proposal from the standpoint of the Administrations program.

Sincerely yours,

KENT FRIZZELL,
Under Secretary of the Interior.

By Mr. BAKER (for himself and Mr. BROCK):

S. 3684. A bill to amend the Federal Aviation Act of 1958, as amended, to broaden the power of the Civil Aeronautics Board to grant relief by exemption in certain cases, and for other purposes. Referred to the Committee on Commerce.

Mr. BAKER. Mr. President, I am sending to the desk for myself and Senator BROCK a bill to amend the Federal Aviation Act of 1958 to broaden the power of the Civil Aeronautics Board to grant relief by exemption in certain cases, and for other purposes.

I ask unanimous consent that the bill, together with a statement of purpose and need for this legislation, be printed in the RECORD at this point.

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

S. 3684

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

SECTION 1. Except as otherwise specified, wherever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Aviation Act of 1958, as amended.

SEC. 2. Section 416(b)(1) is amended by adding the following at the end therof:

"*Provided, however,* that nothing in this section shall prevent the Board from granting an exemption from the requirements of this title so as to authorize the conduct of all-cargo operations in interstate air transportation, pending consideration of an application for initial certification pursuant to Section 401, if the Board finds that the issuance of such exemption is in the public interest."

SEC. 3. Section 101 is amended by renumbering paragraphs (11) through (38) thereof as paragraphs (12) through (39) and by inserting after paragraph (10) the following new paragraph:

"(11) 'All-cargo air transportation' means air transportation of property, or of property and mail, only."

INTRODUCTION AND BACKGROUND

Under the Federal Aviation Act of 1958, the basic means of regulating and licensing air carriers to perform air transportation is the certification procedure. That procedure specifically contemplates and, indeed, requires extensive and time-consuming investigation by the Civil Aeronautics Board into all matters pertaining to the authorization, modification, suspension and deletion of air transportation.

In keeping with the Congressional determination that the public interest is best served by primary reliance on the certification procedure, the Board's power to grant exemptions from the normal requirement of certification is very limited in scope. Thus, the present language of section 416(b) of the Act precludes the Board from acting to grant an exemption unless it can find that the operations of the applicant air carrier are so limited in extent or affected by unusual circumstances that enforcement of the certification procedures would be an "undue burden" on the carrier and not in the public interest.

The Board has often acknowledged that its exemption power is severely restricted. A representative expression of the Board's own view of the scope of its power may be found throughout the history of its decisions. See, *e.g.*, the *Standard Air Lines Exemption Request*, 9 CAB 583, 584–85 (1948), in which the Board noted that:

"The legislative history of section 416(b) of the Act indicates that its primary purpose is to provide relief for the irregular and sporadic operations of the so-called fixed-base operators and for the carriers engaging in unusual or limited operations. There is nothing in the Act or its legislative history to justify the Board in bypassing or ignoring the certification provisions of section 401 of the Act by authorizing extensive new operations which, although involving some experimental characteristics, are neither unusual as to circumstances nor limited in extent."

The courts have consistently upheld the Board's restrictive interpretation of its power (and, on occasion, have reversed its attempts to extend its boundaries), noting that the primary tool under the Act is certification, with exemptions to be granted "sparingly". See, *e.g.*, *Island Airlines, Inc. v. CAB*, 363 F.2d 120, 125 (9th Cir. 1966). *See also, e.g.*, *Utah Agencies v. CAB*, 504 F.2d 1232 (10th Cir. 1975); *ALPA Int'l v. CAB*, 458 F.2d 846 (D.C. Cir. 1972); *Kodiak Airways, Inc. v. CAB*, 447 F.2d 341 (D.C. Cir. 1971).

The difficulty arises out of the increasingly complex and time-consuming nature of the certification process, and the recurring impossibility of making an urgent and otherwise meritorious request for relief "fit" within the reach of the expeditious, but restricted, exemption power. That collision has resulted in the periodic frustration of the Board's ability to discharge its primary statutory mandate—the duty to foster and encourage the development of a sound and responsive air transportation system.

Nowhere has this frustration of purpose been more evident than in the area of domestic all-cargo operations. If a single point of agreement has emerged from all of the various proposals to reform or modify air transport regulation, and from the months of hearings with respect to those proposals, it is that the regulation and promotion of all-cargo services has been a dismal failure.

The uncontradicted evidence of record shows that the development of domestic all-cargo services has been severely stunted by a combination of inappropriate regulation and by carrier and regulatory neglect. Domestic all-cargo air services have been consistently and substantially unprofitable, resulting in their steady decline in availability during the past decade. Clearly, the neglect of those services has been a direct function of the preoccupation of regulatory and carrier management with the predominant passenger services which account for in excess of 90% of air transport revenues. The serious decline of all-cargo air service is particularly regrettable in light of the vital and unique role which that service performs for the Nation's economy, the delivery of life-giving health services, and in response to the needs of the national defense.

To a certain extent, as noted, the Board's ability to redress this unsatisfactory state of affairs has been hampered by restrictions on its power to act. Thus, in specific instances, the statutory limitations upon the Board's

exemption power have deprived the Board of an appropriate degree of regulatory flexibility to take prompt action, or to grant prompt relief, warranted by considerations of the public interest but beyond the apparent scope of the Board's authority under Section 416(b), solely because of the size of the operation for which exemption relief was required.

A recent example of this deficiency is provided by the Board's denial of an application by Federal Express Corporation, a new all-cargo carrier specializing in the transportation of small-package traffic, for exemption authority which would have permitted Federal Express to avoid significant waste and inefficiency resulting from severe capacity strains arising out of the burgeoning demand for its unduplicated package express services.

The relief requested by Federal Express was for grant of a temporary exemption to permit the operation of five large aircraft, as a supplement to the carrier's basic small-aircraft fleet to accommodate the growing demand which had saturated all available lift capacity. Grant of the application would have permitted savings of up to $8.7 million in annual costs, and over 4 million gallons of scarce jet fuel, while enhancing the efficiency and reliability of a new and valuable air service.

In its December 1975 Order denying the application of Federal Express for DC-9-15 authority, the CAB indicated clearly that it felt legally barred from granting Federal Express the requested exemption relief because of the scope of the carrier's operation.

Although the Board invited Federal Express to pursue the certification process, and promised to give "prompt and careful consideration" to such an application, the fact remains that that "solution" offered no remedy at all for the urgent capacity strains and waste presently burdening the Federal Express operation. At best, the certification process would assure the prolongation of those strains by not less than two years.

The Board stated clearly that it had no intent "to discourage the entry or growth of new cargo carriers or to impede the introduction of innovative services in the air transportation system." It must be recognized, however, that notwithstanding the Board's intent, the unavoidable effect of its decision does impede the efficient conduct of Federal Express' highly innovative small-package service.

The essence of the proposed Bill is to provide a solution to the anomaly created by a statutory exemption power which is so limited as to leave the Board with no discretion or legal authority to avoid an unintended and undesirable result, adverse to the very public interest which the Board is bound to promote.

SUMMARY OF BILL

The attached draft Bill amends the Board's exemption power by adding a new proviso to the present standards for grant of an exemption. That new proviso would enable the Board to grant an exemption from the normal certification requirement so as to permit the conduct of all-cargo operations in interstate air transportation, pending consideration of an application for the initial certification of such operations, upon a finding that the grant of such exemption is compatible with the public interest.

In essence, the draft Bill provides for a limited expansion of the Board's present exemption power to give the agency greater flexibility of action in the area most critically in need of regulatory relief. It is important to note that the Board's expanded power is expressly tied to operations which are the subject of an application for initial certification, thus clearly reflecting an intent to continue the basic statutory reliance upon certification as the principal means of licensing air transportation ventures.

Moreover, the limitation of the broadened exemption power to all-cargo operations, and the further limitation to the circumstances of an initial application for certification only, serves two objectives. First, it limits the potential impact of the exercise of the new power upon the established pattern of authorizations in the industry to a level having a de minimus potential for harm or disruption of predominant passenger services. Second, the limitation to initial certification applications is addressed to relieving the unique and critical impact of unavoidable regulatory delay on those new applicants which—unlike the established carriers—must attempt to provide efficient service and remain financially viable without adequate operating authority, absent the possibility of interim exemption relief.

The modest expansion of the Board's exemption power as proposed will enable the Board to act expeditiously to foster and promote needed new all-cargo air transportation services, whose development would be impeded or destroyed by the delays inherent in the normal certification process, pending the orderly pursuit of that process.

By Mr. HANSEN:

S. 3685. A bill to suspend until the close of June 30, 1977, the duty on certain docorubicin hydrochloride antibiotics and for other purposes. Referred to the Committee on Finance.

Mr. HANSEN. Mr. President, as we all know, cancer has become one of the most dread diseases in the United States today. Millions of dollars are being spent by the Government and private industries for research aimed at stemming the ever increasing tide of fatalities from this disease.

One of the most promising avenues in the care and treatment of the cancer patient is in chemotherapy, that is, treatment by a variety of drugs aimed at preventing the further spread of cancer and hopefully controlling this disease.

One drug recently introduced into the United States which has demonstrated significant activity in the treatment of cancer is AdriamycinTM (doxorubicin hydrochloride). Because of its method of manufacture, this drug is classified as an antibiotic and comes into the United States from Italy with a 5 percent tariff imposed under section 437.32 of the tariff schedule. This drug is manufactured in Italy and the U.S. patent is held by an Italian pharmaceutical company.

Mr. President, the bill I am introducing today would suspend this duty until June 30, 1977. Congressman DU PONT has introduced similar legislation, H.R. 12922, in the House.

Mr. President, Adriamycin is used in the treatment of acute leukemias, malignant lymphomas, Wilm's tumor, soft tissue and bone cancer, and cancers of the breast, lungs, ovaries, bladder, and thyroid. Adriamycin is cytotoxic, that is, it kills cells. Its activity in killing cancer cells was significant enough to attract National Cancer Institute as the sponsor for the clinical studies required for the new drug application approved in 1974.

The National Cancer Institute itself is the single largest domestic customer for this material. Because of the toxicity of this drug, it is used solely for an antineoplastic agent and is recommended for use only by physicians qualified in the area of cancer chemotherapy. Treatment with Andriamycin requires close observation of the patient and extensive laboratory monitoring.

Andriamycin, although it cannot be considered a breakthrough or a cure for cancer, does occupy a specific and well-received place in the field of cancer patient care. Andriamycin is not produced in the United States and it is not in direct competition in the marketplace with other antineoplastic agents. Instead, it augments or supplements other forms of treatment and the use of other antineoplastic drugs.

The nature of this drug is such that it is administered periodically over a period as long as 6 months. A course of treatment ranges from $800 to $1,000. As mentioned, the single largest customer in the United States is the National Cancer Institute. This Government contract provides that the National Cancer Institute shall receive a reduction in the price of the drug as of the effective date of any suspension of the tariff.

The domestic distributor also intends to pass this tariff reduction wholly and directly to the Federal Government and all using private hospitals.

The suspension of the tariff will have a significant and immediate effect on the medical costs, which are placing an already heavy burden on many cancer patients.

This legislation has been reviewed favorably by the U.S. International Trade Commission, the National Institutes of Health, and the Departments of Treasury and Health, Education, and Welfare.

Mr. President, I ask unanimous consent that a copy of my bill and letters I have received from the International Trade Commission, the National Institutes of Health, and the Department of Treasury be included at this point in the RECORD.

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

S. 3685

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part 1 of subpart B of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by inserting immediately before item 907.80, the following new item:

" 907.40	Doxorubicin hydrochloride (provided for in item 407.85, part 1, or in item 437.32 or 438.02, part 3, schedule 4, depending on source)	Free	No charge	On or before 6/30/77 ".

(b) The rate of duty prescribed in rate column numbered 1 under item 907.40 of the Tariff Schedule of the United States (as added by subsection (a)) shall be considered to have been proclaimed by the President as being required or appropriate to carry out trade agreements to which the United States is a party, not as a statutory provision enacted by Congress.

(c) The amendment made by subsection

(a) applies to articles entered, or withdrawn from warehouse, for consumption after the date of enactment of this Act.

INTERNATIONAL TRADE COMMISSION,
Washington, D.C., August 20, 1975.

Hon. PIERRE S. DU PONT,
House of Representatives,
Washington, D.C.

DEAR MR. DU PONT: Thank you very much for writing to the United States International Trade Commission concerning a proposed bill to suspend until the close of June 30, 1977, the column 1 rate of duty on "certain doxorubicin hydrochloride antibiotics".

Doxorubicin hydrochloride is used solely as an antineoplastic (anticancer) agent. The material is toxic to human and animal cells and therefore cannot be used as a general antiinfective agent as are most other antibiotics. The drug is unique and does not appear to be in direct competition with other antibiotic or antineoplastic agents. It is generally utilized by physicians active in the field of cancer chemotherapy.

There is currently no U.S. production of doxorubicin hydrochloride and it does not appear that domestic production is anticipated in the near future. The drug is manufactured only in Italy by Farmitalia, S.P.A. and is distributed only by Adria Laboratories, Inc., of Wilmington, Delaware.

Doxorubicin hydrochloride is presently classified under item 437.32 of the Tariff Schedules with a column 1 trade-agreement duty rate of 5 percent ad valorem if imported in bulk form, and in item 438.02 at the same rate of duty when imported in ampoules, capsules, jubes, lozenges, pills or similar forms. There are no official statistics on the quantity of this drug which has been imported. It is known that its cost is presently much higher, and in some cases, many times higher than most other antineoplastic agents. In the absence of official data as to imports, the Commission is not able to state what the loss of revenues would be by reason of enactment of the temporary free entry provision.

Information received informally from the National Institutes of Health, indicates that such agency has been desirous of having the drug imported free of duty. That agency procures some millions of dollars worth of the drug each year. The advice is that the subject drug is one of the most effective, and possibly the most effective, drug in the treatment of cancer. The cost to the individual patient of the drug apparently can be thousands of dollars.

It is suggested that a technical change be affected in the article description of the proposed provision. The present article description would thus be deleted and the following language substituted therefor: "Doxorubicin hydrochloride (provided for in items 437.32 and 438.02, part 3B, schedule 4)."

Please continue to call on us whenever you feel we can be of further service to you.

I hope you have a nice day.

Yours sincerely,

DANIEL MINCHEW,
Vice Chairman.

NATIONAL INSTITUTES OF HEALTH,
Bethesda, Md., September 30, 1975.

Hon. CLIFFORD P. HANSEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HANSEN: Adriamycin is an antibiotic antitumor drug developed by the Farmitalia Company of Milan, Italy. Clinical testing was begun in the United States in 1970 under the sponsorship of the National Cancer Institute (NCI). A New Drug Application (NDA) for the drug was approved by the Food and Drug Administration in 1974 for the marketing of the drug by Adria Laboratories, Inc., of Wilmington, Delaware. This NDA was approved based on clinical data obtained by NCI during its sponsored trials. Adriamcyin is approved for usage against a wide variety of human cancers including breast cancer, lung cancer, bladder cancer, sarcomas of all varieties, malignant lymphomas and acute leukemia.

While the drug is distributed by Adria Laboratories, it is manufactured only by Farmitalia, S.P.A., in Italy. The cost of this drug is very high. A single treatment can cost a patient approximately $200 and since full therapy can entail nine to ten treatments, the cost of a full course of treatment can approach $2,000. This puts a great financial strain on too many patients since third-party carriers will not reimburse for use of the drug on an outpatient basis.

We would defer to the Treasury Department for the establishment of the Administration's position on this legislation because they are more knowledgeable about the situations involved in the imposition and lifting of import duties.

Sincerely yours,

RONALD W. LAMONT-HAVERS, M.D.,
Deputy Director.

THE SECRETARY OF THE TREASURY,
Washington, D.C., November 21, 1975.

Hon. CLIFFORD P. HANSEN,
U.S. Senate,
Washington, D.C.

DEAR CLIFF: In your letter of October 10, 1975, you ask whether the Department has a position on your proposed legislation to suspend temporarily the duty on doxorubicin hydrochloride.

The Treasury cannot make a final decision on pending legislation until the Administration's position is cleared by the Office of Management and Budget. However, Treasury usually supports duty suspension bills if the suspension is not likely to injure a domestic industry. From the International Trade Commission's letter which you enclosed, it appears that suspending the duty on doxorubicin hydrochloride would not injure a U.S. industry. The Treasury is thus likely to support the bill.

Attached are some technical suggestions on the drafting of the bill which you might want to consider.

With best regards,

Sincerely yours,

WILLIAM E. SIMON.

MEMORANDUM

Subject: Proposed legislation to temporarily suspend the import duty on doxorubicin hydrochloride

Senator Hansen in a letter of October 10, 1975, requested the views of the Department of the Treasury on the proposed legislation to suspend the duties on doxorubicin hydrochloride.

Currently the drug is classifiable under the provision for antibiotics, other, in item 437.32, Tariff Schedules of the United States (TSUS, dutiable at the rate of 5 percent ad valorem. If put up in dosage form it is classifiable in item 438.02, also at 5 percent ad valorem.

The proposed legislation would create a new item in the appendix to the tariff schedules, item 907.40—"Antibiotics, other, Doxorubicin Hydrochloride (provided for in items 437.32 and 438.02, Part 3, Schedule 4)." Under column 1 the item would be free; there would be no change in the rate of duty in column 2. The suspension of duty would extend through June 30, 1977.

We agree with the suggestion of the International Trade Commission that the superior heading to the provision be deleted. In addition we would add a qualifying phrase. It is understood that doxorubicin hydrochloride is a fermentation product which is not currently made with the use of a benzenoid precursor. However, in view of the purview of Headnote 1, Part 1, Schedule 4, it is suggested that the article description be modified to state "Doxorubicin hydrochloride (provided for in item 407.85, Part 1, or in item 437.32 or 438.02, Part 3, Schedule 4, depending on source)."

Since the product is classifiable in a "basket" provision, we have no accurate figures on total importation. Nevertheless, at the port of Philadelphia, where apparently the bulk of the importations were entered, there were 27 entries between September 1974 and July 1975 and it is understood that the average value of a shipment was about $350,000. The volume of importations has increased significantly during the past year.

By Mr. MOSS (for himself, Mr. MCGEE, and Mr. STONE):

S. 3688. A bill to amend title 13, United States Code, to provide for a mid-decade census of population, and for other purposes. Referred to the Committee on Post Office and Civil Service.

MID-DECADE CENSUS

Mr. MOSS. Mr. President, today Senator MCGEE, Senator STONE, and I are introducing legislation to institute a mid-decade census, to provide better interim population statistics, and to require that the population data used to determine the allocation of Federal funds be the most recent and accurate available.

We cannot legislate wisely or administer Federal programs fairly for a nation whose social characteristics we cannot accurately assess. We have long collected agricultural and economic data on a 5-year basis; but our most recent population figures and social data are adjustments in the last complete enumeration, or decennial census. With each passing year after the census, these extrapolations become less and less accurate.

To resolve that problem this bill would institute a mid-decade census to commence in 1985 and be repeated every 10 years thereafter. The House has already recognized this need by passing H.R. 11337 early in April. Second, the bill includes a modified version of Senator STONE's bill, S. 1009, requiring collection of annual population statistics for each State, county, or local government unit with a population of 50,000 or more and biennial figures for areas with smaller populations.

Further, the bill recognizes two important national trends.

The first is the increasing mobility of our growing population. In little more than 5 years since our last decennial census, the more industrialized regions of the United States have experienced very slow growth or have even lost population, while States in the South and the Mountain and Pacific West have experienced great increases in population and the rate of population growth. The population of the South grew 8.6 percent between 1970 and 1975, in the Pacific States 6.3 percent, and in the Mountain West a startling 16.3 percent. In a few individual States the growth rates have been considerably higher. It is obvious that changes in the size and distribution of our population can be rapid and extensive.

The second trend is the growth in size and number of Federal assistance programs. In fiscal year 1975, there were some 1,030 such programs which distributed nearly $50 billion dollars, fully 15 percent of the Federal budget. At least 120 of these programs, including

some of the largest, allocated money on the basis of relative population. They benefit every State, county, municipality, and school district in the country.

These programs cannot be administered equitably without accounting for significant changes in population. Because such changes can occur rapidly, it is imperative that the statistics used to determine the allocation of Federal funds be the most recent and accurate available. Accordingly, the bill requires just that, except with respect to programs which are now required by law to be administered on the basis of decennial census figures.

In the very near future, I shall announce a hearing before the Senate Post Office Committee Subcommittee on Census and Statistics, and I hope that we can complete action on this important legislation before the end of the session.

Mr. McGEE. Mr. President, I am pleased to join today with my colleagues, Senator Moss and Senator STONE, in the introduction of legislation to provide for a mid-decade census of population. Our common action reflects our common recognition of a serious problem facing our respective States, rapid population growth. The States of Wyoming, Utah, and Florida are not, however, unique in their plight. Every State of the Union experiences significant population shifts in the course of the 10-year hiatus between the decennial censuses conducted by the Bureau of the Census. For some States, this interim means rapid growth; for others it means the loss of population. But in either case, each ensuing year makes the problem of planning and the allocation of resources to meet social needs a progressively difficult and uncertain task. In testimony before the Committee on Post Office and Civil Service in 1968, Senator RIBICOFF offered these thoughts about the need for a mid-decade census:

> Without adequate data, neither the Federal Government and local governments nor business can make the most informed decisions—especially in our highly mobile society.

The date given for Senator RIBICOFF's quotation clearly demonstrates that the idea of a mid-decade census of population is neither novel nor recent. A number of nations around the world have found it necessary to conduct their censuses more often than once every 10 years. Among the most prominent countries using a quinquennial census are Canada, the United Kingdom, Japan, and Australia.

Halfway through this decade, the need for a complete social census has again become apparent. It is ironic that while we have recognized for almost a half-century the need for collecting agricultural and economic data on a 5-year basis, we have yet to respond in kind to the social needs of our Nation. Faced with these considerations, the House of Representatives found sufficient impetus to act on a mid-decade census bill, H.R. 11337, which it passed on April 7 of this year. The bill we are introducing today differs from the House version in several ways, but ultimately it shares the common and all-important purpose of establishing a mid-decade census of population. One difference is the introduction of several new technical revisions pertaining to the authority and operation of the Bureau of the Census recommended by the Department of Commerce.

Also, the Senate version incorporates a modified form of S. 1009, a bill passed by the Senate on December 15, to require the compilation of current data on total population between censuses and, further, to require the use of such data in the administration of Federal laws in which population is a factor. This legislation now excludes coverage of those Federal laws administered on the basis of decennial census population figures. This is proposed in order to accommodate the objections of several of the Northeastern States, who have properly pointed out that these particular laws are integral to their long-range planning and that the modification of the formulas by which they are administered would be financially disruptive.

Elements of the legislation retained from the House language include a general revision of language and style throughout title 13, United States Code, which most properly can be described as technical. The bill also seeks to account for changes such as the statehood status of Alaska and Hawaii and the reorganization of territories such as the Commonwealth of the Northern Marianas Islands. Moreover, the bill seeks to tighten the protection of the confidentiality of census records retained by the Bureau of the Census.

Perhaps no other aspect of this proposal will be studied so carefully as its cost. However, it seems quite possible that enactment of a mid-decade census of population will result in the exchange of improved information for less cost. The Congressional Budget Office has estimated that the expense of the mid-decade census in fiscal year 1976 dollars would be $517.5 million. The Congressional Budget Office has also calculated the elimination of those statistical programs used to update census data could be eliminated at a savings of $490.6 million. Consequently, the net cost in fiscal year 1976 could be as low as $26.9 million.

It should be pointed out that in calculating the cost of the mid-decade census, the Congressional Budget Office based its figures on the assumption that the census would be conducted by total enumeration. It is quite conceivable, however, that the population and social characteristics of larger metropolitan areas could be determined by the use of sampling procedures. Such a method would mean the cost of the mid-decade census would drop even further. The strong likelihood exists, therefore, that enactment of this legislation will, in fact, mean a reduction in the overall Federal budget.

To me, these are compelling reasons for the swift and thorough consideration of legislation to authorize a mid-decade census of population. Senator Moss will soon announce hearing dates for the consideration of this bill and its companion, H.R. 11337. I recognize the tight schedule that we will be operating under in the Senate, but I sincerely hope and believe this legislation merits our every effort to see that its enactment occurs before the close of the second session of the 94th Congress. Mr. President, at this time I ask unanimous consent that the report on a mid-decade census of population prepared by the Congressional Budget Office along with a letter I received from the Honorable Ed Herschler, Governor of Wyoming, relating to this legislation be inserted in the RECORD at this point.

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

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 21, 1976.

Hon. GALE MCGEE,
Chairman, Committee on Post Office and Civil Service, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 11337, a bill to provide for a mid-decade census of population.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ROBERT A. LEVINE,
Deputy Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE—MAY 21, 1976

1. Bill Number: H.R. 11337.

2. Bill Title: To Provide for a Mid-Decade Census of Population, and Other Purposes.

3. Purpose of Bill: This bill authorizes a mid-decade census of the population of the United States beginning in 1985, and every ten years thereafter. The bill also repeals the law providing prison sentences for failing to respond to census questions, directs the Secretary of Commerce to use sampling methods whenever feasible, and strengthens the confidentiality of census records.

4. Cost Estimate: The net cost of conducting a mid-decade census in 1985 would be $26.9 million in FY 1976 dollars. This cost figure does not assume any inflationary impact beyond December 1976; because of this, the dollar cost will be higher in FY 1985.

5. Basis for Estimate:

The cost of a mid-decade census in FY 1976 is estimated to be $517.5 million. The money for the 1985 census would be spent out over an eight-year period. The FY 1981 cost would be approximately $2.2 million. This cost estimate does not include any inflationary impact, and assumes the costs in FY 1976 dollars. The reason for this assumption is the uncertain rate of inflation for the next decade.

In FY 1976, the federal government supported fifty-five annual major statistical programs at a cost of $498.4 million. In addition, another $46.7 million was spent in support of various periodic statistical programs, which gives a FY 1976 statistical program total of $545.1 million. Much of the data collected in these surveys is specialized information, but at least 10 percent updates census results, especially in the latter half of the decade.

To estimate the approximate savings to the federal government if a mid-decade census were instituted, the annual statistical cost of $545.1 million x 10 percent = $54.5 million. This figure is multiplied by 9, the number of years between the present census years, for a saving of $490.6 million. This figure, $490.6 million, subtracted from $517.5 million, equals $26.9 million as the total cost of a mid-decade census in FY 1976 dollars.

It is possible that other savings might be realized if a mid-decade census were con-

ducted, such as a decrease in lawsuits over revenue sharing programs and less statistical studies legislated by Congress to attain a more accurate data base for policy making, but these have not been considered in this estimate.

6. Estimate Comparison: The House Committee on Post Office and Civil Service estimated the cost of H.R. 11337 to be negative and actually might save the government $50 million. The difference between the estimates is that they used a mid-decade census cost of $350 million in FY 1975 dollars.

7. Previous CBO Estimate: None.

8. Estimate Prepared By: Jack Garrity (225-5275)

9. Estimate Approved By:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

WYOMING EXECUTIVE DEPARTMENT,
Cheyenne, Wyo., May 6, 1976.

Hon. GALE W. MCGEE,
Chairman, Senate Post Office and Civil Service Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR MCGEE: On April 7, the House passed H.R. 11337, which provides for a mid-decade population census. This data would be used to update decennial census figures in federal assistance programs. I understand that the bill has been referred to your committee.

Energy development has produced substantial population increases for Wyoming since the 1970 census. Growth can be expected to continue indefinitely. Many federal grants are based upon the decennial census figures. As our population has grown at a more rapid rate than that for the rest of the nation, we are losing funds which we would receive with an updated census.

I urge your support for the bill.

Yours sincerely,

ED HERSCHLER,
Governor.

ADDITIONAL COSPONSORS

S. 495

At the request of Mr. RIBICOFF, the Senator from Alabama (Mr. ALLEN), the Senator from Colorado (Mr. HASKELL), and the Senator from Maine (Mr. MUSKIE) were added as cosponsors of S. 495, the Watergate Reorganization and Reform Act.

S. 3632

At the request of Mr. TUNNEY, the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 3632, to provide for the acquisition and preservation of works of art in Federal buildings.

S. 3663

At the request of Mr. GARY HART, the Senator from South Dakota (Mr. ABOUREZK) was added as a cosponsor of S. 3663, to amend section 404 of the Federal Water Pollution Control Act.

SENATE RESOLUTION 490—SUBMISSION OF A RESOLUTION TO DISAPPROVE ENERGY ACTION NO. 5

(Referred to the Committee on Interior and Insular Affairs.)

Mr. JACKSON submitted the following resolution:

S. RES. 490

Resolved, That the Senate does not favor the energy action numbered 5 transmitted to the Congress on July 20, 1975.

Mr. JACKSON. Mr. President, today I am submitting a resolution expressing the Senate's disapproval of Energy Action No. 5, the Federal Energy Administration proposal to remove price and allocation controls from naphthas, gas oils, and certain other petroleum products. The full text of the FEA proposal appears in the CONGRESSIONAL RECORD of July 20, 1976 at pages 22779–22781.

The provisions of sections 455 and 551 of the Energy Policy and Conservation Act (Public Law 94–163) specify the congressional review procedures for the submission and consideration of proposals by the administration to amend the regulation affecting domestic crude oil and refined petroleum products. The proposed energy actions would become effective unless disapproved by either House of Congress within 15 legislative days. In the case of this proposal to decontrol naphthas, gas oils, and other products, the 15-day period would end on midnight August 4, 1976.

I anticipate that the resolution with respect to Energy Action No. 5 will be referred to the Committee on Interior and Insular Affairs. The committee has no hearings scheduled on this decontrol proposal at this time. In any event, if the committee has not reported the resolution at the end of 5 days after referral, section 551(f)(4) of the Energy Policy and Conservation Act provides that any Member of the Senate may move to discharge the committee from further consideration of the resolution. Such a discharge motion would be highly privileged and the debate on the motion would be limited to 1 hour.

These procedures assure that the Senate will not be denied an opportunity to vote on a resolution of disapproval with respect to an energy action by inaction of any committee. I am submitting this resolution to preserve the opportunity of the Senate to act in the case of the petroleum products covered by Energy Action No. 5. The Senate should examine each of these FEA decontrol proposals closely during the statutory review period. If disapproval is warranted, my resolution will provide an opportunity for the Senate to express itself in the case of Energy Action No. 5.

AMENDMENTS SUBMITTED FOR PRINTING

TAX REFORM ACT OF 1976—H.R. 10612

AMENDMENT NO. 2047

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

Mr. BUCKLEY submitted an amendment intended to be proposed by him to the bill (H.R. 10612) to reform the tax laws of the United States.

AMENDMENT NO. 2055

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

Mr. THURMOND submitted an amendment intended to be proposed by him to the bill (H.R. 10612), supra.

AMENDMENT NO. 2056

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

Mr. FANNIN submitted an amendment intended to be proposed by him to the bill (H.R. 10612), supra.

AMENDMENT NO. 2057

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

Mr. KENNEDY (for himself and Mr. THURMOND) submitted an amendment intended to be proposed by them jointly to the bill (H.R. 10612), supra.

CRIME CONTROL ACT OF 1976—S. 2212

AMENDMENT NO. 2048

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

Mr. BAYH. Mr. President, I have the good fortune of serving on the Judiciary Committee with the floor manager of S. 2212, the distinguished senior Senator from Arkansas (Mr. MCCLELLAN). I know how hard he and other committee members, including Senators HRUSKA and KENNEDY, have labored to provide stronger and more effective crime control legislation.

The amendment I propose at this time is not designed to find fault with their efforts. Rather, it is designed to carry out my responsibility as chairman of the Judiciary Committee's Subcommittee to Investigate Juvenile Delinquency and as author of the 1974 Juvenile Justice and Delinquency Prevention Act (Public Law 93–415) which my colleagues in this body approved almost without objection in 1974 by a vote of 88 to 1. Today, I urge you to help assure that the long-ignored area of juvenile crime prevention remains the priority of the Federal anticrime program.

The Juvenile Justice and Delinquency Prevention Act was the product of a bipartisan effort of groups of dedicated citizens and of strong bipartisan majorities in both the Senate and House—329 to 20—to specifically address this Nation's juvenile crime problem, which finds more than one-half of all serious crimes committed by young people who have the highest recidivism rate of any age group.

The most eloquent evidence of the scope of the problem is the fact that although youngsters from ages 10 to 17 account for only 16 percent of our population, they, likewise, account for fully 45 percent of all persons arrested for serious crimes. More than 60 percent of all criminal arrests are of people 22 years of age or younger.

This measure was designed specifically to prevent young people from entering our failing juvenile justice system and to assist communities in developing more sensible and economic approaches for youngsters already in the juvenile justice system. Its cornerstone is the acknowledgment of the vital role private nonprofit organizations must play in the fight against crime. Involvement of the millions of citizens represented by such groups, will help assure that we avoid the wasteful duplication inherent in past Federal crime policy. Under its provisions the Office of Juvenile Justice and Delinquency Prevention, LEAA, must assist those public and private agencies who use prevention methods in dealing with juvenile offenders to help assure that only those youth who should be are incarcerated and that the thousands of youth who have committed no

criminal act—status offenders, such as runaways and truants—are never incarcerated, but dealt with in a healthy and more appropriate manner.

An essential aspect of the 1974 act is the "maintenance of effort" provision—section 261(b) and section 544. It requires LEAA to continue at least the fiscal year 1972 level—$112 million—of support for a wide range of juvenile programs. This provision assured that the 1974 act's primary aim, to focus the new Office efforts on prevention, would not be the victim of a "shell game" whereby LEAA merely shifted traditional juvenile programs to the new office. Thus, it guaranteed that juvenile crime prevention was the priority.

Fiscal year 1972 was selected only because it was the most recent year for which current and reportedly accurate data were available. Witnesses from LEAA represented to the Subcommittee to Investigate Juvenile Delinquency in June 1973 that nearly $140 million had been awarded by the Agency during that year ostensibly to programs for the improvement of the traditional juvenile justice system. It was this provision, when coupled with the new prevention thrust of the substantive program authorized by the 1974 act, which represented a commitment by the Congress to make the prevention of juvenile crime a national priority—not one of several competing programs administered by LEAA, but the national crime-fighting priority.

The subcommittee has worked for years to persuade LEAA to make an effort in the delinquency field commensurate with the fact that youths under the age of 20 are responsible for half the crime in this country. In fiscal year 1970, LEAA spent an unimpressive 12 percent; in fiscal year 1971, 14 percent; and in fiscal year 1972, 20 percent of its block funds in this vital area. In 1973 the Senate approved the Bayh-Cook amendment to the LEAA extension bill (H.R. 8152) which required LEAA to allocate 30 percent of its dollars to juvenile crime prevention. Regrettably, some who had not objected to its Senate passage opposed it in the House-Senate conference where it was deleted.

Thus, the passage of the 1974 act, which was opposed by the Nixon administration—LEAA, HEW, and OMB—was truly a turning point in Federal crime prevention policy. It was unmistakably clear that we had finally responded to the reality that juveniles commit more than half the serious crime.

Unfortunately, in its zealousness to defeat both the 1973 Bayh-Cook amendment for the improvement of the juvenile justice system and the bill which eventually became the 1974 act, the administration and its representatives grossly misrepresented their efforts in this area.

In hearings before my subcommittee last year, OMB Deputy Director Paul O'Neill, and other representatives of the administration finally admitted that the actual expenditure for fiscal year 1972 was $111,851,054 or $28 million less than we had contemplated would be required to be spent each year under the maintenance of effort provision of the 1974 act.

The legislative history of the Juvenile Justice Act is replete with reference to the significance of this provision. The Judiciary Committee report, the explanations of the bill, both when introduced and debated by myself and Senator Hruska, as well as our joint explanations to this body of the action taken by the Senate-House conference on the measure each cite the $140 million figure and stress the requirement of this expenditure as integral to the impact contemplated by Congress through the passage of the Juvenile Justice and Delinquency Prevention Act of 1974.

Once law, the Ford administration, as if on cue from its predecessor, steadfastly opposed appropriations for the act and hampered the implementation of its provisions. When the President signed the act he ironically cited the availability of the "$140 million" as the basis for not seeking appropriations for the new prevention program.

Despite continued stiff Ford administration opposition to this congressional crime prevention program, $25 million was obtained in the fiscal year 1975 supplemental. The act authorized $125 million for fiscal year 1976; the President requested zero funding; the Senate appropriated $75 million; and the Congress approved $40 million. In January, President Ford proposed to defer $15 million from fiscal year 1976 to fiscal year 1977 and requested a paltry $10 million of the $150 million authorized for fiscal year 1977, or a $30 million reduction from fiscal year 1976. On March 4, 1976, the House, on a voice vote, rejected the Ford deferral and recently the Congress provided $75 million for the new prevention program.

Mr. President, while we have obtained, over strong administration opposition, about 50 percent of the funding Congress authorized for the new prevention program under the 1974 act, the administration has renewed its efforts to prevent its full implementation. In fact, the Ford "Crime Control Act of 1976," S. 2212, would repeal the maintenance of effort provision of the 1974 act.

It is interesting to note that the primary reason stated for the administration's opposition to funding of the 1974 act prevention program was the availability of the very "maintenance of effort" provision which the administration seeks to repeal in S. 2212.

Mr. President, the same forked-tongue approach was articulated by Deputy Attorney General Harold Tyler before the Senate Appropriations Subcommittee. He again cited the availability of the maintenance of effort requirement in urging the Appropriations Committee to reduce by 75 percent, to $10 million, current funding for the new prevention program or in other words, kill it.

The Ford administration was unable to persuade the Judiciary Committee to fully repeal this key section of the 1974 act, but they were able to persuade a close majority to accept a substitute percentage formula for the present law, the effect of which would substantially reduce the total Federal effort for juvenile crime prevention. But, what the President seeks, and what his supporters will diligently pursue is the full emasculation of the program. This intent is clearly evidenced in the original version of S. 2212 and even more importantly in the President's proposal to extend the 1974 act, for 1 year, which was submitted to Congress on May 15, after the percentage formula version was reported from the Judiciary Committee. This new proposal again incorporates sections repealing the key maintenance of effort provision. My subcommittee heard testimony on this measure on May 20 and it was clear to me that rather than an extension bill, it is an extinction bill.

It is this type of doubletalk for the better part of a decade which is in part responsible for the annual recordbreaking double-digit escalation of serious crime in this country.

Mr. President, I am not able to support the reported version of President Ford's Crime Control Act of 1976, S. 2212, because it—sections 26(b) and 28—repeals a significant provision of the Juvenile Justice and Delinquency Prevention Act of 1974 (Public Law 93-415). The formula substituted for present law—by a vote of 7 to 5, voting "nay": Senators BAYH, HART, KENNEDY, ABOUREZK, and MATHIAS; and voting "yea": Senators MCCLELLAN, BURDICK, EASTLAND, HRUSKA, FONG, THURMOND, and WILLIAM L. SCOTT, represents a clear erosion of a congressional priority for juvenile crime prevention and at best proposes that we trade current legal requirements that retain this priority for the prospect of perhaps comparable requirements.

Under the approach recommended by the committee, rather than the level mandated by the 1974 act; namely expenditures for the improvement of juvenile justice systems for fiscal year 1972 represented to be $140 million, but in fact, about $112 million, 19.15 percent of the total allocation of LEAA parts C and E funds would be maintained annually. This percentage represents the relationship of actual fiscal year 1972 expenditures for juvenile justice improvement—$112 million—to total C and E allocation of $584 million for that year. Its application in fiscal year 1977 would require that less than $82 million of Crime Control Act moneys be maintained for juvenile justice system improvement. Thus, $30 million less would be allocated than in fiscal year 1975 or 1976. It is likewise important to recall that because of the misrepresentation regarding actual expenditures in fiscal year 1972, $28 million less than Congress had intended was allocated to juvenile crime in fiscal years 1975 and 1976. The cumulative impact of the administration's sleight of hand regarding the $140 million figure and the application of the percentage formula solely to LEAA parts C and E would reduce the act's congressional commitment by $114 million: $28 million in fiscal year 1975, $28 million in fiscal year 1976, and $58 million in fiscal year 1977. This is totally unacceptable.

On May 28, 1976, I introduced amendment No. 1731, which would strike the provisions of S. 2212 which substitute the narrow percentage formula approach for

the extremely significant maintenance of effort requirement. The approach of amendment No. 1731, which favors current statutory language is identical to that taken by Chairman RODINO's House Judiciary Committee in S. 2212's companion bill, H.R. 13636. In addition to the pure merit of supporting the status quo which retains juvenile crime prevention as the LEAA priority, it was my view that those interested in fundamentally altering the provisions of the 1974 act, as the reported bill clearly intends, reserve their proposals until next spring and work with the subcommittee in drafting legislation to extend the 1974 act. Our hearings to accomplish this extension began May 20, 1976. It was with this perspective that I introduced amendment No. 1731 to excise these unpalatable sections.

Since that time I have reviewed this matter and concluded that the flexibility provided by the percentage formula approach may be more equitable in that the maintenance level would increase or decrease in proportion to the actual allocation of funds each fiscal year, but that the allocation for juvenile justice improvement should be a percentage of the total Crime Control Act appropriation, not solely of LEAA part C and E funds. The commitment to improving the juvenile justice system should be reflected in each category or area of LEAA activity: technical assistance-research, evaluation and technology transfer; educational assistance and special training; data systems and statistical assistance; management and operations; and planning as well as the matching and discretionary grants to improve and strengthen the criminal justice system.

Today, therefore, I ask my colleagues' support for my new amendment. The amendment does not authorize any additional appropriations; it simply helps insure, consistent with the policy thrust of the 1974 act, that LEAA will allocate crime control funds in proportion to the seriousness of the juvenile crime problem. The amendment will require that 19.15 percent of Crime Control Act funds, in deference to the level recommended in the committee report, be allocated for the improvement of the juvenile justice system.

It should be recalled that in 1973 this body supported, without objection, the Bayh-Cook amendment to the LEAA extension bill which would have required that 30 percent of LEAA part C and E funds be allocated for improvement of the juvenile justice system. My amendment, today, is clearly consistent with that effort. Had the 30-percent requirement become law it would have required that nearly $130 million of Crime Control Act, part C and E dollars—$427,500,000—be maintained during fiscal year 1977.

Coincidentally, the application of the 19.15-percent formula to Crime Control Act moneys for fiscal year 1977—$678,000,000—would require that an almost identical amount, $129,837,000, be maintained for the improvement of the juvenile justice system.

If we are to tamper with the 1974 act in a manner that will have significant impact, let us be assured that we act consistent with our dedication to the conviction that juvenile crime prevention be the priority of the Federal crime program. The GAO has identified this as the most cost-effective crime prevention program we have; it is supported by a myriad of groups interested in the safety of our citizens and our youth who are our future; and I am proud to say that this bipartisan approach is strongly endorsed in my party's national platform. My amendment will guarantee a continuity of investment of Crime Control Act funds for the improvement of the juvenile justice system; and when coupled with the appropriations obtained for the new office—$75 million for fiscal year 1977—we can truly say that we have begun to address the cornerstone of crime in this country—juvenile delinquency.

More money alone, however, will not get the job done. There is no magic solution to the serious problems of crime and delinquency.

Yet, as we celebrate the 200th anniversary of the beginning of our struggle to establish a just and free society, we must recognize that whatever progress is to be made rests, in large part, on the willingness of our people to invest in the future of succeeding generations. I think we can do better for this young generation of Americans than setting them adrift in schools racked by violence, communities staggering under soaring crime rates, and a juvenile system that often lacks the most important ingredient—justice.

The young people of this country are our future. How we respond to children in trouble, whether we are vindictive or considerate, will not only measure the depth of our conscience, but will determine the type of society we convey to future generations. Erosion of the commitment to children in trouble, as contained in S. 2212, as reported, is clearly not compatible with these objectives.

I urge my colleagues to support my amendment and help retain juvenile crime prevention as the national anticrime program priority.

I ask unanimous consent that my amendment be printed in the RECORD at this point:

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

AMENDMENT NO. 2048

On page 33, strike lines 11 through 16, inserting in lieu thereof the following:

(b) striking subsection (b) and inserting in lieu thereof the following:

"(b) In addition to the funds appropriated under section 261(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, the Administration shall maintain from the appropriation for the Law Enforcement Assistance Administration, each fiscal year, at least the same level of financial assistance for juvenile delinquency programs that such assistance bore to the total appropriation for the programs funded pursuant to part C and part E of this title during fiscal year 1972, namely 19.15 per centum of the total appropriation for the Administration."

On page 34, strike lines 16 through 23, inserting in lieu thereof the following:

SEC. 28. Section 261 of the Juvenile Justice and Delinquency Prevention Act of 1974 (88 Stat. 1129) is amended by striking subsection (b) and inserting in lieu thereof the following:

"(b) In addition to the funds appropriated under section 261(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, the Administration shall maintain from the appropriation for the Law Enforcement Assistance Administration, each fiscal year, at least the same level of financial assistance for juvenile delinquency programs that such assistance bore to the total appropriation for the programs funded pursuant to part C and part E of this title during fiscal year 1972, namely 19.15 per centum of the total appropriation for the Administration."

AMENDMENTS NOS. 2049, 2050, AND 2051

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

Mr. HATHAWAY submitted three amendments intended to be proposed by him to the bill (S. 2212) to amend the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and for other purposes.

AMENDMENT NO. 2053

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

Mr. PERCY. Mr. President, I am introducing an amendment to S. 2212, the Crime Control Act of 1976. This amendment is identical to S. 3657, the Drug Enforcement Administration Improvement Act of 1976, which I introduced along with Senators NUNN and RIBICOFF on July 1, 1976. It provides for the removal of all upper-level supervisory personnel in the Drug Enforcement Administration—DEA—from the civil service system. This involves those positions of grade GS–15 and above—some 162 people in this 4,200 person agency.

This removal would become effective 1 year after the enactment of this bill. In the interim, the people in such positions who do not elect to remain in their positions in the excepted service could either:

Transfer to a similar position for which they are qualified in another agency which is protected by the civil service; or

Transfer to a grade GS–14 position in DEA with no loss in salary or pension rights.

There are two questions which I would like to address in these introductory remarks. First, "Is this amendment relevant to the bill which we are now considering?" And, second, "Is this amendment worth supporting?"

There are two reasons why an amendment to improve DEA is an appropriate one to be offering to S. 2212. One is the direct financial connection between the Law Enforcement Assistance Administration—LEAA—and DEA. As you all know, S. 2212 provides for the reauthorization of LEAA. And, LEAA has funded, and continues to fund DEA administered projects in the States and localities to the tune of over $30 million for the last 3 fiscal years—$11.5 million of that in fiscal 1976 alone.

But there is a second, and far more important reason why an amendment designed to improve the Drug Enforcement Administration belongs in a crime control bill. This is the tragic correlation between drug abuse and crime. The traffic in hard drugs literally breeds crime, and this twin peril is a principal reason for the intolerable conditions in many parts of our urban centers. In fact, in his April 27, 1976, message to Congress on drug

abuse, President Ford indicated that law enforcement officials estimate that as much as one-half of all "street crime"—robberies, muggings, and burglaries—is committed by drug addicts to support their habits. Drug abuse has been calculated to cost us up to $17 billion a year, and a large portion of this cost results from such street crimes.

Consequently, an effective fight against drug abuse would have a significant impact on crime. And this impact is likely to be greatest in precisely those high crime areas which S. 2212 singles out for extra assistance. A successful Federal drug law enforcement effort would be of tremendous value to such areas, and to the Nation as a whole.

So the real question is not whether an amendment designed to improve the Drug Enforcement Administration is germane to the Crime Control Act of 1976. Clearly it is. Rather, the question is whether this proposal to remove the top supervisory positions in DEA from the civil service system would improve the agency. And, I think the record is equally unequivocal on this point—it would.

S. 3657, the Drug Enforcement Administration Improvement Act of 1976, which forms the body of this amendment, grew out of the investigation by the Permanent Subcommittee on Investigations into the Federal drug law enforcement effort.

The Investigations Subcommittee's June–July 1975 hearings showed that during DEA's first 2 years, a period in which heroin addiction was growing to epidemic proportions, the agency was beset by mismanagement, internal strife, and some serious integrity problems.

A major obstacle to the successful resolution of these problems has been the restrictions imposed upon the Administrator of DEA by the civil service personnel policies under which the agency operates. Because of rigid civil service rules and regulations, an Administrator interested in upgrading the quality of DEA personnel and the effectiveness of agency programs, does not have the administrative flexibility needed to make those major personnel changes he deems necessary.

Furthermore, when the Administrator seeks to fill key supervisory positions from within the agency, his choice is severely limited by civil service rules which ordinarily prohibit an employee from advancing more than one full grade per year. This problem is especially acute at the crucial top levels of the agency, where the Administrator's choice may be limited to as few as two or three potential appointees.

This amendment is an attempt to solve this problem by giving the Administrator of DEA the greater managerial flexibility he so desperately needs to better run the Agency.

The record of the hearings held by the Senate Permanent Subcommittee on Investigations strongly supports this proposal. After an extensive review of internal difficulties at DEA and its predecessor agencies, the subcommittee has concluded that this reform is essential to the effective management of the Agency. As the subcommittee report, which was released last Sunday, concludes:

> It is the finding of the Subcommittee that DEA personnel should not be covered by civil service rules and regulations. The subcommittee believes a fair method of disengaging DEA or any successor organization from civil service would be to give personnel a 1-year grace period during which they could seek other Federal employment covered by civil service with their rights intact. In turn, should personnel choose to remain in place, they would, after the 1-year period, lose all rights and protections previously provided them under civil service.

In addition, I have been in contact with various individuals who have had experience, either working in, or dealing with DEA. Former Deputy Attorney General Laurence Silberman, former Acting DEA Administrator Henry S. Dogin, former Chief Inspector and former Acting Deputy Administrator of DEA Andrew C. Tartaglino, Watergate Special Prosecutor and former Acting DEA Chief Inspector Charles Ruff, and other senior officials both in and out of the Department of Justice have all expressed strong support for this legislation. Perhaps Mr. Silberman, who as Deputy Attorney General was the official primarily responsible for oversight of DEA, most cogently summed up the need for this legislation in his testimony before the Permanent Subcommittee on Investigations:

> I think this committee . . . could do something that would be of enormous help for DEA and for the Justice Department, and that is to pass legislation to take civil service away from DEA and give them the same personnel status as the FBI.
>
> If you do that, you will end up with a much better DEA, which will be less susceptible to corruption.
>
> As you dug into this investigation, I think this committee has become aware that the protections which civil service gives employees, while very valuable, are probably inappropriate in an organization engaged in direct law enforcement. You have a higher degree of discipline and you need a higher degree of flexibility of management.

As the ranking minority member of the Permanent Subcommittee on Investigations, I am firmly convinced of the need for this measure. And I am very pleased to have been joined in introducing S. 3657 by Senator NUNN, acting chairman of the subcommittee, and Senator RIBICOFF, a member of the subcommittee and chairman of the full Government Operations Committee. Both were active participants in the subcommittee's inquiry into the Federal drug law enforcement efforts, and both have indicated an acute understanding of the enormous need for greater managerial flexibility at the highest levels of DEA.

Before I conclude, I would like to emphasize one point in particular. This amendment is not intended as a means of capriciously punishing those individuals now in supervisory positions in DEA. Indeed, many of these individuals are men of the highest integrity, and are very dedicated and competent law enforcement officials.

Nor is this amendment intended to serve as a precedent for the wholesale removal of Government agencies from the civil service system. Rather, it is a recognition of the fact that Federal law enforcement agencies constitute a special case. In these agencies, the opportunities for "corner-cutting" and outright corruption are so great that a more flexible personnel system is needed to insure the integrity and effectiveness of agency personnel. By way of comparison, the other law enforcement agency under the Justice Department, the FBI, has, since its creation, maintained a personnel system wholly outside the civil service.

Mr. President, this amendment is absolutely essential to the most effective operation of the Drug Enforcement Administration. In view of the tremendous importance of DEA's role in the fight against drug abuse and the enormous impact which its efforts have on crime, especially in our cities, I think that this is an especially appropriate and important amendment to be offering to S. 2212, the Crime Control Act of 1976.

AMENDMENT NO. 2054

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

Mr. BENTSEN. Mr. President, I am today submitting an amendment to S. 2212, the Crime Control Act of 1976. My amendment would add paragraph 13 to section 301(a), and would serve to highlight and encourage the use of Federal funding for one program that has proven an invaluable aid to State and local law enforcement.

I speak of early case assessment, a program in which Federal funds finance efforts at the local level to employ experienced prosecutors to analyze criminal cases immediately upon their entry into the criminal justice system. These prosecutors target and expedite cases involving violent crimes. They immediately interview witnesses, who might otherwise disappear or become impossible to locate. They eliminate cases that should never be brought to trial due to weak or nonexistent evidence or for other reasons. They concentrate the limited resources of the Government on those cases that would most wisely be prosecuted, either due to the violence of the crime or the winnability of the case.

Mr. President, competent case screening has been done in a few cities like New York, St. Louis, and Houston. It has proved to be an invaluable managerial technique that has saved the prosecution valuable resources, the courts valuable time, and the public a considerable amount of money. It has protected the rights of defendants who would have been acquitted after a lengthy, expensive and trying ordeal that should never have taken place. It protects the innocent, and facilitates the prosecution of the truly dangerous. It has reduced the abuse of plea-bargaining that has allowed so many dangerous offenders to escape punishment, especially in high crime areas.

Mr. President, my amendment would emphasize the availability of Federal funds for this effort—a highly effective program—and one that has made justice more just, law enforcement more effective, Federal spending more wise, and our streets a little more safe.

I seek to encourage the process of early case assessment. It is a truly efficient businesslike approach to the justice system. It is a proven procedure which others should recognize and utilize.

Mr. President, I urge adoption of this amendment as one step in the right di-

rection to help curb the violence that plagues so many of our streets and communities, and I ask unanimous consent that the text of this amendment be printed in the RECORD at this point.

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

AMENDMENT No. 2054

On page 16, line 22, strike out "; and" and after line 22 insert the following:

"(13) The establishment of early case assessment panels for any unit of local government within the State having a population of two hundred and fifty thousand or more to screen and analyze cases as early as possible from the time of the bringing of charges, to determine the feasibility of successful prosecution, to expedite the prosecution of cases involving repeat offenders and perpetrators of violent crimes, and to concentrate prosecution efforts on cases with a high probability of successful prosecution."; and

CLEAN AIR ACT AMENDMENTS OF 1976—S. 3219

AMENDMENT NO. 2052

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

Mr. WILLIAMS (for himself and Mr. CASE) submitted an amendment intended to be proposed by them jointly to the bill (S. 3219) to amend the Clean Air Act, as amended.

SCHEDULE OF HEARINGS

Mr. JACKSON. Mr. President, I wish to announce for the information of my colleagues and the interested public the following schedule of hearings to be held before the Subcommittee on Parks and Recreation of the Senate Interior and Insular Affairs Committee:

July 26—10 a.m., in room 3110 of the Dirksen Building:

H.R. 13713, National Park Service omnibus bill regarding extension of boundaries and acquisition ceilings, encompassing the following measures:

S. 1133, Golden Spike National Historic Site.

S. 1510, Andrew Johnson National Historic Site.

S. 2325, Gulf Islands National Seashore.

S. 2904, establishing Buffalo National River.

S. 3012, Colorado National Monument.

Additional boundary and ceiling changes include:

S. 91, Antietam National Battlefield.

S. 2182, C&O Canal Development Act.

S. 2257, Edison National Historic Site.

S. 2894, Bandelier National Monument.

S. 3116, Haleakala National Park.

S. 3373, Nez Perce National Historic Park.

S. 3410, Morriston National Historical Park.

S. 3501, Fort Union Trading Post National Historic Site.

S. 3560, John F. Kennedy Center authorization.

Written testimony will also be accepted on S. 3430, Park Service Authorities Bill.

July 27—10 a.m., in room 3110 of the Dirksen Building:

Senate Joint Resolution 139, St. Paul's Church, Eastchester.

H.R. 10370, Canaveral Seashore Commission.

S. 400, Frederick Law Olmstead National Historic Site.

S. 3419, Afro-American Museum.

S. 3441, Congressional Cemetery Maintenance.

August 2—10 a.m., in room 3110 of the Dirksen Building:

S. 2112, Bartram National Scenic Trail—study.

S. 2783, Daniel Boone National Scenic Trail—study.

S. 3273, Nee Me Poo National Scenic Trail—study.

S. 3287, Iditarod National Historic Trail—establish.

S. 3528, Desert National Scenic Trail—study.

House Concurrent Resolution 225, Washington-Rochambeau National Historic Route—establish.

Persons having any questions concerning these hearings may wish to contact Mr. James P. Beirne, counsel to the subcommittee, at 224-7145. Written testimony for the record should be submitted to the Subcommittee on Parks and Recreation, Committee on Interior and Insular Affairs, room 3106, Dirksen Senate Office Building, Washington, D.C. 20510.

NOTICE OF HEARING

Mr. HASKELL. Mr. President, I wish to announce for the benefit of my colleagues and the public, the scheduling of a public hearing before the Subcommittee on the Environment and Land Resources of the Senate Interior and Insular Affairs Committee.

The hearing is scheduled for July 30, beginning at 10 a.m., in room 3110 of the Dirksen Senate Office Building. Testimony is invited regarding three bills which are presently before the subcommittee. The measures are:

S. 3204.—to provide for the study of certain lands in the State;

S. 3676.—of Missouri to determine their suitability for designation as wilderness; and

S. 3444.—to provide for the study of certain lands in the State of Louisiana to determine their suitability for designation as wilderness.

For further information regarding the hearings you may wish to contact Mr. Thomas Williams of the subcommittee staff on extension 4-9894. Those wishing to testify or who wish to submit a written statement for the hearing record should write to the Subcommittee on Environment and Land Resources, room 3106, Dirksen Senate Office Building, Washington, D.C. 20510.

NOTICE OF HEARING ON NOMINATION

Mr. MOSS. Mr. President, on behalf of myself, Senator KENNEDY, and Senator TUNNEY, I announce that a hearing on the nomination of Dr. H. Guyford Stever to become Director of the Office of Science and Technology Policy in the Executive Office of the President will be held on Wednesday, July 28, 1976, at 11 a.m., in room 318 of the Russell Senate Office Building.

ADDITIONAL STATEMENTS

JOBS FROM INDUSTRY, NOT FEDS

Mr. BUCKLEY. Mr. President, since this Congress convened a year and a half ago, there has been much discussion about ways in which the Federal Government can create jobs for unemployed workers. Perhaps it is time for the Congress to talk less on this subject and to listen more, heeding especially the advice of those men and women around the country whose wisdom and experience have made them leaders in commerce and industry, that is, in the creation of jobs through private initiative.

Douglass C. Harvey is one of them. As vice president and general manager of the apparatus division of the Eastman Kodak Co. in Rochester, N.Y., Doug Harvey is a business leader of whom his community and his State can be proud. In a recent address to the graduating class of Roberts Wesleyan College in Rochester, he explained how the Congress can stimulate the American economy to produce more jobs and how, if we are not careful, the Congress can disrupt our economic system beyond repair. His analysis, published in the Rochester Democrat and Chronicle of June 28, 1976, is hard hitting and astute. It says what badly needs saying, especially in the Congress. I therefore ask unanimous consent, Mr. President, that Mr. Harvey's remarks be printed in the RECORD.

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

JOBS FROM INDUSTRY, NOT FEDS

(By Douglass C. Harvey)

The National unemployment level has lingered at a deplorable 7½ percent, and we read that unemployment among liberal-arts graduates is twice the national figure.

Viable jobs come into existence only to meet a want or need for goods or services that enough people perceive as having a value worth their hard-earned dollars.

One percentage point of unemployment means 900,000 jobs that aren't there, $50 billion worth of goods and services that are not produced, and $14 billion in taxes that are not collected. Under the circumstances, you would have a hard time finding anybody of any political persuasion who regards 7½ percent unemployment as a tolerable long-term condition for this country.

The most prominent remedy that has been proposed is a bill currently in Senate debate. It commits the federal government to provide a job for every "adult American, able, willing, and seeking work." Sounds like an easy solution, doesn't it? . . .

One of the bill's co-sponsors, Sen. Hubert Humphrey, was reported as saying that those who "worship at the shrine of the free market forget that we live in a country that has people, and the free market doesn't take care of the poor."

This sort of thing is all right for 30-second TV commercials, or airport stopovers—even for a declared non-candidate. But Sen. Humphrey was talking in a "think tank" to professional economists and others who have reason to know how the American economy works.

Any of them might have countered with abundant evidence to show the senator that what he said just ain't so.

They couldn't have used a more pertinent source than the distinguished Harvard economist, Joseph Schumpeter . . .

Schumpeter commented: "Queen Elizabeth owned silk stockings. The capitalist achieve-

ment does not typically consist in providing more silk stockings for queens, but in bringing them within the reach of factory girls for a steadily decreasing amount of effort."

We have had a dramatic demonstration of Schumpeter's thesis in our time. From 1960 through 1973, $1.8 trillion in capital investment was poured into the American economy, and 18.6 million new jobs were created. During the same period, the percentage of the population living below the poverty line, as defined by the U.S. government, declined from 22 per cent to 11 per cent.

These statistics would tend to belie the statement that the free market doesn't take care of the poor . . .

But Schumpeter came to what he called a "paradoxical conclusion:" Karl Marx would probably turn out to be right for the wrong reasons. "Capitalism," said Schumpeter, "is being killed by its own achievements . . ."

When Schumpeter himself was countercharged with being defeatist on the future of capitalism and individual freedom, he replied:

"The report that a given ship is sinking is not defeatist. Only the spirit in which the report is received can be defeatist. The crew can sit down and drink. But it can also run for the pumps."

I am one for the pumps.

A Chamber of Commerce spokesman testified before a congressional committee that the average public service employment job would cost $8,000 in public subsidies.

By and large, these jobs are not for the creation of goods. By contrast, the investment needed (per job) in the business sector today lies in the $60,000 to $70,000 range.

One can ask: If jobs provided by government cost so much less is that, then, the key? Senator Humphrey seems to think so.

But I ask you, would things be better if government were to provide two out of six jobs? Three out of six?

Jobs provided by government drain our tax dollars. Jobs in the business sector, on the other hand, require more capital—to be sure—but return taxes to the national treasury. It should be obvious, the emphasis must be toward the creation of jobs in the business sector . . .

But why is the capital needed to provide a job in the business sector so much greater than in government?

The reason is that these jobs create goods and have to be competitive with the same work being performed almost anywhere else in the world. The buzz word is "productivity."

The wage the average worker at the Kodak Apparatus Division receives for an hour of production would pay for better than two workers in Japan, about three in Mexico, six in Hong Kong, and nine in Taiwan.

The only way American workers can stay competitive in the world market is through the use of modern tools and advanced training that make their work more productive—productive in ideas, as well as goods . . .

Treasury Secretary William Simon has warned that, in real terms, the United States is actually cutting back on its investment in new jobs.

Capital invested per new worker from 1971 through 1975 averaged $67,000, which sounds substantial. But for the comparable period a decade ago, the average comes out $77,000 on the same basis.

So what? So the American job is becoming less competitive in the world market. It's less competitive because as a nation we're losing ground in productivity.

The tasks our system will be confronted with, in the years ahead, are even more demanding than anything it has achieved in the past:

We have to provide new jobs for about half again as many workers over the next ten years as we did over the past ten.

We have to rebuild a national industrial plant that is now estimated to be two years behind those of Western Europe and Japan.

We have to develop new sources of energy to lessen the nation's dependence on foreign oil, a project that could require a trillion dollars in capital investment over the next ten years.

And, we have to resume putting roofs over people's heads—to the tune of another trillion dollars investment in construction.

All in all, informed estimates of the capital requirement to keep the American economy moving range between $4 trillion and $4.7 trillion from now through 1985.

And, if present trends in capital formation continue, we aren't going to make it! We aren't going to make it by $350 billion to $650 billion.

That much of a shortfall would mean that we would have to settle for an economy operating at less than its full potential, with a continuing slowdown in productivity and, probably, more underemployment, inflation, recession, or, perhaps, all of these conditions, together.

But, I'm an optimist. I don't believe Schumpeter's prophecy need come true.

First, there is a dire need for cooperation, not antagonism, between government and industry, if there are to be enough jobs for this and future generations.

Secondly, profits derived from providing needed goods and desired services are not bad. In fact, they are a vital ingredient in a healthy economy. . . .

Some of our Congressmen are suggesting that there is an easy solution to the job question—but don't be misled by a mirage and accept the easy way.

There is no such thing as a free lunch.

MRS. SHIKU SATOW: LEARNING IS A LIFELONG PURSUIT

Mr. TUNNEY. Mr. President, at the age of 86, Mr. Shiku Satow has watched 25 children and grandchildren receive high school diplomas at Leuzinger High School in Lawndale, Calif. And at the age of 86, it became Mrs. Satow's turn to ascend the podium in cap and gown to receive a diploma of her own.

A longtime resident of Hawthorne, Mrs. Satow and her family have contributed a richness to the quality of education at Leuzinger and to life in Hawthorne itself. Among her offspring who have graduated have been several football players, a valedictorian, several student class presidents, and award winners. During the June graduation ceremonies, almost half a century after her first child entered Leuzinger, Mrs. Satow's family, friends, and neighbors rose to honor her as she received the first honorary diploma ever awarded by the school.

I join all of those who know and respect Mrs. Satow in expressing my sincere congratulations and good wishes on this momentous occasion. It is an honor justly deserved.

I ask unanimous consent that the text of an article which appeared in the Los Angeles Times about Mrs. Satow's graduation be printed in the RECORD.

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

SHE GETS A DIPLOMA AT 86—HONOR MARKS FAMILY'S TIES TO HIGH SCHOOL: 25 GRADUATES

(By Charles Hillinger)

As the elderly Japanese-American woman walked to the podium in white cap and gown, the 390 graduating seniors assembled on the Leuzinger High School football field jumped to their feet, clapped and cheered.

In the bleachers, hundreds of relatives and friends of the graduates rose at the same time to give the woman a standing ovation.

For 86-year-old Shiku Satow, the event highlighted almost half a century of association with the high school from which 25 members of her family—seven children and 18 grandchildren—have graduated.

Mrs. Satow was awarded an honorary diploma—the first ever given by Leuzinger—at graduation exercises Wednesday evening in Lawndale.

"This is one of the happiest moments of my life," she said after the ceremonies. "All these years I have set out there in the audience watching my children and grandchildren graduate. I never expected to be up here with the graduates."

Seated beside Mrs. Satow on the podium was her eldest son, Hideo, a member of Leuzinger's first graduating class in 1932.

Among graduates this year was Gwyn Christine Satow, whose father, Kunio, 51, received his diploma in 1942.

Kunio was the only one of the 25 Satow to gradaute from Leuzinger who did not receive his diploma at regular graduation exercises.

His diploma was presented in a special graduation ceremony for Japanese-Americans from high schools throughout Southern California assembled at the World War II internment camp at Santa Anita Race Track in June, 1942.

Mrs. Satow has lived in Hawthorne since she and her late husband, Tomijiro, first came to the United States in 1914.

She is still active in the floral business she and her husband established the year they arrived. Mrs. Satow, six sons and one daughter grow carnations on 10 acres of land.

From the very beginning, her family has had close ties with Leuzinger.

In fact, for Wednesday evening's ceremonies, a special section in the audience was reserved for Mrs. Satow's seven children, 22 grandchildren, eight great-grandchildren and other members of the family.

"Throughout the entire history of our school, except for the three war years, there has always been a member of Shiku Satow's family in attendance," said Principal Jim Crase.

"The Satows have all been outstanding students—beginning with Hideo who won the first Darsie Award for service to Leuzinger. Satows have included a valedictorian, football players, student class presidents. They have enriched the life of this campus immensely."

Then, while the school choir sang "This Is My Country" and a fireworks display ended the evening's ceremonies, Mrs. Satow had a few words of her own.

"I am so happy this happened," she said softly. "America has been very good to my family."

BEING GENEROUS WITH SOMEBODY ELSE'S MONEY

Mr. HELMS. Mr. President, it would be amusing—if the self-deception were not so tragic—to note how generous some politicians and public officials can be with somebody else's money. I am always amazed at the reasoning of those

limousine liberals who point the finger at those of us with conservative inclinations, accusing us of lacking sufficient compassion for the unfortunate. We are being so stingy, they say, while they, being endowed by their Creator with hearts of much larger dimensions, are always generous on behalf of the unfortunate.

One almost has a pang of guilt—for a moment—until the simple truth emerges: It is not their money with which our liberal friends are being generous; it is not our money with which conservatives are being stingy. It is the money of our fellow man that is at issue. One cannot be generous or stingy with someone else's money.

It is remindful of the institution of whipping boys in the days of royalty. It was considered an act of disloyalty to spank an infant king, so one of his young subjects would take his place. There was a certain child king, under this institution, who impressed everyone by his humility in insisting that he be properly punished for the slightest misbehavior. Everyone was impressed, at least until it was realized that it was not the king's posterior that was receiving the requested punishment.

Indeed, Mr. President, often it seems that those whose eloquence rises to the loftiest heights on the subject of generosity are remarkably consistent in making sure that public generosity is first extended to themselves. It is very true, as someone once pointed out, that hypocrisy is the tribute that evil pays to virtue.

A fine friend and outstanding citizen of Asheville, N.C., Mr. David B. Morgan, Jr., recently sent me a most blatant example of the hypocrisy of the limousine liberals. In an article appearing in the International Herald Tribune on May 24, 1976, there is set out a synopsis of the ridiculously excessive salaries paid to and enjoyed by the United Nations staff in Geneva. These are the same international bureaucrats who like to lecture the rest of us on our responsibilities to the malnourished, sick, and poor people of the world. It appears that they have been partially successful in eliminating poverty, and providing for the abundant life—their own.

Mr. President, I ask unanimous consent that the article from the International Herald Tribune be printed in the RECORD.

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

[From the Paris International Herald Tribune, May 24, 1976]

UN SALARIES IN GENEVA: A STERN ACCOUNTING

(By John A. Callcott)

GENEVA, May 23.—The salaries and benefits enjoyed by the 10,000 international employees of the UN here have come under sharp attack from member governments that pay the bill.

Resident diplomats are asking how it is possible that a messenger can take home $413 a week for pushing around a trolley stacked with interoffice mail.

Criticism has provoked an internal UN investigation. Still secret, the report which emerged concedes that things have got out of hand. It cites the case of the messenger.

SOME EXAMPLES

Some other examples of salaries and fringe benefits at the European headquarters of the UN and the specialized agrencies in Geneva:

$350 a week, free of tax, for a young copytypist.

$555 a week for a mid-echelon member of management.

$1,000 a week for top executives plus diplomatic privileges.

Six weeks annual vacation for everyone, a generous pension plan, family and school allowances.

An "old boy" system that allows divisional directors to retire at half pay only to become "technical advisers" or "consultants" the next day at their old salary—which in some cases means a tax-free $1,240 a week.

"'Never," an ambassador said, "have so many done so little for so much."

Just arrived as his country's permanent representative, the ambassador was exasperated at being unable to find his own secretarial and clerical staff.

"They're all at the UN," he said. "How can we match those salaries and fringe benefits?"

There are similar complaints from private enterprise. A temporary employment agency says it has extreme trouble finding secretaries.

"Downtown, a bilingual secretary with shorthand can earn from 2,400 to 3,100 Swiss francs a month ($960 to $1,240). But the international organizations pay as much or more than that for a typist, as well as longer holidays and other benefits," an executive of the employment agency said.

At one of the large U.S. multinational corporations, the personnel manager said he could afford to match UN wages but it was impossible to offer comparable vacation, pension and other advantages. "The situation is even more difficult for smaller companies and diplomatic missions," he said.

The UN salary system, and relaxed working atmosphere, provoked a sarcastic comment on the "international good life" from Patrick Moynihan last year during his brief tenure as U.S. ambassador.

"You know the kind of money some of these people make?" Mr. Moynihan said at a private luncheon. "Why, only Russian ballerinas, pop singers and soccer stars make that much."

Top UN management is increasingly concerned at member countries' criticism, which has become stronger following the strike earlier this year of the so-called "general services" employees for more money.

These "GS," as they are known, comprise clerical, technical and lower-management staff. They make up roughly two-thirds of the total number of "international functionaries," the rest being the higher grade "professionals," of "PS."

The strike by the "GS" resulted in a pay increase as of next month that is retroactive to last August. This increase will add $5 million a year to the budget of the UN itself, housed in the sprawling Palais des Nations, and another $4 million to $5 million to the budgets of the specialized agencies, such as the International Labor Organization, the World Health Organization and International Telecommunications Union.

High officials expect trouble at the General Assembly in New York this year when member governments will be faced with a formal request for more money. France, in particular, is expected to balk.

Already signed, however, the new pay agreement cannot be withdrawn, according to UN executives. If governments refuse to pay more, then UN programs will have to be slashed. Many contracts will not be renewed and there may be dismissals, particularly at the ILO, which already has frozen hirings.

TRIBUTE TO SENATOR PHILIP A. HART

Mr. McGOVERN. Mr. President, last month, Network, the religious lobbying group, held their fifth annual seminar here in Washington, D.C.

The Michigan delegation to the seminar proudly offered a fitting resolution in tribute to one of the most tireless and devoted workers for peace and social justice in the Senate—our colleague PHILIP A. HART.

It goes without saying that such an honor is well deserved and I ask unanimous consent that the Network resolution be printed in the RECORD.

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

TRIBUTE TO SENATOR PHILIP HART, MICHIGAN

Whereas Senator Philip Hart of Michigan has served the people of his state tirelessly for 18 years,

Whereas Senator Philip Hart has concerned himself with those issues that relate to struggling peoples,

Whereas Senator Philip Hart has proved himself the conscience of the Senate, the visionary of the country, and the hope of a hopeless world,

Whereas Senator Philip Hart has not only addressed his words in debate, his pen in amendments, but also cast his vote for the strongest bills for the good of the people,

Whereas Senator Philip Hart has maintained a perfect record in Congress as recorded by Network in its concern for health, employment, criminal justice, defense budget cuts, food and foreign policy, and women's rights,

Be It Resolved that we, the Network Legislative Seminar of 1976, honor and pay tribute to you in gratitude for your action and service.

A FUTURE FOR EVERY CHILD

Mr. HATFIELD. Mr. President, recently an article written by Dr. Jean Mayer, world-renowned expert and consultant with the United Nations Children's Fund, has come to my attention. Dr. Mayer's article, which appeared in both the Washington Post and the New York Daily News, is a heartwarming account of the vital and impressive work being done by UNICEF over the past three decades. I would remind my colleagues of UNICEF's high purpose "A Future for Every Child" and of the fact that 80 percent of UNICEF's budget is directed toward improving the quality of life for needy mothers and children throughout the world.

It is a formidable task. As Dr. Mayer indicates, more than 100 million children under the age of 5 are still suffering from severe malnourishment, and 90 percent of the young children who die each year could be saved with simple preventive measures. I recommend that my colleagues lend their attention to the thoughtful article by Dr. Mayer and to the efforts by UNICEF and other organizations to help ease the immense suffering throughout the world. I ask unanimous consent that this article be printed in the RECORD.

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

LET'S NOT FORGET THE CHILDREN

(By Dr. Jean Mayer)

A most unfortunate consequence of the current disenchantment with the United Nations and some of its agencies is the drop in support for UNICEF, one of the most exemplary of the international charitable institutions today.

Ever since it was created in 1946 as the International Children's Emergency Fund (later shortened to the U.N. Children's Fund), this organization has been dedicated without reservation, to its motto, "A Future for Every Child." During the war in Nigeria, UNICEF was the only U.N. organization to join private relief organizations and the Red Cross in responding to the desperate needs of the starving children of Biafra and Nigeria. During the drought in Africa, UNICEF worked with other international relief organizations to airlift food, drugs and supplies for child health services. Immediately after the earthquake in Guatemala last February, UNICEF began flying in emergency equipment, food and medications.

UNICEF has been involved in helping developing countries to invent, manufacture and distribute low-cost, high-protein foods for young children, especially in urban areas where not enough milk is available. And they have sponsored family and child welfare services, daycare centers, family counseling services, youth clubs and parent education. UNICEF also teaches scientific methods of birth control when a nation officially requests such information.

Despite such intensive efforts, UNICEF estimates that these services have reached only 20 per cent of the youngsters in developing nations. Indeed, more than 100 million children under 5 are still severely malnourished, and 90 per cent of the young children who die each year could be saved with simple preventive measures.

To reach even more children, UNICEF is attemping to train more local manpower. Under this plan, villagers and slum dwellers choose representatives to be schooled in new techniques of agriculture, medicine and nutrition, among others. These workers then return to their homes to teach their neighbors these newly acquired skills, including how to protect grain from rot and rodents or how to breed fish, chickens and other small animals.

Helping children to survive an emergency has been UNICEF's tradition since its first shipments of food, medicine and clothing to Europe at the end of World War II. Since then, UNICEF workers have vaccinated more than 400 million children against tuberculosis, treated more than 40 million for trachoma, the leading cause of blindness in underdeveloped countries, and treated more than 400,000 for leprosy.

But UNICEF has recognized that you cannot insure a child's health solely with emergency aid. Today, about 80 per cent of the UNICEF budget is dedicated to improving the quality of daily life for needy mothers and children throughout the world.

In more than 100 countries, UNICEF has paid for or equipped thousands of pediatric and maternity wards, rural health care centers, child-care centers and orphanages. To improve health services, they have trained paramedical and auxiliary workers. To improve environmental health, they have helped drill wells for clean water, built sanitary facilities and sponsored community health education programs. To improve nutrition, they have helped plant community gardens, set up school canteens and funded nutrition education and training centers.

In addition to all these efforts to aid individuals, UNICEF also offers its help to governments that request it. For example, UNICEF is helping national governments set up effective nutrition monitoring systems, with special attention to the needs of the youngest and most vulnerable members of their population.

At a time when most human institutions have proved themselves sadly unequal to their tasks, UNICEF has been a model of intelligent services, courage and goodwill towards all. Its ultimate success will improve the lives of all people, for we all are citizens of a small and interdependent world. But such success also depends upon our continued support.

OVERREGULATION AND UNIVERSITIES

Mr. McINTYRE. Mr. President, in its issue dated July 5, 1976, U.S. News & World Report published an article titled "Another Campus Revolt—This Time Against Washington," which shows the overregulation of our universities by the Federal Government.

Part of this article quotes the president of Dartmouth College, in my home State of New Hampshire:

It is a very frustrating thing that we have to respond to something within two weeks and the Government may take up to a year to make up its mind whether it accepts your explanation or not.

As cochairman of the Commission on Federal Paperwork, I am becoming increasingly aware of the problems facing our Nation's businesses, universities, and nonprofit institutions.

I ask unanimous consent that the article from the U.S. News & World Report be printed in the RECORD. I also hope that the Members of the Senate will consider the problems of Government regulation and paperwork when evaluating legislation. We must work to correct the situation that forces our private institutions to waste so much time and resources in collecting information and filling out forms for the Government.

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

ANOTHER CAMPUS REVOLT—THIS TIME AGAINST WASHINGTON

A mood of rebellion is spreading among college educators who are finding themselves increasingly under the thumb of a benevolent despot—the federal bureaucracy.

Since 1960, more than 50 billions in Government dollars has flowed from Washington, D.C., to the campuses of the nation.

This money enabled them to absorb soaring enrollments, upgrade faculties and expand research—much of it for the Government.

Now educators are having to pay the price for that largess.

They are under mounting pressure to comply—just as public utilities, television stations and drug companies have to—with federal regulations on what they can and can't do, or risk a cutoff of Government support.

STREAM OF GUIDELINES

This means compliance with a never-ending stream of Washington's guidelines on student admissions, faculty hiring and promotion, curriculum changes, degree requirements, fees, class size, facilities, salaries, pensions, discipline and athletics.

Many of these guidelines have their origin in a rule requiring "affirmative action" by institutions to apply laws that bar discrimination against women and racial minorities, whether as students or teachers. This rule is sometimes blamed by college officials for producing a lowering of standards, with "reverse discrimination" against white males.

Campus administrators also must deal with a wide variety of other federal statutes and rules that cover matters ranging from occupational safety to environment and health. Federal research-and-development contracts often change course content and direction.

Today, colleges and universities are becoming restive—and even defiant on occasion.

Some are refusing to participate in any federally aided programs. Many are appealing to Congress and the courts for help against what Texas A & M President Jack K. Williams calls "bureaucratic blackmail."

Meantime they are having to live with these hard facts:

Nearly 400 federal programs now directly affect higher education. About 50 executive agencies and two dozen congressional committees crank out bills, regulations, program guidelines, criteria standards and audit requirements for colleges and universities.

Even a $5,000 federal grant can have attached to it regulations covering 100 or more pages of bureaucratic fine print. An affirmative-action plan drawn up by the University of California at Berkeley to guarantee equality of educational and employment opportunities alone required 70,000 statistical calculations.

It is the Government's power of the purse that usually brings compliance.

STRINGS ATTACHED

Congress is now investing almost 10 billion dollars a year in higher education, as shown in the chart on page 92. Every penny of this money has strings attached. Institutions that fail to stay in line can lose all federal financial assistance. This has never happened, however, because, as one federal official put it, "the sanctions for noncompliance are just too overwhelming."

Adds Richard W. Lyman, president of Stanford University: "In the U.S. today, a major university cannot divorce itself from Government support and remain a major university."

Educators got a taste of what divorce would be like when the Government cut back on research-and-development contracts in the early 1970s. Enrollments shrank at graduate schools as scholarship money dried up. Many institutions had to phase out major research projects, and at some a freeze was put on faculty hiring.

LOOKING FOR HELP

In their struggle to get out from under the Government's thumb, university officials look for help from David Mathews, Secretary of Health, Education and Welfare, who had first-hand knowledge of their problems as president of the University of Alabama.

Secretary Mathews acknowledges that the independence and diversity of higher education is endangered by "the enormous pressure for uniformity" applied by federal agencies. Further, he conceded that red tape is especially burdensome to small institutions with small staffs.

Mr. Mathews told *U.S. News & World Report* that HEW has launched studies aimed at easing the paper-work load, and that institutions are now getting more access to the development of regulations.

The Secretary pointed out, however, that much of HEW's bureaucratic machinery is the result of social legislation of the last 10 years, which has conferred great benefits as well as problems on colleges and their students.

With the help of Government tuition loans, college enrollments have grown by more than 6.5 million since 1956. In approximately the same period, higher education's land, buildings and equipment increased in value from about 18 billion dollars to more than 67 billion. Much of this was financed with federal dollars. Secretary Mathews said:

"Somebody has to monitor all this spending. Inevitably, the bureaucracy follows the dollar. But the regulations are aimed at protecting people from any capriciousness in bureaucracy and providing uniformity in administration of the law."

At present, as a result, the long arm of Government reaches into almost every corner of the campus. Harvard President Derek C. Bok described the scope this way in his most recent report to the university's board of overseers:

"Rules have been issued to regulate the internal operations of educational institutions by requiring them to grant equal admission to women and minority groups, to institute grievance procedures in cases of alleged discrimination and to open confidential files for student inspection.

"Tax laws have been amended in ways that affect the incentive to make charitable contributions to colleges and universities.... Congress has cut certain programs and expanded others in ways that dramatize the power of the purse to alter the shape and priorities of the university. Congress has demonstrated that it is even prepared to regulate the curriculum. Although never enacted into law, the House of Representatives passed a bill in 1974 to induce all medical schools to require every student to complete six weeks of training in a health facility situated in a medically underserved area."

Confusion over the Government's role in education, critics say, is heightened by the multitude of agencies that are empowered to enforce the same or similar policies.

In the area of equal-employment opportunity, for example, authority is shared by four different bodies—HEW, the Labor Department, the Equal Employment Opportunity Commission and the Internal Revenue Service.

Widespread among educators is the conviction that many Government dictums have been poorly thought out. President Lyman of Stanford spoke of a tendency to "legislate or regulate first and ask questions afterward, if at all."

An example of this often cited by college administrators is the Family Rights and Privacy Act of 1974, sponsored by Senator James L. Buckley (Cons.-Rep.), of New York, which denies potential employers and other third parties access to grades and other school records without the permission of the student who is involved.

The law slipped through Congress without public hearings and with little debate. It developed into an administrative nightmare and eventually had to be sent back to Congress for major repair work.

Barbara Pearson, director of affirmative-action programs at the University of Southern California, commented that Congress passes laws with the best of intentions but "regulations that the bureaus put out drive us up the wall." She added that some agencies "seem more interested in poundage than the contents" of the reports they receive from universities.

Typical of the impasse that often develops between universities and Government was Michigan State's struggle to get approval of its affirmative-action plans for equality of campus educational and employment opportunities.

Michigan State was told in 1975 that it would have to draft a whole new set of affirmative-action standards to keep a million dollars' worth of federal contracts. It got two weeks to come up with a new plan that would have cost an estimated $100,000 to develop.

After frantic negotiations, HEW finally relented—by approving an affirmative-action plan originally submitted by MSU in 1970.

"PANIC FOR WEEKS"

The university's relations with the Government have improved since then, but administrators are still jittery. Said Robert Perrin, vice president for university and federal relations: "You get a Government envelope in the mail in the morning and it can throw the whole university into a panic for weeks."

At other institutions, the mood ascends to a high pitch of indignation.

"We stand at the gates of the kingdom of chaos," said President Jack K. Williams of Texas A & M. He maintained that the Equal Employment Opportunity Commission "is at war with us" and HEW "is too often our enemy, too often an agency acting from overstimulated idiocy."

A complaint of Chancellor Archie Dykes of the University of Kansas is this: "We've had to add to our legal staff because our lawyers spend so much time corresponding with the Federal Government. They hire lawyers to write to our lawyers, and we have to hire more lawyers to reply."

At the University of North Carolina in Greensboro, Donald J. Reichard, director of institutional research, said 10 reports required by HEW last year swamped his computer facilities. "All other uses of the computer stopped," he recalls. "For a six-month period we did nothing but HEW reports."

One report from Greensboro to the Office of Civil Rights was 1,187 pages in length and weighed more than 12 pounds.

Costs are equally staggering.

Compliance with five federal programs is costing Harvard up to 8.3 million dollars a year. At the University of Rochester, Government red tape is estimated to add 1 million dollars annually to operating costs.

The University of Kansas, which gets about 24 millions in federal funds annually, spends more than $750,000 a year on compliance reports.

Result: Some institutions now are flirting with the idea of getting along without federal funds.

The presidents of four universities in the Washington, D.C., area—American, Catholic, Georgetown and George Washington—have issued a "1976 Declaration of Independence," pledging to refuse federal money that encroaches on academic freedom. They asserted:

"Government interference is disrupting higher education to a point where institutional autonomy is seriously threatened. Without the vigorous exercise of independence, the American system of higher education . . . will certainly collapse."

Said Charles U. Daly, Harvard's vice president for government and community affairs: "If it came to the point where we really felt we were sacrificing the guts of academic freedom, then we certainly would consider giving up federal aid, and I hope we'd have the courage to give it up.

"That obviously would be extraordinarily difficult for Harvard, and it would be a suicidal decision for a great many financially weaker institutions."

Robert L. Sproull, president of the richly endowed University of Rochester, agrees and commented: "Of course we could exist without federal grants and contracts, but we'd be a much different institution. And the country and the 21st century would be weaker for it.

"But nobody in Washington cares about the 21st century. It's all they can do to care about next week, and nothing—absolutely nothing—goes beyond the first Tuesday in November."

In fact, about 75 private colleges and universities receive either no Government aid or assistance in amounts of less than 2 per cent of their budgets.

Many educators, however, learned last October that there may be no escape from bureaucratic entanglements.

HEW ruled that, as of October 1, any college enrolling students who receive individual aid through Government loan and grant programs is to be considered a "recipient institution"—subject to a wide range of Government controls.

The ruling covers millions of students attending almost every institution of higher education in the country.

Brigham Young University and Hillsdale College in Michigan are leading a group of schools in efforts to nullify or at least modify this latest interpretation of a "recipient institution."

Few, however, see a way out from under Washington's lengthening shadow across higher education.

The president of Baylor University, Abner V. McCall, concedes that although Baylor refuses to accept building grants or Government loans, it has been lassoed by the new recipient-institution ruling.

Mr. McCall adds ruefully: "If you're in for a penny, you're in all the way."

In that situation, educators are besieging Congress and HEW with demands for a bigger voice in developing legislation affecting their institutions and in drafting regulations for the administration of new laws. Two principal aims:

Get Congress to assume responsibility for monitoring regulations affecting education to make sure they're working fairly.

Change employment rules designed for business and industry but unworkable for universities.

In courts, too, educators are challenging bureaucratic demands.

A VICTORY

When the State of Maryland was threatened with the loss of 65 million dollars in federal aid to its 28 public colleges because of alleged failure to eliminate racial segregation, it obtained a federal-court injunction restraining HEW's civil-rights office from carrying out its threat. The court held that the Government had acted "arbitrarily and whimsically."

Beyond those measures, Frederic W. Ness, president of the 1,400-member Association of American Colleges, is advising college officials to be more alert to what goes on in Congress. "Sometimes we have been caught napping," he said.

From Stephen Bailey, vice president of the American Council on Education, comes a further admonition to the academic hierarchy: to continue improving their old "image" in Washington, where, unfairly or not, they have had a reputation for being "exclusive, self-indulgent, patronizing and sloppy."

On more and more campuses there is rising talk of organizing a common front of faculty members, alumni and administrators in the battle against the federal bureaucracy.

Until a more effective challenge is mounted, however, many eductors share the feeling of Harvard's Derek Bok that "it is unlikely that higher eduaction will do much more than fight a series of rear-guard actions toward off the more menacing forms of Government intervention."

ALICE LICHTENSTEIN

Mr. MATHIAS. Mr. President, whenever a gifted teacher retires from the classroom, there is reason for regret. But in these days when new tales of scandal on Capitol Hill daily appear in the press, all of us in Congress have special cause to regret the retirement of one dedicated teacher—Alice Lichtenstein.

Ms. Lichtenstein, as an employee of the Social Security Administration since June 1, 1959, has imparted her expert knowledge of her subject: "Congress and the Legislative Process" to more than 2,600 employees in 87 classes. For the past 17 years, she has emphasized to her

students the positive side of the legislative process. She has told them of the slogging hard work it takes to make the system work. She has interpreted the legislative process faithfully but as a friend. When she has identified its failures, she has done so in order to strengthen it.

I am proud that Alice Lichtenstein is a Marylander and a constituent of mine. But all of us here in Congress also are constituents of hers and she has served us well. In gratitude, I ask unanimous consent that a resolution presented to her by her last class June 17, 1976, be printed in the RECORD.

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

SSA RESOLUTION

Whereas Alice Lichtenstein agreed to teach this last class on Congress and the Legislative Process for the Bureau of Data Processing; and

Whereas during her career she has taught 87 classes containing over 2600 students; and

Whereas this could be a dull subject area if taught only by the textbook; and

Whereas Alice teaches these classes with a contagious excitement about political processes; and

Whereas she gave us the benefit of her knowledge and experience; and

Whereas she presented this knowledge in an amusing and interesting fashion unique to her and;

Whereas she has given herself to us above and beyond the call of duty; and

Whereas we appreciate the added touches she gives this course; and

Whereas she has started us in the habit of reading the newspaper front and editorial page before the comics; and

Whereas we will always remember her when we read or think about Congress and the legislative process in the future; and

Whereas all the other classes she has taught and influenced cannot be present at this time; and

Whereas we must represent them all: Now, therefore be it

Resolved that we will all rise and applaud Alice Lichtenstein for the excellent work she has accomplished.

A NEW BREED OF ACTIVIST STATE COURT

Mr. TUNNEY. Mr. President, I ask unanimous consent to have printed in the RECORD an article by that distinguished jurist Stanley Mosk, justice of the supreme court of California. The article is entitled "A New Breed of Activist State Court," and appeared in the Baltimore Sun on June 13. Justice Mosk traces the role of State courts and State judges, from Revolutionary times down to our own day, in protecting the rights and liberties of the citizen. As chairman of the Constitutional Rights Subcommittee, I call this fine article to the attention of my colleagues:

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

A NEW BREED OF ACTIVIST STATE COURT

(By Stanley Mosk)

Almost imperceptibly in the past several years there has developed in the courts of the nation a pheonix-like resurgence of genuine federalism. It results from a curious but expedient welding of traditional states-rights advocates and hard-shell civil libertarians who rightly or wrongly are disenchanted with recent trends in the Supreme Court.

Perspective from the future may be necessary to determine whether this revival of federalism, long deemed to be but a historical memory, is to endure, or indeed whether it is practical in this era of communication and transportation that virtually obliterate state boundaries. But court decisions on various subjects in some 19 states certify that there is a distinct movement which warrants explication.

For 173 of the 200 years of this republic a relentless tide of judicial authority has flowed from the states to the federal government. It began with Chief Justice John Marshall's opinion in 1803 in Marbury v. Madison—despite the apprehensions and opposition of Thomas Jefferson—and has been enhanced by every successor of Marshall. In many respects the highest state courts were reduced in effectiveness to mere wayside stations on the route from trial courts to the Supreme Court.

This is not to suggest that the movement was either unnecessary or undesirable. Just prior to the ascendency of the Warren court, it was commonly said that "if our liberties are not protected in Des Moines the only hope is in Washington."

That observation proved to be a prophecy. The Warren court, from its inception in 1953, served as the midwife to a design of constitutional law. The previous era had been characterized by a benign acceptance of racism, political rotten boroughs, disability of the poor, an Anthony Comstock approach to sexual matters, denial of universal suffrage, and unconcern for the rights of the criminally accused. Chief Justice Warren and his colleagues elected to employ the federal Constitution to achieve a liberating impact in the areas of politically opportunity, criminal justice and racial equality.

Out in the hinterland there was understandable furor over many of the decisions. Rural politicians who had more cows than people for constituents saw their power threatened by reapportionment. Law enforcement officers resented the necessity to change their long-accepted technique as a result of decisions in the criminal law field. State courts had relied on an 1833 Supreme Court decision that declared the federal Bill of Rights was inapplicable to the states and functioned solely as a restraint upon the national government.

Gradually the states adapted their criminal and judicial techniques to the requirements of the Supreme Court. Some of the efforts were labored, but in general a satisfactory accommodation was achieved. Police officers were taught how to lawfully enforce the law. Trial judges became reconciled to admitting only legally obtained evidence.

Just as a period of peaceful coexistence seemed imminent, the post-Warren counterrevolution began. All legal scholars agree that the current court is no longer a bold, innovative institution determined to be the nation's conscience. The court apparently sees its role as one of self-restraint, of minimal interference. From our current vantage point one cannot pass judgment on that course. Perhaps it is wise, or inevitable that a period of hypertension be followed by years of lowered expectations.

But the role of state courts—the primary source of justice for most persons—has become infinitely more complex. As the Supreme Court has careened from one end of the constitutional spectrum to the other, state courts must choose between two alternatives. They can shift gears and once again change directions, thus resuming their pre-Warren course of callousness in the constitutional area. Or they can continue their more recent concern for protection of individual rights by reliance upon the independent nonfederal grounds found in the state constitutions. A growing number of states have adopted the latter course.

Indeed, Justice William Brennan, the Supreme Court's most ardent champion of individual rights, has several times cordially invited the states to rely upon their own charters rather than to follow the high court's cutbacks on federal protection. Last December he reminded them that each state has power to impose higher standards governing police practices under state law than is required by the federal Constitution," and he enumerated several state courts of last resort which have done so.

The list is growing. In determining the voluntariness of a consent to search premises New Jersey's highest court departed from the new federal rule, and relied upon its state Constitution. On the defense of entrapment, at least four states—Michigan, Iowa, New Mexico and Alaska—have chosen a different test than that most recently employed by the Supreme Court. In cases involving warrantless electronic surveillance Michigan has gone its independent way. On the subject of double jeopardy, Michigan, Oregon, California and Pennsylvania have imposed higher standards than the Supreme Court now requires.

On impeachment exceptions to the famed Miranda rule, Pennsylvania, Hawaii and California relied upon state authority rather than the new federal rule. The right to counsel at pre-indictment police lineups, recently abandoned by the high court, is being retained in Nevada, Oklahoma and Michigan.

In cases known as United States v. Robinson and Gustafson v. Florida, a majority of the Supreme Court permitted law enforcement officers to make full body searches of the person incident to custodial arrests for mere traffic offenses and other minor violations which involve no tangible evidence. Hawaii and California deliberately rejected the Robinson-Gustafson rule and with careful analysis relied upon their respective state constitutions to afford greater protection for citizens in their states.

In other specific areas, a wide diversity of states have on occasion clung to state constitutional authority to reach conclusions at variance with those of the high court. Among them, in addition to those already mentioned, are Wisconsin, North Dakota, Missouri, Indiana, South Carolina and Ohio. At least two relevant questions arise regarding this recycled federalism. Is it historically tenable? Is it permitted by the Supreme Court? To each the answer is affirmative.

A reading of the "Federalist Papers" clearly reveals an intent by the founding fathers to permit the states to remain a repository of individual rights. Alexander Hamilton and James Madison so declared time and again. Madison put it this way: "The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State." That, of course, is the tenor of the Tenth Amendment to the Constitution.

But, it is sometimes argued, most state constitutions derive in inspiration, and often in actual text, from the federal Constitution and thus they should have no independent qualities. This is said to be particularly so with reference to bills of individual rights.

However it is more relevant to recognize that our founding fathers obtained their inspiration and texts for the first 10 amendments from the predecessors of the states: the colonies and their declarations of rights. It was the Pennsylvania Declaration of Rights of 1776 that, with regard to freedom of speech and press, was the direct precurser of perhaps the most significant guarantee of the federal Bill of Rights contained in the First Amendment.

Maryland's Declaration of Rights prohibited bills of attainder, Delaware's inspired

prohibitions against quartering of soldiers and ex post facto laws, and North Carolina's declaration contained a compendium of almost all of the fundamental rights which came to be recognized by American constitution-makers, both federal and state.

Thus if chronology in the cataloguing of rights is significant, the states have more than an arguable claim to priority.

As to contemporary authority, the Supreme Court has frequently declared that states may impose higher standards than those required by the United States Constitution. Justice John M. Harlan was a consistent advocate of decentralizing criminal justice, urging that state criminal procedure should be uninhibited by federal restraints as long as there is adherence to fundamental standards of fairness. Chief Justice Burger has expressed a similar viewpoint.

It should be emphasized that no state claims the right to differ with the United States Supreme Court on federal constitutional interpretations. If state courts restrict, or unduly expand, individual rights under federal constitutional provisions, the Supreme Court will undoubtedly intervene and take appropriate action. In that area it has unquestioned supremacy. But the states are beginning to assert the right to interpret their state constitutions in a manner different than that expressed by the Supreme Court in employing the federal constitution, even though the provisions of the two may be textually similar. If the result is fragmentation of a national consciousness, it is justified in furtherance of an expanded liberty.

This revival of federalism has a twofold result. First, it gives to the citizens of the states a higher degree of individual protection than would otherwise obtain. And secondly reliance upon state law in rendering a decision as a general rule insulates the case from subsequent federal review. This has the cumulative benefit of hastening the finality of decision thus blunting one of the common criticisms of courts: that justice in its tortuous path through court after court takes too long. There may be those who will recall civil-rights conflicts of the past and thus deem the resurgence of states rights as a calamity. That fear is understandable in view of the track record of some states with a history of inadequate and insensitive judicial systems. But it can be said with considerable confidence that those days are past, that the quality of justice in most states compares favorably with that in the federal judiciary. There are at least a dozen state courts of last resort that most legal commentators would rank as truly outstanding by any standard.

The United States has learned much in 200 years. But federal institutions do not have all the answers. Encouraging the 50 states to experiment, to retain their historic individuality, to seek innovative responses to problems of protecting individual liberty, may produce more satisfactory solutions in the years ahead. Those who are experiencing equal protection and due process gloom on the national scene may one day liken state courts to those monks who kept classical learning alive so that it might be rediscovered in the Renaissance.

NUTRITION AND THE ELDERLY

Mr. McGOVERN. Mr. President, as chairman of the Select Committee on Nutrition and Human Needs, I have heard much testimony over the years concerning the severe nutritional problems of our Nation's senior citizens. Though precise national statistics have been difficult to obtain, the evidence clearly indicates that millions of elderly persons suffer from various types and degrees of malnutrition.

In response to these nutrition problems, Congress, in 1972, established the title VII, nutrition program to provide nutritional support for persons 60 years and over. More recently, Senators PERCY, KENNEDY, DOLE, and myself have introduced S. 3585, the National Meals-on-Wheels Act of 1976, to extend the benefits of a title VII hot meal to the homebound elderly, blind, and disabled who are incapable of participating in the regular title VII congregate program.

Mr. President, a recent study conducted in Missouri underscores the positive health effects of nutritional support for the elderly such as is provided through title VII. Nutritionists at Lincoln University in Jefferson City, Mo., have completed an evaluation of participants in local elderly nutrition projects. The study, funded by the Central Missouri Agency on Aging, found that title VII meals significantly reduce the nutritional deficiencies which plague older Americans. The study, which will be presented at the October meeting of the Gerontological Society in New York, was reported in the June 24 issue of CNI Weekly Reports. I ask unanimous consent that this article be printed in the RECORD.

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

MISSOURI EVALUATES ELDERLY FEEDING IMPACT

A nutritional evaluation of Title VII recipients funded by the Central Missouri Agency on Aging has found reduced vitamin A and C deficiencies and a lower-than-expected incidence of iron deficiency anemia among persons participating regularly in elderly feeding projects.

Final results of the survey, which was conducted by nutritionists at Lincoln University in Jefferson City, are scheduled for presentation at the annual meeting of the Gerontological Society in New York City in October.

The Lincoln University researchers prepared one-day food records for over 400 persons 60 years and older randomly selected from participants in elderly feeding projects in late 1974. Subjects were divided into three groups: (1) participants not consuming a meal on site the day of the record, (2) participants not consuming a Title VII meal on the day chosen, and (3) non-participants prior to the opening of one site.

The researchers found that individuals who had eaten a Title VII meal consumed significantly more calories, protein and calcium than subjects not eating on site. There were fewer persons with low and deficient serum levels of vitamins A and C among individuals who had participated in the program two to five times per week compared with those who had participated less than twice a week.

BASELINE STUDY

The survey, which was directed by Mary Bess Kohrs, also found lower-than-expected levels of iron deficiency anemia among Title VII participants. Anemia was about one-fourth as common among male participants and about one-half as common among female participants in 1975 as compared with similar individuals surveyed in 1973 before the Title VII program began in Missouri.

The Title VII survey results were measured against USDA-funded baseline studies similar to the Ten-State Nutrition Survey of the late 1960s. That 1973 Missouri survey found widespread malnutrition throughout the state, including considerable iron deficiency; obesity; calcium and vitamin A deficiencies; and inadequate caloric intake among certain groups. Children, women of child-bearing age, and adults 60 years and over were especially affected. Iron was the nutrient most commonly lacking in diets surveyed.

USDA has awarded Lincoln University a grant of $72,298 for a follow-up project to study the principal economic and social factors associated with the state's nutritional deficiencies.

Arnold Shaefer, former director of the Ten-State Survey, told CNI Weekly Report the Missouri study and its offshoots demonstrate that malnutrition and related health problems can be overcome if authorities are willing to see problems and pursue effective solutions.

BICENTENNIAL RESOLUTION OF CLINTON LODGE NO. 54 F. & A.M.

Mr. TALMADGE. Mr. President, the Clinton Lodge No. 54 F. & A.M. of Savannah, Ga., has adopted an outstanding resolution in observance of our Nation's Bicentennial.

This resolution is a splendid affirmation of the principles upon which the United States was founded 200 years ago and an expression of dedication to the blessings of freedom and prosperity.

I bring this resolution to the attention of the Senate and ask unanimous consent that it be printed in the RECORD.

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

RESOLUTION

Whereas, the United States of America is celebrating its 200th year of independence and,

Whereas, the ideals of freemasonry were an inspiration to the founding fathers of our nation and,

Whereas, our membership desires to join with the nation in recognizing this landmark;

Now, therefore; be it hereby resolved: that Clinton Lodge No. 54 F. and A.M., in regular communication assembled, goes on record as joining the United States of America in celebrating the 200th anniversary of the independence of our country and joins in the prayers of the free world invoking the blessings of the Supreme Architect of the Universe to preserve and maintain the liberties and freedoms of intellect, as well as activities, which are enjoined in this great country so that they may continue as an example for freedom-loving people everywhere and as a wholesome environment for our own citizens, enabling us and our future generations to continue the principles of independence we have established, which allows people of all cultures to live peacefully and harmoniously; and,

Be it furthermore resolved: that this resolution be spread upon the minutes of Clinton Lodge No. 54 F. and A.M. and copies hereof be sent to the Most Worshipful Grand Lodge of the State of Georgia, our Senior United States Senator and our District United States Congressman.

THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, over a quarter century has passed since the General Assembly of the United Nations, adopted the text of the Genocide Convention. On December 9, 1948, the United States voted for the adoption of this significant landmark in the development of international law.

The United States helped draft the convention and was among the first nations to sign it. Today, over 70 nations have ratified this treaty, but we have not.

Millions of Americans will feel that a historic achievement has been registered if this convention at long last becomes an

accepted part of the law of nations. This year, as we celebrate the 200th anniversary of the Declaration of Independence, that great monument in the history of human liberty, it is imperative that we continue, and reaffirm, our support for the protection of human rights, by endorsing the Genocide Convention.

The United States should take every opportunity to champion the rule of law in the conduct of nations. Let us give fresh vitality to America's leadership in the struggle for human rights and ratify the Genocide Convention without delay.

JUDGE UPHOLDS BLM TERMINATION OF GRAZING ACT ADVISORY BOARDS

Mr. METCALF. Mr. President, U.S. District Court Judge Bruce R. Thompson of Nevada has held that the automatic termination provision of the Federal Advisory Committee Act does indeed apply to advisory boards established by the Taylor Grazing Act.

His June 15 decision in a suit against the Secretary of the Interior and the Bureau of Land Management supports the effort of BLM to utilize the Federal Advisory Committee Act to evolve into a comprehensive land management agency.

Section 14 of the Federal Advisory Committee Act provided that each advisory committee in existence on the effective date of the act would terminate automatically in 2 years—on January 5, 1975—unless it had been formally renewed or enjoyed a longer duration specified by law.

In January 1975, BLM let its grazing district advisory boards lapse and replaced them with broadly based multiple use advisory boards representing not only stockmen but such other interests as wildlife, forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, and county government.

Members of a terminated board brought suit, contending that advisory boards established by the Taylor Grazing Act are exempt from any effect of the Federal Advisory Committee Act, because if they were not their termination would involve implied repeal of the Taylor Grazing Act.

In finding for BLM, Judge Thompson declared:

> Thus, we think it is clear that when Congress enacted the FACA, it was concerned about the proliferation of advisory committees which had outlived their usefulness. To remedy this situation, Congress contemplated that the Act would affect existing substantive law and that if it later decided the advisory committees were necessary, Congress would enact legislation to recharter them. The Secretary of the Interior had no obligation or authority to recharter the advisory boards of which plaintiffs were members.

Mr. President, I ask unanimous consent that Judge Thompson's decision be printed in the RECORD.

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

[In the U.S. District Court for the District of Nevada]

John C. Carpenter, Jr., et al, Plaintiffs, versus Rogers C. B. Morton, et al, Defendants.

CIVIL No. R-75-1 BRT

OPINION

This case was tried to the Court on stipulated facts and memoranda of law. This opinion shall constitute the findings of fact and conclusions of law required by Rule 52, Federal Rules of Civil Procedure. The key issue to be decided is whether the Secretary of the Interior is obligated to recharter the advisory boards created by the Taylor Grazing Act and terminated by Section 14 of the Federal Advisory Committee Act (FACA). It appears that this is a case of first impression.

By a 1939 amendment to the Taylor Grazing Act (43 U.S.C. § 315, et seq.), Congress established boards of grazing district advisors in the several districts (Section 3150-1). All plaintiffs were members of such a board until January 1975.

Defendant Thomas S. Kleppe is the Secretary of the United States Department of the Interior. The remaining defendants are employees, managers, officers or directors of the Bureau of Land Management (BLM).

Pursuant to the Taylor Grazing Act, the Department of the Interior promulgated a regulation relating to the appointment, term of office and removal of members of grazing district boards. 43 CFR § 4114.1-3. The regulation was in effect at all times in 1974 and 1975. Specifically, the regulation provided that the State Director of the Bureau of Land Management could, in his discretion, appoint board members in certain classifications to a term of office of three hundred sixty-five days and could renew those appointments upon expiration. The length of the renewal term would depend on the classification of the board member.

In 1972, Congress enacted the Federal Advisory Committee Act, Public Law 92-463; 86 Stat. 770; 5 U.S.C. § 1, et seq., App. I. The effective date of the Act was January 5, 1973 (§ 15). The purpose of the Act, as it relates to this controversy, is to provide a means by which advisory committees[1] which had been established by Congress, the President and various agencies could be reviewed so that those no longer furthering the purpose for which they were established could be terminated (§ 2).

Section 14(a)(1) of the Act provides that each advisory committee existing at the time of the effective date of the Act shall terminate within two years unless, among other things, the advisory committee is one established by an act of Congress and for which Congress has provided a longer duration period.

Section 14(b)(1) contemplates that an advisory committee which had been terminated may be renewed.

Plaintiffs argue that the advisory boards established by the Taylor Grazing Act are exempt from any effect of the FACA. The crux of plaintiffs' argument is that the FACA could not have abolished the advisory boards established by the Taylor Grazing Act because to do so would necessarily involve an implied repeal of the Taylor Grazing Act and implied repeals are not favored. See *Morton* v. *Mancari*, 417 U.S. 535, 550 (1974).

Plaintiffs further argue that the FACA merely terminated all advisory committees so that various governmental authorities could reassess the need for advisory boards under their respective jurisdictions. Plaintiffs conclude that in this case the Taylor Grazing Act itself implicitly requires that grazing district advisory boards be reinstated and that there is no need to reassess the situation.

Section 14 of the Act uses the word "terminate" in describing the effect of the Act on existing advisory committees. Other sections of the Act, in different contexts (§§ 5, 6 and 7, for example), use the word "abolish." Plaintiffs argue that if Congress had intended that the operative provision of Section 14 would cause the existing advisory committees to cease to exist, it would have used the word "abolish" rather than the word "terminate."

While plaintiffs' arguments has a superficial appeal, it is not persuasive. Section 14 (6)(1) provides for the possible renewal of an advisory committee terminated by the Act. The use of the word "terminate" in section 14(a)(1) is entirely consistent with the renewal provision of Section 14(6)(1); the use of the word "abolish" would not be consistent with the provision.

Section 5 of the Act provides that "each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished." Section 6 of the Act provides that the President shall (beginning with the year after the effective date of the Act) make an annual report including the names of the advisory committees established by Congress which he recommends should be abolished. Section 7 of the Act provides that the Director of the Office of Management and Budget shall (immediately after October 6, 1972) institute a comprehensive review of the activities and responsibilities of each advisory committee to determine "whether it should be abolished."

Defendants argue that sections 5, 6 and 7 are primarily applicable to those advisory committees established after the effective date of the Act (i.e., to those advisory committees to which Section 14 would not apply). Defendants' argument is logical and persuasive. Unquestionably, the FACA was intended to have both immediately effect through (§ 14) and prospective effect through §§ 5, 6 and 7. Since the procedures of §§ 5, 6 and 7 contemplate a studied decision with respect to the question of whether a particular advisory committee is necessary, Congress could use a term denoting finality; thus the use of the word "abolish." Since the procedure of Section 14 is automatic and, further, since it contemplates the possible renewal of a previously disbanded advisory committee, Congress used the word "terminate."

The case of *Wright* v. *Vinton Branch*, 300 U.S. 440, 463-64, n. 8 (1937), holds that it is appropriate to refer to reports to determine Congressional intent.

Congressman D. B. Fascell, one of the managers of the bill on the part of the House, said:

"One of the major purposes of the bill is to establish congressional control over the proliferation of committees * * *. If the Congress creates an advisory committee by statute, we shall continue to have a right to repeal or create. The only way we touch a committee or affect a committee in this bill, and that applies to all of them, is they terminate at the end of two years, unless appropriate action is taken to continue them * * *. If it is Congress, we must reauthorize. Now, we do that so that we can get some kind of control with respect to the creation and indefinite continuation of these committees." (118 Cong. Rec. 16305 (1972)).[2]

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[1] An advisory committee is described as "any committee, board * * * or other similar group * * * which is * * * established by statute * * *." Section 3(2).

[2] The House bill to which Congressman Fascell referred is set out in full in 118 Cong. Rec. 16300-16301. The termination provision (insofar as it is pertinent to the issue here) is substantially similar to Section 14 of the Act.

Senator Charles Percy, one of the managers of the bill on the part of the Senate, said:

"Another key provision is that all advisory committees will terminate unless specific action is taken by the creating authority to continue them." 118 Cong. Rec. 30274 (1972).[3]

Thus, we think it is clear that when Congress enacted the FACA, it was concerned about the proliferation of advisory committees which had outlived their usefulness. To remedy this situation, Congress chose to terminate all advisory committees. In doing that, Congress contemplated that the Act would affect existing substantive law and that if it later decided the advisory committees were necessary, Congress would enact legislation to recharter them. The Secretary of the Interior had no obligation or authority to recharter the advisory boards of which plaintiffs were members. Accordingly,

It hereby is ordered that judgment shall be entered in favor of defendants and against plaintiffs.

[3] The pertinent part of the Senate bill to which Senator Percy referred is set out in 118 Cong. Rec. 30271. It also is substantially similar to Section 14 of the Act.

IMPORTANCE OF MISSISSIPPI BARGE TRANSPORTATION

Mr. HUMPHREY. Mr. President, during the June 24, 1976, hearing by the Water Resources Subcommittee of the Committee on Public Works, testimony was given by Dr. William F. Hueg, Jr., who is deputy vice president and dean of the Institute of Agriculture, Forestry, and Home Economics at the University of Minnesota.

Dr. Hueg testified before the subcommittee concerning the importance of Lock and Dam 26 in assuring reliable barge transportation on the Mississippi River. The river is well suited to transport bulk commodities such as grain, and the barge transportation system provides efficient, low-cost shipping services to the upper Midwest farmers. The river is a vital transportation artery for not only grain, but also inputs such as petroleum products and fertilizer. Commercial traffic on the Mississippi is vital to the economy of the upper Midwest.

Dr. Hueg also emphasize the large impact that a small increase in transportation costs has on grain and fertilizer prices. As both of these commodities must be transported over long distances, an increase in transportation costs reduces the prices which farmers receive and increases prices farmers must pay for inputs such as fertilizer.

Dr. Hueg pointed out that farmers and consumers have also benefitted indirectly from low-cost barge transportation because barge competition was a major factor inducing the railroads to offer special multiple-car rates on soybeans and corn from the upper Midwest to the gulf. These improved rail rates reduced costs and improved services to the area's farm and industrial economy.

Dr. Hueg stressed the fact that Mississippi River ports alone handled nearly 40 percent of grain exports in 1975, thus playing a major role in the national economy. With rising petroleum imports, grain exports play a vital role in our balance of payments.

I believe Dr. Hueg's testimony is very helpful in considering the course of action to be taken on lock and dam 26. I, therefore, ask unanimous consent that Dr. Hueg's testimony be printed in the RECORD.

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

STATEMENT OF DR. WILLIAM F. HUEG, JR.

Mr. Chairman, I appreciate the opportunity to express my views concerning the importance of barge transportation on the Mississippi River to the economy of the Upper Midwest, and particularly, to health and vigor of its agricultural sector. Competent engineers tell us that Locks and Dam 26 at Alton, Illinois, is in a critical state of decay and must be replaced if commercial traffic on the Mississippi is to continue. It is important that we proceed with dispatch to replace this facility, otherwise, the economy of the Upper Midwest will be jeopardized. In 1975, Minnesota exported $820 million worth of wheat, soybeans, and feed grains, much of it by river barge.

River barge transportation provides efficient, low cost, shipping services to Upper Midwest farmers. The river is particularly well-suited to the efficient shipment of bulk commodities on which our farmers are heavily dependent. Grain is a bulk commodity and we produce large quantities for export. This grain must be shipped down river to our ports for export. The Mississippi River is a vital transportation artery for this export grain. Our farmers also need large quantities of production inputs such as petroleum products and fertilizer which are shipped by barge up the river. Most of the fertilizer in the United States is mined or produced in our southern states. Phosphate is mined in Florida and nitrogen fertilizers are also produced in the South near the sources of natural gas. The cheapest way of shipping these bulky fertilizers to the Upper Midwest is by river barge.

If barge transportation on the river is halted, transportation costs between the Upper Midwest and our export ports will be increased. Higher transportation costs are a two-edged sword for farmers. They reduce prices farmers receive for grain and increase prices farmers must pay for important inputs such as fertilizer. Both grain and fertilizer are high in bulk relative to their value. Consequently, a small increase in transportation costs has a large impact on grain and fertilizer prices since they must be transported over long distances. Economists estimate that if river transportation for grain were halted, corn and soybean prices in Southern Minnesota would decline by nearly 20 cents per bushel. Phosphate fertilizer prices, on the other hand, would be increased as much as $12 per ton. Lower grain prices and higher fertilizer prices would bear heavily on the agricultural economy of the Upper Midwest.

We saw evidence of this effect in April of 1976 when the Locks and Dam 26 was closed for about 10 days. The price of corn dropped 4 cents a bushel during this period. There was little purpose to offer corn for sale when you couldn't deliver at the point of export. This was a loss of income to Minnesota farmers.

Farmers and consumers have also benefited indirectly from low-cost barge transportation. The existence of barge competition was a major factor inducing the railroads to offer special multiple-car rates on soybeans and corn from the Upper Midwest to the Gulf. These improved rail rate structures reduced costs and improved services to our area's farm and industrial economy.

Farmers and consumers have been particularly interested in grain transportation costs and facilities in recent years as the United States has exported record quantities of grain. In fiscal 1976, the United States will export a record 93 million tons of wheat, feed grains, and soybeans. A sizeable share of our grain exports is produced in the Upper Midwest states which rely heavily on the river to ship the grain to the port for export. In 1975, 3.2 billion bushels of grain were inspected for export at all U.S. ports. Mississippi River ports alone handled 1.2 billion bushels or nearly 40 percent of this grain for export. The reason why such a large proportion of our grain is exported through Mississippi River ports is that grain can be efficiently shipped by barge down the Mississippi River from where it is produced in the Upper Midwest. See Table 1.

Grain exports are important not only to agriculture but to the United States' economy as a whole. With our petroleum imports rising, grain exports will continue to play a vital role in our balance of payments. If our farmers are to continue producing large quantities of grain for export, we should not pursue transportation policies which reduce grain prices and increase production costs. These will be the results if barge traffic on the Mississippi is reduced, interrupted, or halted altogether. It is my understanding that even if construction were to start today, it would be about 8–10 years before the new Locks and Dam 26 would be available. This places Upper Midwest agriculture in a dangerous position.

Our grain transportation system consists of trucks, railroads, and barges on inland waterways. Each plays a vital role in the system. We cannot reduce the effectiveness or lose one mode without doing irreparable damage to the entire system. Therefore, it is crucial that the Locks and Dam 26 issue be resolved as soon as possible so our transportation system can continue to function with maximum efficiency.

We all recognize that the Mississippi River is a multivalue resource to our entire nation. A balance between its commercial, environmental, and natural significance must be struck. That balance can be achieved with safeguards protecting the river's many values with a new Locks and Dam at Alton, Illinois, under proposed legislation that is now before the Congress.

TABLE I.—VOLUME OF GRAIN SHIPPED OUT BY MINNEAPOLIS-ST. PAUL AREA ELEVATORS VIA BARGE AND RAIL, JANUARY–DECEMBER 1975

Grain	Total (millions of bushels)	Barge (millions of bushels)	Percent of total	Rail (millions of bushels)	Percent of total
Wheat	76.8	58.3	75.9	18.5	24.1
Durum	11.5	5.7	49.3	5.8	50.4
Corn	76.6	65.7	85.8	10.6	13.8
Oats	36.4	7.0	19.4	27.9	76.8
Barley	36.0			35.3	98.1
Rye	2.3	.4	16.8	1.9	82.4
Flax	.1			.1	100.0
Soybeans	15.0	13.5	89.9	1.0	6.6
Total	254.7	150.6	59.1	101.1	39.7

APPROPRIATIONS FOR CSA MIGRANT PROGRAMS

Mr. BAYH. Mr. President, for years this country has utilized the services of migrant and seasonal farm laborers to annually harvest crops. While doing so we have largely ignored the fact that this group of workers is one of the most exploited groups in the American labor force. These people are constantly searching for an honest day's work to support themselves and are rewarded with wages so low they are forced to live in poverty. Migrants are anxious to perform an honest day's work and yet are forced to exist in the poorest of living

conditions, in housing which is unsanitary and cramped. Their children receive an erratic education. Even the most rudimentary health and sanitary facilities are usually unavailable.

I am very pleased that $10 million has been included in the 1977 Appropriations bill for the Community Services Administration—HEW—to assume the responsibility for programs the Office of Economic Opportunity previously administered. On May 27 I wrote a letter to Senator MAGNUSON, chairman of the Labor-HEW Appropriations Subcommittee, outlining the reasons why I believe there is a pressing need to return these programs to a service oriented agency.

At the present time the Department of Labor is responsible for all migrant worker services. Congress entrusted the Labor Department with this work after receiving assurances that DOL would maintain the wide range and good quality of programs that had been developed and administered by the Community Services Administration of the Office of Equal Opportunity. The appropriation for migrant programs was $37 million in 1973, the last year that OEA administered these programs.

While migrants represent 2 percent of the Nation's population, they receive only about one one-hundredth of all Federal expenditures for domestic social programs and services.

The primary service for migrant workers now provided by the Labor Department is a job training program through CETA. This is a vital program which should be continued. However, this vocational training program reaches only a limited number of farmworkers seeking to leave the migrant mainstream and settle permanently. Other important services previously provided for other members of the family under the OEO-CSA programs have been severely reduced. The Department of Labor has not received sufficient funds—nor is it a traditional DOL function—for provision of such services as health care, day care, legal counseling, community development programs, housing assistance, educational services, emergency funds, or services for stranded families. Many of these programs, such as community clinics, are also used by the residents of the local community.

Lack of a wide range of services means that families, many with small children, do not receive services which they desperately need. Most communities do not have adequate money, time, or staff to devote to the wide range of services necessary to handle the influx of so many potentially service-demanding transients.

The total number of migrants and seasonal workers in the country is impossible to determine. Estimates range from 200,000 to 7½ million. The most commonly accepted figures are 2½ million migrant workers and 3 to 4 million seasonal workers.

The 1971 Manpower Report of the President gave the following account of migrant farmworkers:

> The migratory workers and their families may be away from their home base for several months out of the year. Their itinerary may span thousands of miles, many different employers, and a variety of crops. Jobs are intermittent, and slack periods with little or no earnings are common.
>
> Migratory farmworkers travel out of economic necessity, not because of preference for nomadic life. Seasonal farm activities in the southern parts of Florida, Texas and California, which are the home base areas for the largest groups of migrants, do not provide sufficient employment and earnings. Workers depending on seasonal farm jobs must move with the crops in the hope of lengthening their periods of work and increasing their annual incomes. Migrants begin their annual trek northward in the early spring, following a cycle of activities in a number of crop areas. In California, they typically cultivate cotton and vegetables and then move into the harvest of a variety of spring vegetable and fruit crops. In other Western and North Central States, they find spring jobs in sugar beet cultivation and in the strawberry harvest. During the spring, migratory workers also are found in fruit and vegetable harvest activities in the Atlantic Coast States. Summer and fall are the most active seasons; migratory workers are relied on to supplement local labor in harvesting tomatoes, grapes, peaches, pears, melons, cherries, blueberries, cucumbers, apples, tobacco and other crops.
>
> The peak employment of migratory workers in areas reporting to the Department of Labor usually occurs in August . . . Nearly three-fourths of these were interstate migrants. Virtually every state uses migratory workers at some time during the year, with the largest numbers in California, Michigan, Texas, and Florida. Other states with significant numbers of these workers were Ohio, Oregon, New York, Washington, and New Jersey.
>
> Migratory workers basic problem is, of course, irregularity of work, despite efforts by the public employment service to coordinate and regularize their employment. Harvest timetables may be upset by the vagaries of weather and crop failure. The number of workers needed may be overestimated, or the unexpected arrival of crews may upset prior plans and create labor surpluses in some areas while others are short of workers. And workers receive no pay for time spent in travel or waiting for work. In effect, some of the risks associated with the weather and other circumstances are shifted from employers to hired workers to a much greater extent than in other industries where the labor supply is less flexible and workers are protected by collective bargaining agreements. Furthermore, housing and sanitary conditions are often unsatisfactory in the migrant workers' camps, and adequate health services and child care are generally lacking.
>
> The majority of migratory farmworkers come from seriously disadvantaged groups. Many are Mexican-Americans and Negroes, whose employment problems are compounded by discrimination.
>
> The average level of education is low. Since families are constantly on the move, the schooling of children is often interrupted. Large numbers of migrant children who are in school are below the grade level normal for their age. Many drop out of school at an early age to help supplement family earnings and thus further handicap themselves in future efforts to enter more stable, better paid fields.

A study by the Office of Economic Opportunity found that the average migrant family of six had a total income of $2,021 in 1971. At that time the poverty level established by OEO for a family of six was $4,800.

CHILDREN OF MIGRANTS FACE MANY PROBLEMS

HEW reports that the average migrant farmworker has not completed more than 12 years of school. In addition, the DHEW found that more than 90 percent of all migrant children never finish high school.

For a migrant child, education is an erratic process. The children are constantly moved from one school district to another, with very little continuity in subjects. They are put into classes where teachers are not adequately trained to deal with language problems or with a sudden influx of students who remain in school for a short period of time.

School is a difficult time for many children, but a migrant child may find it especially so. A child will attend up to 10 schools in 1 year, will be taken in and out in the midst of programs and will usually be a year or two behind his age group.

But the problems faced by the children of a migrant family go far beyond educational deprivation.

In testimony before the Subcommittee on Migratory Labor on July 18, 1968, Dr. Robert Coles, research psychiatrist at Harvard University, stated:

> It is one thing to get poor food, never see a doctor, and live in a brokendown shack—indeed, at times in enlarged chicken coop without running water, screens, plumbing or even electricity. It is quite another order of human experience when children are moved from one place to another, within States and across State lines. These children eventually become dazed, listless, numb to anything but immediate survival—which is also in jeopardy, because the infant mortality rate among such children can be three or four times higher than it is among nonmigrant people. I am saying that constant mobility, constant moving and more moving, damages the physical and mental health of children in special ways—so that migrants present us with a special and awful problem even when compared to other underprivileged groups.

A special aspect of the problem is presented by preschool aged children. When harvest time occurs, the work needs to be completed quickly. All hands are needed and used, including the people who usually look after the younger children. Because there are usually no day care centers near the fields, the children spend the days in the cars or around the fields supervised by adolescents. The older children are usually working the fields with their parents.

The fact that quality day care is necessary is obvious. The problem is how to provide it given the unusual life style migrant families live in. The families come to an area for a short time, they do not have money, time or available transportation to find and place their children in established day care facilities in the town. Existing facilities are inadequate to handle the large number of children suddenly thrust upon them. The hours the children need to be cared for are long and can, during the harvest period, be 7 days a week. It is unrealistic to expect a community to bear this burden without some help.

In some areas migrants have been able to set up day care facilities, but this is not true in all areas. When day care centers are available, it is beneficial to the children and to the rest of the family. The parents are able to work a maximum of hours to earn needed money, while school age children can attend school rather than stay home to babysit.

The way to attack these problems is through counseling and education. Often, neither public officials nor migrants know what type of services the migrant family can qualify for in a given community. By funding the community services administration migrant programs, money would be available to local organizations desiring to help these workers and their families. Assistance would be available to arrange for adequate health care and for proper child care.

HOUSING

Migrants live in dilapidated, drafty, ramshackled houses that are cold and wet in winter, and leaky, steaming, and excessively hot in the summer.

Reported the President's National Advisory Commission on Rural Poverty in September 1967.

Insufficient ventilation, poor or no mattresses, unsanitary privies and bathing devices, and unsanitary storage and disposal of garbage and refuse are too often the prevailing conditions.

It is customary for the growers to provide housing for the migrants working on their farmland. To most farmers this housing is their lowest priority.

Many people believe there is no worse housing in existence anywhere in this country than the housing used by migrants as they move from farm to farm.

Growers and migrants have argued over housing for years. The growers say that they are the only employers in the country required to furnish housing to their employees—an argument frequently heard when stricter housing standards are sought. Migrants, on the other hand, contend that the growers use this housing as an unfair bargaining tool when the migrants negotiate wages. Migrants have charged that, in some cases when they try to leave a camp, the grower will prevent them, claiming that they owe rent money for housing. At their very worst, some camps are reminiscent of the days of slavery. In Dade County, Fla., in 1973, a farm labor contractor was convicted by a U.S. district court on 2 of 16 counts of peonage and involuntary servitude.

In testimony before the Subcommittee on Migratory Labor in 1970, Dr. Raymond Wheeler stated:

We saw housing and living conditions horrible and dehumanizing to the point of our disbelief . . . without heat, adequate light or ventilation, and containing no plumbing or refrigeration, each room (no larger than 8 x 14 feet) is the living space of an entire family appropriately suggesting slave quarters of earlier days. . . .

. . . For example, in Dade County Florida we looked at quarters operated by the Homestead Housing Authority with public funds . . . there was not one gesture toward providing either comfort or basic human needs—no source of water, no toilet, no refrigeration, no heat.

WAGES

Vernon M. Briggs, Jr., writing in Chicanos in Rural Poverty said:

Regardless of his race or ethnic group, the legal status of anyone employed in the agricultural sector of the American economy is that of a second-class citizen.

Although large farmowners are the most privileged group in American corporate society (with import quota protection, antitrust law, exemptions, price supports, soil bank purchases, subsidized research, irrigation, land reclamation and erosion projects, and special property tax rates), farmworkers survive only by the law of the jungle.

Agricultural workers have historically been excluded from the protections of the National Labor Relations Act and the Fair Labor Standards Act. It was not until 1973 that laws were enacted which would eventually make the minimum wage in agriculture equitable with the minimum wage of other workers. Today, agricultural employers who hire 500 person-days of labor in any quarter of the preceeding calendar year, and who are engaged in interstate commerce are required to pay minimum wages to their employees. But migrants are often unaware of this—and other—protections extended to them by State or Federal law.

Funding for the Community Services Administration migrant labor program will provide counseling resources to advise workers of their rights under the law.

PROBLEMS OF THE WORKER

One of the few Federal benefit programs for which migrants are eligible is social security. A worker may receive benefits if he or she received cash wages amounting to at least $150—on a piece-rate basis—from one employee during the year, or if he or she worked for one employer 20 days or more during the year on a cash-time basis.

The Social Security Administration estimated that in 1972 a minimum of 300,000 migrant workers should have been covered by social security deductions. Reports were received for only 100,000; no one knows what happened to the other 200,000.

HEALTH

The infant mortality rate for migrants is 25 percent higher than the national average. Births occur outside of hospitals at a rate nine times higher for migrant mothers than the national rate. Mortality rates for tuberculosis and other infectious diseases among migrants are 2½ times the national rate. For influenza and pneumonia, the rate is 20 percent higher than for the general population. The rate of hospitalization for accidents is 50 percent higher for migrants than it is for the Nation as a whole.

In addition to what many consider to be inadequate levels of funding, the migrant health program has encountered a number of obstacles which complicate efforts to improve and maintain the health of migrants. These include problems in hospitalization for migrants, migrant camp sanitation, and medicaid coverage.

Mr. President, I have sought to enumerate some of the very severe problems facing migrant workers in our country.

The $10 million provided for CSA migrants programs in the Senate version of the fiscal 1977 Labor-HEW Appropriations bill is a step in the right direction toward correcting the inadequacies of the present social services and aid in providing ones that have existed in the past. I congratulate Chairman MAGNUSON and Senator BROOKE, the ranking minority member of the subcommittee, for such a fine bill and their continued commitment to alleviate the poor conditions in which so many migrant workers and their families must live.

I am hopeful that all or most of the $10 million appropriated by the Senate will be retained in conference. With this modest beginning, CSA can begin to counsel migrants, public officials and community organizations on how to meet the needs of the migrant family. Assistance can be provided to groups for health care, child care, adequate housing, and for advisory services on rules and regulations pertaining to wages. Local communities will be participants in a cooperative effort to improve the living conditions of migrant workers.

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

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

AVERAGE NUMBER OF DAYS WORKED AND WAGES EARNED AT FARM AND NONFARM WAGEWORK, 1973 [1]

	Number of workers	Farm and nonfarm			Farm			Nonfarm		
		Days worked	Wages earned		Days worked	Wages earned		Days worked	Wages earned	
			Per year	Per day		Per year	Per day		Per year	Per day
All migratory workers	203,000	150	$2,517	$16.85	98	$1,597	$16.35	52	$920	$17.70
South	60,000	166	2,454	14.75	114	1,479	12.95	52	975	18.65
West	89,000	166	3,134	18.85	132	2,347	18.50	35	697	20.15

[1] Agricultural Economic Report No. 265, Department of Agriculture, 1973.

Note: Of the 203,000 migratory workers, 108,000 or about 53 percent did farm wagework only. These individuals averaged 138 days of work during the year for an average of $17.70 per day, or $2,457 per year.

SOLAR ENERGY

Mr. GRAVEL. Mr. President, I call to the attention of my colleagues a project which, while it is still in its infancy, could have the most far-reaching effects on the world's supply of energy.

Some years ago, Peter Glaser proposed the construction of solar energy satellites. These satellites would convert huge amounts of the Sun's energy and beam this energy to Earth by means of microwave. The capability of a single power satellite could be five times that of the largest nuclear plant.

This basic concept is now being refined by a group including Gerard K. O'Neill, a professor of physics at Princeton. Professor O'Neill suggests that not only is the solar energy satellite a promising idea, but the economics of this proposal might be improved by using the Moon's minerals to construct the satellites.

The idea involves building satellites to contain manufacturing facilities, then acquiring from the Moon the materials needed for the orbiting solar power stations. The great cost of lifting materials from the Earth would then be avoided.

This seems to me to present a worthwhile follow-on to our country's great effort to reach the Moon, and I hope NASA will seriously examine proposals like Dr. O'Neill's.

I ask unanimous consent that Professor O'Neill's article "Space Colonies and Energy Supply to the Earth" be printed in the RECORD.

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

SPACE COLONIES AND ENERGY SUPPLY TO THE EARTH

(By Gerard K. O'Neill)

Manufacturing facilities in high orbit could be used to build satellite solar power stations from lunar materials.

Within this century it may be feasible to establish manufacturing facilities in space, possibly in the vicinity of one of the Lagrange libration points of the earth-moon system (1, 2). Near two of these points, called L4 and L5, there are orbits which are stable under the combined gravitational effects of the earth, the moon, and the sun. A space manufacturing facility (SMF; the terms space community and space colony have also been used to describe such a facility) would be a self-sustaining habitat for a large number of people (of the order of 10^1 to 10^2). Its energy needs would be met by solar power, used directly as sunlight for agriculture, as process heat for industry when concentrated by mirrors, or indirectly as electricity.

The SMF may be economically more effective than alternative industries on the earth for the construction of products whose end use would be in geosynchronous or higher orbits. Such products, if made on the earth, would have to be lifted by rockets out of the earth's gravitational potential well, which is about 6500 km deep. In contrast, the SMF would obtain the raw materials for its products from the surface of the moon, whose gravitational well is only 1/20 as deep. As a consequence of the moon's vacuum environment, and of that factor of 20 in energy, a launching device located on the moon could transport material to the SMF at low cost relative to shipment from the earth. In this article I suggest that solar power stations may be constructed at a space colony, and relocated in geosynchronous orbit to supply energy to the earth, at a lower cost than if such stations were to be built on and lifted from the earth.

ENERGY NEEDS

The increasing demand for electricity, the shortage of fuels on the earth, and concern about widespread use of nuclear energy have led to consideration of satellite solar power stations (SSPS's). Glaser (3) has studied the SSPS concept, which is the location in geosynchronous orbit of stations converting solar into electrical energy, to be sent down as microwave power for conversion to direct current or to a power line frequence at the earth's surface.

In 1975 the Energy Forecast Working Group of the Institute of Electrical and Electronics Engineers (IEEE) summarized forecasts, by 12 organizations, of the electric generating capacity which will be required by the United States during the years 1975 to 2000 (4). The IEEE summary estimated an increase from about 500 Gw in 1975 (5) to a required capacity of 781 to 1070 Gw in 1985, and to a capacity of 1880 to 2250 Gw in 2000. The IEEE estimates therefore correspond to an average construction rate of new generator capacity of about 65,000 Mw/year in 1990 and 115,000 Mw/year in 2000. A study by Associated Universities, Inc. (AUI), predicted a demand for 85,000 Mw/year of new capacity at the turn of the century (6). The discussion that follows is not sensitive to such differences in the estimates.

At current prices [typically $450 per kilowatt installed for a coal-fired plant (7)] the forecasts therefore correspond to a market of $30 billion per year in the United States alone in the year 1990, and $40 billion to $50 billion per year a decade later. [The dollar figure may be conservative; the AUI study (6) was based on the assumption that most of the increased capacity during 1985 to 2020 would be powered by nuclear reactors, with higher installed costs (7) of $600 to $1800 per kilowatt in 1972 dollars.] Economic self-interest would tend to enlarge the market to the wider range beyond national borders; assistance to developing nations in the form of electrical energy would also increase the total production requirement for new power plants.

ENVIRONMENTAL EFFECTS

Each method so far considered for power generation has characteristics which are potentially damaging. Nuclear power produces radioactive wastes and materials convertible for use in nucler weapons. Coal-fired plants require extensive strip-mining to keep them supplied. In the year 2000 electric generation for the United States alone will require the mining of more than 2×10^9 tons of coal per year, unless alternative sources provide most of the energy needed at that time.

Transmission to the earth of the energy generated by an SSPS would require a microwave beam to a central antenna. That may be less desirable environmentally than the high-voltage lines used conventionally at the surface of the earth for the interconnection of large generator plants. Microwave transmission may, though, be more acceptable than the alternatives of nuclear power or strip-mining and that is an important issue which should be studied carefully Glaser (3, 8) has stated that the microwave beam intensity outside the antenna site would be low enough to satisfy stringent environmental requirements. Because the conversion of microwave energy to direct current could be about 90 percent efficient, an SSPS antenna array would release into the biosphere only one-tenth as much energy as it would deliver for use. In contrast, a fossil-fuel or nuclear plant discards as waste heat about 1.5 times the energy which it delivers to the power lines. The land-use requirements for an SSPS ground antenna array would be only about one-tenth to one one-hundredth as great as for direct photovoltaic energy conversion of sunlight, because direct conversion is limited by low efficiency, the day-night cycle, seasonal variation of the day length, atmospheric absorption, and cloud cover.

ECONOMIC FACTORS

Delay in the realization of the SSPS concept appears to be due mainly to lift costs and power plant mass. The installed cost of an SSPS would depend primarily on four factors: the capital cost per kilowatt of the power plant for converting solar energy to electricity ($/kw); the specific mass of the power plant in kilograms per kilowatt of output (kg/kw); the cost per kilogram of lifting power plant from the earth to geosynchronous orbit ($/kgsy); and the overall efficiency of converting electricity into microwave energy, transmitting it to the earth, and a reconverting it into direct current or to a power line frequency (ϵ). The installed capital cost of the installation, per kilowatt of power output from the antenna busbar on the earth, would be approximately

$$1/\epsilon[\$/\text{kw}+(\text{kg/kw})(\$/\text{kgsy})]$$

plus interest charges, development costs, and smaller additive terms for the ground antenna and the land it would occupy.

EARTH-LAUNCHED POWER SATELLITES

Solution of the microwave transmission problem (9, 10) for the SSPS appears to be progressing well: tests have already demonstrated a transmission efficiency ϵ (direct current to direct current by a microwave link) of 55 percent. The goal is an efficiency of about 63 percent. For an earth-launched SSPS, the economic problem lies in the remaining factors: capital cost, power plant mass per unit power, and lift cost.

Two alternatives for the conversion of solar energy to electric energy in an SSPS have been considered: photovoltaic cells (solar panel arrays) and turbogenerators powered by mirror-concentrated sunlight.

Glaser (3) has estimated that for an earth-launched SSPS the specific mass for solar panel arrays will have to be reduced to about 0.88 kg/kw. For comparison, the value for photovoltaic solar cell arrays in operational satellites of the last decade has ranged from 78 to 107 kg/kw; one experimental satellite designed as a short-life test vehicle achieved 29 kg/kf (11). For the Solar Electric Propulsion System space probe scheduled to fly in 1984, the specific mass is intended to be 13 kg/kw (12).

Present costs of solar panel arrays for space applications are based on manual assembly techniques and are therefore much too high for application to an SSPS; they are typically $175,000 per kilowatt (3). A more reasonable starting point is the 1971 figure of $5,000 per kilowatt for single-crystal wafers 5 cm in diameter. The necessary target figure (3) for a competitive SSPS launched from the earth is about $220 per kilowatt, about half the present cost of a large, coal-fired central power station.

As an alternative to a photovoltaic array for SSPS power, Woodcock and Gregory (13) have considered the use of closed-cycle helium turbines (14) driving conventional electric generators. In that alternative the specific mass must be reduced from presently attainable values (10 kg/kw) to about 5 kg/kw. To achieve that reduction, Woodcock and Gregory have assumed a development program in which the turbine inlet temperature could be increased to a value considerably higher than that used in current practice

For an earth-launched SSPS the cost of lifting components to geosynchronous orbit from the earth would be critically important. For a photovoltaic SSPS of 0.88 kg/kw, the necessary lift cost figure would be $220/kgsy (3). For the turbogenerator SSPS of 5 kg/kw and efficiency ϵ of 70 percent, the performance demands on the lift vehicle would be even more severe; $75/kgsy (13).

LAUNCH VEHICLES

An advanced, chemically propelled "space tug" could bring from low earth orbit to geosynchronous orbit, as payload, about one-third of the total payload delivered to low earth orbit from the earth's surface. When the cost of space-tug operations is included, the cost of transport ($/kgsy) from the earth to geosynchronous orbit can then be taken as roughly four times the cost of transport to low earth orbit. For simplicity, lift cost figures in the following discussion will refer to the overall transport from the surface of the earth to geosynchronous orbit ($/kgsy) and will be taken as four times the cost to low orbit. An additional uncertainty of about ± 30 percent is a consequence of this simplification.

The target figure for the space shuttle, planned for operation in the early 1980's, is $1400/kgsy, not including development costs of several billion dollars (15). A heavy-lift launch vehicle (70-ton payload) using the same kind of engines that are already being developed for the shuttle, and therefore obtainable without large additional expense for development, is estimated to be capable of achieving $600/kgsy to $1000/kgsy). (16).

To summarize, for an economically viable earth-launched photovoltaic SSPS the specific mass (kg/kw) must be reduced by about a factor of 30 to 60 below the corresponding figure for satellites of the 1970's; the lift cost to geosynchronous orbit must be reduced by about a factor of 4 below figures estimated to be attainable in the 1980's without large additional development costs; the capital cost ($/kw) must be reduced by a factor of about 30.

For an earth-launched turbogenerator SSPS the capital cost must be held equal to that of a present-day coal-fired plant; the specific mass must be reduced to about half the value currently attainable; ϵ must be raised to 0.70; and the lift cost must be reduced by about a factor of 10 below the figure now considered to be attainable in the 1980's without substantial postshuttle development.

Table 1 summarizes the values of these factors which have been assumed in several studies and, where the information is available, the resulting estimate of power cost. Extrapolations to vehicles more advanced than shuttle-derived rockets are necessarily subject to large uncertainties; new developments in engines, heat shields, reusable fuel tanks, and other components would all be needed before their construction. For a very large vehicle, capable of lifting 180 tons to low orbit, estimates of attainable recurring cost range from $80/kgsy to $900/kgsy, and estimates of development cost range from $5 billion to more than $25 billion (17).

POWERPLANT ECONOMICS

In power generation, the busbar cost is crucial to the achievement of market penetration. Power plants are characterized as base load (operating nearly all the time), intermediate load (operating part of each day), and peak load (operating only during coincidences of maximum industrial and residential demands). Peak-load plants are normally simple and inexpensive to build and, when called into use, generate electricity at a cost up to 60 mills (that is, $0.06 per kilowatt-hour). Intermediate-load plants are capitalized more heavily and generate electricity at 20 to 25 mills.

Eventually photovoltaic solar cells located in the American Southwest may be competitive with one type of intermediate-load service; the supply of energy for air conditioning. Base-load plants (mainly coal-fired and nuclear) supply power at 15 to 17 mills. Nuclear plants in particular are best suited to base-load service; they must run nearly all the time to amortize the heavy capital investment required for their construction. Once started, a nuclear plant is kept running for another reason also: each time it is turned off there is a risk of component failure due to temperature changes.

If electricity could be obtained from an inexhaustible source at 4 to 8 mills, lower even than base-load rates, it could have a profound impact on economic security and independence; residential and industrial heating could then be shifted to electricity, relieving demands on natural gas and oil supplies, and the production of synthetic fuel alternatives to gasoline could become practical.

Like a nuclear plant, an SSPS would have to operate nearly all the time to amortize its construction cost. Economic viability of an SSPS would require, therefore, that it operate in base-load service, at rates not over 15 to 17 mills. If SSPS power is to have major impact on the problems of energy resources and dependence, a way must be found to build and locate large numbers of SSPS plants (up to 20 to 40 per year of 5-Gw size) and the electricity rates at which they operate must be low enough so that they will achieve market penetration, being chosen for new construction in preference to alternative (coal or nuclear) plants. If those two conditions are not met, SSPS power can be no more than an exotic rarity, classed with hydroelectric and geothermal power among fringe sources (1 to 5 percent) of energy.

My purpose in stating these necessary economic conditions is not to discourage the development of a prototype SSPS. Clearly, though, it will be difficult to meet these conditions with SSPS plants built on, and launched from, the earth. In support of the viewpoint that SSPS development is justified nevertheless, I will outline what may be a way to meet the conditions of SSPS mass production and low electrical rates.

THE SPACE MANUFACTURING ALTERNATIVE

The effectiveness of an SMF program for the achievement of economical solar power on the earth would depend on two key elements: the use of lunar materials and the "bootstrap process"—the construction by the first SMF not only of SSPS units but of additional SMF's. The use of lunar materials would circumvent the problem of lift cost (S/kgsy) and therefore of power plant mass (kg/kw). The bootstrap process would replace linear growth in the number of SSPS units by exponential growth.

The establishment of the first SMF would require the transport of 3,000 to 10,000 tons to the lunar surface, and 10,000 to 40,000 tons to L5(2). The structural mass of the SMF has been estimated as 150,000 tons (18), and the total mass including cosmic-ray shielding could be 25 to 65 times larger. The SMF would be built almost entirely of lunar surface materials. The lunar soil (regolith) as found, unselected, contains 20 to 30 percent metals, 20 percent silicon, and 40 percent oxygen by weight (19). Depending on whether the first SMF were provided at the outset with a massive cosmic-ray shield, or acquired such a shield over a period of years by the accretion of industrial wastes (slag) from the manufacturing operations at L5, the transport machine (mass-driver) for lunar surface materials would be required to lift 80,000 to 700,000 tons per year from the moon to L5. With full-time operation at a cycling rate of 30 kg/sec, the mass-driver previously described (2) would transport 940,000 tons per year.

After completion of the SMF, the lunar mass-driver would continue to export raw materials to the SMF site. There, the processing plant already used for SMF construction would continue to produce metals, glass, ceramics, and other materials. In zero or low-gravity construction bays adjacent to the SMF habitat, those materials would be formed into SSPS components.

An SSPS built at a space colony would be considerably simpler than one launched from the earth, because the colony-built SSPS could be designed without launch vehicle constraints. Turbogenerators could be fewer and of the most efficient size rather than kept within vehicle limits. Solar reflectors and waste-heat radiators could be built in large sizes and would never have to withstand launch accelerations. That is a significant advantage because an SSPS would be mechanically fragile: the specific mass figures of Table 1 imply an overall average thickness for the SSPS, including solar energy converters, radiators, conductors, mirrors, supports, and transmitting equipment, of only 0.08 to 0.6 mm of aluminum.

Table 1. Critical factors in satellite power station economics. The numbers assumed in several studies for the factors specific power plant mass, component lift cost from the earth, transmission loss factor (ϵ^{-1}), and interest rate are summarized; in each case a higher number corresponds to a more conservative assumption. Earth-launched SSPS values are from (13) for those with turbogenerators and from (3) for those with photovoltaic cells. Data in the last column are from this article. The lift cost from the earth to geosynchronous orbit is approximately equal to the cost for lift to Lagrange point L5. For base-load service, busbar power costs are now typically 15 to 17 mill/kwh.

SSPS	Specific mass (kg/kw)	Lift cost ($/kgsy)	ϵ^{-1}	Interest rate (percent)	Initial busbar power cost (mill/kwh)
Earth-launched:					
Turbogenerator	5.0	75	1.43	8	25
Photovoltaic	.8	220	1.54	----------	----------
Built in space from lunar material	10.0	950	1.6	10	15

The linear dimension of the SSPS would be several kilometers, about ten times larger than those of the SMF. On completion, the SSPS would be tested in space close to the construction site. It would then be moved to geosynchronous orbit through the small velocity interval (2.1 km/sec) which separates that orbit from L5. A second mass-driver, similar to the one which by then would have been in operation on the moon for several years, could be used for this task. It would be assembled outside the SMF and attached to the completed power station, to serve as a reaction engine. It would use as reaction mass industrial wastes, possibly liquid oxygen, left over from the processing of materials for the SSPS. As a reaction engine, the mass-driver would have an exhaust velocity of 2.4 to 3.7 km/sec and a thrust controllable from zero up to a maximum of several tons. It would be powered by the SSPS during the orbital transfer time of 1 to 4 months.

The economics of SSPS construction at L5 requires a fresh viewpoint: in that construction almost no materials or energy from the earth would be required. The colony itself, once established, would be self-sustaining, and its residents would be paid mainly in goods and services produced by the colony.

The economic input to the combined colony-SSPS program is the sum of development and construction costs for the first colony, the cost of lifting the materials needed from the earth for subsequent colonies and for noncolony-built SSPS components, a payment on the earth of $10,000 annually to every colonist, representing that portion of salaries convertible to goods and services on the earth (for subsequent use on visits or, if desired, on retirement), and a carrying charge of 10 percent interest on the

outstanding balance in every year of the program (20). That is approximately equivalent to discounted economics with a 10 percent discount rate.

Cost estimates for the first SMF (Table 2) are based on making an early start, with the shuttle and a shuttle-derived freight vehicle. The lift costs assumed for Table 2 are therefore relatively high, equivalent to $950/kgsy. The time line of Fig. 1 uses the intermediate cost estimate of Table 2.

Table 2. Cost estimates for establishing a first manufacturing facility in space. Cost figures not in parentheses are based on transport rates of $1900/kg from the earth to the lunar surface and $950/kg to Lagrange point L5. Those in parentheses are based on the assumption (13) of transport rates reduced by a factor of 12, with an additional $10 billion added for vehicle development and no change in administrative costs. In this simplified table, personnel rotation, if required, and material resupply are within the tonnage figures.

[Dollar amounts in billions]

Type of estimate	Lift to lunar surface		Lift to L5		Development and construction	Administrative and salaries (20 percent)	Total cost, rounded	
	Tons	Amount	Tons	Amount				
Minimal	3,000	$5.7	10,000	$9.5	$11.0	$5.2	$31.4	($27.4)
Intermediate	10,500	20.0	42,000	40.0	20.0	16.0	96.0	(50.8)
High	20,000	38.0	80,000	76.0	40.0	30.8	185.0	(89.8)

Because of the high interest rate assumed, the cost-benefit analysis is sensitive to the speed of construction of the SMF, and therefore to productivity. The first colony, with a structural mass of about 150,000 tons, is assumed to be constructed in 6 years by a work force of 2,000 people. The corresponding productivity, 13 tons per person per year, is consistent with analyses by D. Morgan of current experience on the earth in materials processing and fabrication (18). I assume that subsequent colonies could be constructed in 2 years. This tripling of production rate would require devoting 4,000 people of a 10,000-person colony to new-community construction (compared to 2,000 people available at the construction site during the building of the first SMF) and an increase of efficiency by a modest factor of 1.5. I assume that most of the residents of the early space communities will be employed in production, support services being assisted as far as possible by automation. Later decreases in the employed fraction of the work force are assumed to be compensated by productivity increases.

The productivity required at L5 for the SSPS would depend on the ratio of kilograms to kilowatts of output at the time of construction. In my assumption, an SSPS supply 5,000 Mw of electricity at the busbar would have a mass of 80,000 tons; in the study by Woodcock and Gregory (13), 35,000 tons; in the study by Glaser (3), only 11,000 tons. Assuming that the remainder of an SMF work force, 6,000 persons, were committed to SSPS construction, and that two SSPS units were produced per SMF per year, the corresponding requirements for productivity would be 27, 12, and 4 tons per person per year. Most of the production operations of SSPS construction would take place within the weather-free, zero-gravity, enclosed environment of a space community's assembly volume, which should favor high productivity. For 12 to 27 tons per person annually, and a peak production rate of 160 Gw/year of new generator capacity, a total work force of 100,000 to 200,000 people in space would be required. New colony construction is therefore taken to be halted after the 16th colony, because of market saturation.

* * * * *

Because of the exponential growth of the number of SMF's, satellite power could have a strong impact relatively soon. By year 11 from the start of SMF construction, the usable electric energy supplied to the earth by the program could exceed the peak capacity of the Alaska pipeline (2×10^6 barrels a day) (21). Two years later the production rate of SSPS plants could exceed the U.S. annual need for new generating capacity. By year 17, the total energy so far provided from the satellites could exceed the estimated capacity of the Alaskan North Slope (10^{10} barrels) (21).

This discussion has been confined to technical questions. Clearly, though, if an SMF program is initiated, it will have wider impact than the science-oriented space programs that have preceded it. As an enterprise with the potential to return a profit and to tap an inexhaustible source of energy, it could be carried out as a joint venture of several or many nations. The worldwide food shortages that have been forecast for the next decades could be alleviated substantially by the provision to developing nations of low-cost energy for the manufacture of agricultural chemicals (22). In the SMF approach, subsidies of that kind to the Third World could be given out of new, nonterrestrial wealth, not requiring sacrifice by donor nations.

The data in this article should be considered not as definitive, but as requiring substantiation or correction by additional research. So far, during a year of exposure of the SMF concept to technical review, no major changes in the basic concept have been necessary, but it is almost certain that further work will uncover both unsuspected problems and new technical possibilities. A modest amount of research on the key questions of productivity, life support needs, SMF and SSPS construction methods, and lunar materials transport could substantially improve our knowledge of the cost and time required for the achievement of the first beachhead in space, and of the speed with which the initial investment could be returned.

SUMMARY

The feasibility of establishing manufacturing facilities in a high orbit is under discussion. They could be used for the construction of satellite solar power stations from lunar materials. Estimates indicate that this may be considerably more economical than constructing power stations on the earth and lifting them into orbit.

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23. It is a pleasure to thank P. Glaser, M. Hopkins, D. Morgan, and G. Woodcock for providing useful information not yet published. The latter part of this study was carried out with support from the National Aeronautics and Space Administration.

FPC PREPARING ANOTHER GOUGE OF CONSUMERS

Mr. METCALF. Mr. President, while public and congressional attention is diverted to many other matters, the electric and gas utility industry is increasing its efforts to slip hidden overcharges into utility bills.

The technique I wish to discuss today is called "construction work in progress."

Simply stated, the utilities want to add to their rate base—upon which utility revenues and customer charges are based—the cost of plant construction which has not been completed.

Historically, utilities' rate base has included the value of property "used and

useful" in providing service to current customers. Regulatory commissions have permitted utilities to recover construction costs. Utilities have tended, especially in recent years, to build more plants than they need, because they misjudge demand and customer resistance to higher rates.

The effect of permitting construction work in progress to be included in the rate base would be to accelerate unneeded construction and to increase consumer costs without noticeably increasing the utilities' rate of return.

For example, if a utility has a $1 billion dollar rate base and has a rate of return of 8 percent, it will be allowed to set rates to bring it $80 million in annual revenue. If the utility is permitted to include in its rate base $100 million in "construction work in progress" it can take in an additional $8 million a year without showing an increase in the rate of return.

The administration proposed legislating "construction work in progress" in S. 594, the President's omnibus energy bill. Senator MUSKIE's and my subcommittee conducted hearings on the utility sections of that bill. After we developed the real story of "construction work in progress" not even the President's closest friends suggested putting such a monstrosity onto the statutes.

So the Federal Power Commission is planning to do what the Congress would not do. Unless the Congress and the public focus on this issue, one of these days soon when the Congress is about to recess—or in recess—there will be a decision by the Commission which will violate fair regulatory principles and add more unjustified costs for consumers.

Electrical Week has just issued an "Extra" which describes the FPC maneuvers. I ask unanimous consent that the article be printed in the RECORD, followed by my statement to the FPC shortly after it initiated consideration of this consumer ripoff.

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

FPC BEGINS MARKING UP CWIP RULE; WOULD REQUIRE SHOWING OF FINANCIAL NEED

Utilities with bond-coverage ratios below a still-undecided-upon level and utilities building pollution-control or fuel-conversion facilities mandated by the government will be allowed to place construction work in progress (CWIP) in the rate base for their wholesale sales, the Federal Power Commission tentatively decided in preliminary votes late Friday. The four sitting FPC commissioners also, at the working session, tentatively rejected 2–2 a proposal to allow CWIP for utilities that do more than half of their business in states in which the state commission allows CWIP in the rate base. And they agreed to study a proposal by Commissioner John Holloman to bar CWIP in cases where an investor-owned utility building a new generating facility has refused offers by municipal and cooperative utilities to buy shares of that facility.

The commissioners gave no indication when they would actually issue their long-awaited and already-controversial CWIP decision. The meeting Friday was the second one last week on the subject and at the end of it chairman Richard Dunham said the commissioners had made "considerable progress" on the CWIP question. All four commissioners indicated during the Friday session that they would like to see some CWIP in the rate base for all utilities meeting some broad criteria.

The vote on the financial-need criterion was 3–1, with only Commissioner James Watt dissenting. An FPC staff member told the commissioners that one likely cutoff point was a bond coverage ratio—the amount net earnings exceed required interest payments—of 2.5 times, but he added that the 2.5 figure "was thought to be illustrative more than anything else." Dunham then asked if the final figure the staff would come up with would be between 2 and 3 times. The staff member agreed, and the commissioners voted to include such a criterion in their CWIP order. Commissioners Holloman and Don Smith noted that they favored such a financial-need criterion "as one test"—but not the only one. The commissioners indicated that they would allow only enough CWIP to utilities meeting the financial need test to bring the coverage ratio up to the minimum level.

The proposal that CWIP for wholesale sales be allowed where a state commission already allows it for retail sales failed after Commissioner Smith expressed misgivings about FPC actions depending on varying state practices. State policy "is relevant but should not be controlling," he said. He and Holloman voted against the proposal. Another proposal, by Dunham, that CWIP be allowed "in all cases," also failed in a 2–2 vote, Smith and Holloman voting against it and Watt voting for it. The vote to allow CWIP for pollution-control and fuel-conversion equipment was unanimous, though the commissioners had noted on Wednesday that defining which equipment was eligible might be difficult.

The individual positions of the commissioners varied. Dunham seemed prepared to grant CWIP in as many cases as possible. Watt agreed, opposing the financial-need test because "arbitrary formulas would bring about discrimination among companies" and create a "hodge-podge" of decisions—sometimes for the same utility. "If we do not face the problems of the electric power industry today, we will see an industry crippled in 20 years like the gas industry is today because of decisions made 20 years ago," Watt said. Holloman favored a case-by-case approach to CWIP, arguing that rates of return aren't standard nationally and CWIP shouldn't be, either. Smith favored CWIP at least in cases where "societal problems" such as fuel-conversion orders require large utility expenditures.

STATEMENT BY SENATOR LEE METCALF

Re FPC Docket No. RM 75–13, Amendments to Uniform Systems of Accounts for Public Utilities and Licensees and for Natural Gas Companies and to Regulations Under the Federal Power Act and Natural Gas Act, to provide for inclusion of Construction work in progress in rate base.

To Kenneth F. Plumb, Secretary, Federal Power Commission.

I am greatly dismayed by this proposed rulemaking to include construction work in progress in the rate base. If adopted, the rule will deceptively and unnecessarily raise the cost of basic electric service.

At a time when Americans are questioning why the classic economic law of supply and demand seems to work only when prices are going up, this-under-the-table attempt to punish consumers for their commendable conservation efforts must be labeled irresponsible.

Once again, the average citizen sees that the agencies of government originally intended to protect his interest from monopoly power are instead more concerned with the financial success of the companies they are supposed to regulate. Utility customers will be forced to bail out managerial incompetence and inefficiency of the worst sort under this proposal.

Because this proposed rule defies the facts on the record as well as our National efforts to promote conservation and combat inflation, I strongly urge the Commission to reject it. I ask each Commissioner to consider carefully the following points in light of the economic and political woes the American people have been forced to bear during the past two years:

(1) *The Proposal is deceptive.* The amount of profit allowed a utility is the product of a percentage fair rate of return multiplied by the rate base which is supposed to represent the capital invested in providing service. That product—the allowed profit—can be made larger by either increasing the rate of return or enlarging the rate base.

The public expects that if their rates are to be raised to provide more profit for investors, there must be a full public hearing where each utility is required to prove that its investors deserve a greater rate of return. The public does not expect across-the-board rate increases by means of an obscure rule change which does not require an increase in the allowed rate of return or the proof which must accompany such an increase. Enlarging the rate base by including construction work in progress accomplishes higher profits without public awareness of that result.

If utility investors need more profit, then the Commission should move openly by the normal rate-making process and increase the allowed rate of return upon convincing proof. Consumers would then understand that their rates are being raised to increase utility profits.

Americans are sick and tired of price fixing, double-dipping, tax loopholes, and the myriad other hidden ways by which large corporations bilk the public each year. The Federal Power Commission should not be an accomplice to such deception by approving the proposed rule.

(2) *The Proposal violates one of the basic principles of rate making.* It has long been accepted that the rate base should only include the value of property which is "used and useful" in providing service to current customers. Otherwise, customers would be forced to pay a return on property not used in the utility business. To prevent such inequity, the Federal Power Commission and most other regulatory commissions have not included unfinished and therefore unproductive property in the rate base.

Adoption of this proposal would change all of that. Utility managements will no longer have any efficiency incentive to complete plant construction expeditiously. Investors will earn a return whether capital is invested productively or not. Not only will regulation guarantee these cost-plus monopolies a profit, but they will be further elevated above the rigors of competition by being guaranteed a return on non-productive investment. Incompetent and inefficient utility executives will surely believe in Santa Claus is this proposal is adopted.

The primary reason that construction work in progress is so large in proportion to plant in service is that many utility managements have made the decision to "go nuclear" when adding additional generating capacity. That decision is not surprising since existing rate-making procedures gear total allowed profit to the total amount invested in providing service, thus inducing managements to increase plant investment.

Nuclear power plants have the dubious distinction of being the most expensive power source available to utilities as well as the most time consuming to construct. That means the amount of construction work in progress increases geometrically. Construc-

tion periods of six to ten years are commonly forecast for nuclear plants.

The wisdom of restricting allowed return to currently productive investment is essential as an incentive to bring plant on line as quickly as possible.

(3) *This proposal is based on an unrealistic projected growth rate for electricity consumption.* There is no present shortage of electric generating capacity in this Nation. All that propaganda we keep hearing about the lights going out if utilities do not earn enough to satisfy Wall Street is based upon projections of the amount of capacity needed to serve customers five or six years from now. The vast amounts of capital which excessive profits from today's customers are supposed to attract will be used to serve the assumed needs of customers far in the future.

Intelligent projections of growth in electricity consumption are an absolute necessity when dealing with capital requirements measured in tens of billions of dollars. The historical growth rate has been about 7% annually, but due to skyrocketing rates and conservation efforts by customers, the power industry's summer peak increased by only 1.04% this year, according to Electrical World. Almost half of the 77 utilities surveyed had summer peaks which actually declined. The Commission's own Bureau of Power has compiled electric generation data for the first nine months of 1974 showing that the amount of electricity generated this year is 1.63% less than for the same period last year.

A peak that grows while total generation declines means even more inefficient use of the Nation's generating facilities. (It should be noted that customer resistance to increased consumption has occurred for the most part under rate schedules which encourage greater use of electricity. Adoption of rate schedules which encourage conservation should ensure more efficient use of existing facilities.)

After a $4 million, two-year study, the Ford Foundation's Energy Policy Project has found that a long-term average growth of about 2% annually—as set forth in its final report—is both technically feasible and economical.* The Congressional Research Service has calculated that a growth rate of 2% in 1975 and 3% thereafter would reduce the electric utility industry's demand for external capital by $57.8 billion over the next five years. That is a 50% reduction from the amount which would be needed using a business as usual scenario of 4% growth in 1975 and 6.5% thereafter as calculated by the Commission's Office of Economics.

Reducing capital demand by such a large margin would help lower interest rates and free capital resources for other uses such as housing. A low growth rate seems reasonable in view of the significantly larger proportion of customers' real income which now goes to pay for energy.

Cash earnings will increase for utilities under a realistic growth and construction projection. As unnecessary and expensive construction plans are abandoned to reduce the proportion of construction work in progress to plant in service, plant now under construction will begin contributing to earnings as it becomes operational. When Wall Street realizes that utilities will not need excessive amounts of high priced capital, investors will react more favorably in valuing existing and future debt and equity securities.

The situation in the electric utility industry today, then, is as follows: a very low growth rate in consumption; a corresponding enormous decrease in the amount of capital utilities will have to raise; and the prospect for increased cash earnings as maximum utilization of existing facilities occurs.

I would like to focus on the assumptions made by the Federal Power Commission staff in support of granting utilities higher immediate profits by including construction work in progress in the rate base.

No justification for adoption is offered in this proposed rulemaking. In fact, adoption is treated as an accomplished fact since public comment is only solicited on how best to implement the proposal. The perceived need for greater utility profits must derive from reports such as the study of the industry prepared by the Commission's Office of Accounting and Finance in September, 1974. That report recognized that growth in consumption is greatly diminished, that population and GNP are not expected to maintain historic post-World War II growth levels, and that the large proportionate real increases in the price of electricity are dampening demand. Nevertheless, the report accepts the premise that "increasing consumption of power is indigenous to our system of long-term economic growth." The analysis concludes, "But, in the absence of clearly defined new trends, we will base our appraisal of the future on earlier estimates of about 7% growth in the consumption of electricity."

That incredible statement typifies the sort of bureaucratic irresponsibility which causes my constituents to wonder if anyone in Washington knows what is going on in the rest of the Nation! If anyone wants a clearer definition of economic trends, I suggest they put down their copies of *Public Utilities Fortnightly* and go have a talk with the homebuilders in California, the miners in Montana, the auto workers in Michigan, or any head of household trying to plan the family budget. The efforts by consumers to halt the endless cycle of rate increases through conservation and changes in lifestyle are simply ignored.

The 27 September, 1974 issue of *FPC News* reports that the Bureau of Power is also using an average 7% demand growth rate in computing generating capacity for the years 1984 to 1993.

The really disturbing aspect of all this is that it may end up costing consumers up to $37 billion dollars during the next five years if this proposed rulemaking is adopted, according to figures prepared by the Congressional Research Service. A Commission staff appraisal which blandly regards the most serious economic challenge since the Depression as a historical fluke becomes the rationale for changing long accepted ratemaking policies to raise utility profits. National Utility Service Inc., an economic consulting firm, surveyed fifty of the Nation's largest electric utilities and found that their rates rose 12.3% in 1973 and catapulated 55.4% in the first half of this year alone! The American people are fed up with government which does not respond to their needs. They can no logner afford the luxury of the Federal Power Commission staff ignoring current factual realities to see if a trend develops. Consumers do not see the sense in further raids on their shrunken pocketbooks to support an idle and speculative demand forecast when many people are losing their jobs and nearly everyone is cutting back to make ends meet. Utility investors should be willing to bear their share of the current financial burden until the demand for electricity catches up with the ambitious construction programs planned by their managements.

The Federal Power Commission must take into account the efforts of customers to adjust to a new energy-expensive lifestyle when deciding on policies which will significantly raise the basic cost of living. Perhaps an extensive staff study on the effects of skyrocketing electric rates would be an apt beginning.

(4) *This proposal will force customers to bail out inefficient utility managements.* As noted earlier, adoption of this proposal will remove any incentive for bringing plant on line expeditiously. Utilities which have invested heavily in problem nuclear facilities will be able to pass the cost of their mistakes onto the public.

Nuclear plants have proven to be such an enormously expensive boondoggle that the *Wall Street Journal* has called them "atomic lemons." *Forbes* quotes Donald Cook, chairman of American Electric Power Co., as saying: "Nuclear plants have more problems than a hound dog has fleas. I'm talking about operating and engineering problems unrelated to safety." Construction delays due to improper planning are common. When they finally become operational, nuclear plants have been running at a wasteful 55% of capacity rather than the 80% operating ratio upon which all of the supposed cost saving figures are based.

The decision to go nuclear was made in corporate boardrooms without any input from the customers who are affected so greatly by that decision. It would be manifestly unfair to now require customers to bail out managements who have shown poor judgment.

(5) *This proposal is highly inflationary.* Including construction work in progress in the rate base will have the pure inflationary effect of raising prices without producing any benefit in return. The Commission's own Office of Economics has projected that it will cost consumers $22.1 billion over the next five years.

Other than needlessly enriching investors, there is no indication that any benefit will accrue from this proposal. There will be no need to raise the vast amounts of capital necessary to meet a 7% growth in demand if present trends continue. Increasing profits does not necessarily improve the attractiveness of utility securities anyway. Investors are aware of current trends and will not react favorably until utilities adjust to using their facilities more productively in a low-growth environment. It does not take a brilliant analyst to realize that customers are at the end of their rope and will not continually accept increased profits for utilities. We in the Congress are acutely aware of consumer resistance to proposals such as this, and I must stress the magnitude of such public sentiment.

In summary, I must impress upon the Commission and its staff that the American people and the Congress will no longer tolerate acquiescence to utility claims for ever greater profits when everyone else is paring back to fight joblessness and double-digit inflation. Any rate increase must be open, must be based on hard proof rather than idle assumptions, and each utility must bear the burden of proving its own need. Across-the-board rate hikes from proposals like this do not complement our National efforts to meet the economic challenge before us. Therefore, I must respectfully ask the Commission to reject this proposed rulemaking and go on record as being opposed to similar inflationary measures.

APPROPRIATIONS FOR FAMILY PLANNING

Mr. BAYH. Mr. President, the Labor-HEW appropriations bill for fiscal year 1977 which the Senate passed on June 30, contains $122.6 million for badly needed family planning services. I commend Senator MAGNUSON, chairman of the subcommittee, for recognizing this need and supporting the allocation of the full $122.6 million which I requested. Because of Senator MAGNUSON's support, despite ever-present tight budgetary constraints, the Senate has taken a significant step toward providing help for the

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* *A Time To Choose, America's Energy Future,* Energy Policy Project of the Ford Foundation, Ballinger Publishing Co., Cambridge, Mass , 1974, pp. 45–80, 325.

3½ million women who need family planning services but do not have access to them.

Mr. President, the Senate affirmed its commitment to American women in need of family planning with its passage, in 1970, of the Family Planning Services and Population Research Act (Public Law 91–572). This act marked the beginning of a major new congressional initiative in the field of family planning. The act amended the Public Health Service Act to include a new title X. The legislation authorized the Secretary of HEW to award project grants to voluntarily formed family planning programs. These project grants now form the backbone of Federal efforts in the field. In fiscal year 1974, $8 of every $10 spent for the provision of family planning came from the Federal Government. The bulk of this money was used for project grants.

As a result of past appropriations family planning services have been extended to millions of American women, thereby reducing the human, social, and economic costs incurred as a result of unplanned children. Ten years ago only 600,000 people were served by organized family planning organizations; today, 3.5 million are served. The project grants funded by title X of the Public Health Service Act serve 2 million of these women, in comparison with 860,000 only 4 years earlier.

Unfortunately, congressional appropriations for the project grants have remained static despite the increased use of family planning programs. From fiscal year 1973 through fiscal year 1976 4 consecutive years, the funding level for project grants was $94.5 million. Taking inflation into account, this represents an effective reduction in outlays of 30 percent. The program has now reached a stage where it cannot serve additional women without eliminating services for those who have taken advantage of the program in the past, or abandoning high medical standards. Thus, the 3½ million low- and marginal-income women who currently do not have access to family planning now will not be able to receive services unless Congress increases its appropriations.

This year, the Senate has affirmed its desire to move forward in the field of family planning by making its fiscal year 1977 appropriation for family planning $122.6 million; this amount includes a $20.5 million increase in funding for project grants. The House has appropriated $100,615,000 for fiscal year 1977. Both branches of Congress suggest appropriations above the clearly inadequate budget request of $79,435,000. The President's request would eliminate services for half a million women—an alternative rejected by both the House and Senate.

The proposed increase in funds is a long needed step in the direction of providing family planning services to all who need them. I am hopeful that my esteemed colleagues in the House of Representatives, accept the higher Senate figure for this program. The need for family planning is too great to risk delay.

The human costs of dilatory action would be considerable. Twenty to twenty-five percent of all births are still unplanned or unwanted at the time of conception; the proportion is much higher among the poor. These pregnancies deny women the personal freedom to make critical choices about their own future. unwanted pregnancies affect education and employment decisions and deny women the ability to determine the number and spacing of their children. Since high and middle income women can afford family planning services provided by private sources, these women are given a relative advantage in the freedom to decide their future. Poor women must be aided by governmentally provided services to share this right equally.

For many women one of the most traumatic consequences of unplanned pregnancy is the decision to have an abortion. In 1974, 1 million legal abortions were performed in this country, reflecting the inadequate provision of services to all who need them. Teenage mothers accounted for one-third of these abortions. Regardless of one's stand on the abortion issue, I think we can all agree that family planning is preferable to abortion for preventing the birth of unwanted children.

American teenagers demonstrate the greatest need for family planning services. It has been estimated that 70 to 80 percent of sexually active teenagers do not use family planning services. Planned Parenthood predicts an epidemic of teenage pregnancies for three reasons: First, increased sexual activity among teenagers; second, nonuse or ineffective use of contraceptives; and third, lack of contraceptive information and services for teenagers.

Sexual activity among teenagers has increased over the past few years. The proportion of 15- to 17-year-olds who had sexual experience increased from 20 percent in 1970 to 30 percent 3 years later. Now 50 percent of all 19-year-old women are sexually active. The overall proportion of women age 13 to 19 who have had sexual experience is 3 in 10.

Approximately 1 million women under the age of 20 become pregnant each year. Sixty percent of these pregnancies result in live births; almost a third end with abortions. Given this large number of pregnancies and the significant percentage which are carried to term, it is no surprise that 1 in 10 of all teenage women bear a child during their teen years.

Teenage mothers account for a fairly large proportion of all births. In 1973, 19 percent of all live births were to teenage mothers. The proportion of teenage births to live births has increased over the past few years.

Teenage pregnancies are largely the result of nonuse or ineffective use of contraceptives. Four out of five of the sexually experienced teenage women do not use contraceptives regularly. Of these nonusers, 84 percent do not want to become pregnant. Yet, these teenagers are, for the most part, uncognizant of the risk they are taking. A recent survey indicated that of teenage women who do not use contraceptives, 71 percent are ignorant of the pregnancy risk; 31 percent said they knew of no place where they could obtain contraceptives. Increased expenditures on family planning can help disseminate information about pregnancy risk and make contraceptives more accessible.

Teenage women who bear children face a variety of problems. Teenage mothers experience more medical problems for both mother and child than older women. These mothers frequently suffer from toxemia, prolonged labor, and iron-deficiency anemia. Prematurity and low birth weight of babies are more common in cases of teenage pregnancies. Thus, there is a higher risk that children will be stricken by epilepsy, cerebral palsy, and mental retardation or be physically impaired. The mortality rates for teenage mothers and their children are also higher than those for older women.

Unstable marriages are often the plight of the 3 in 10 teenage mothers who marry shortly before or after the outcome of their pregnancy. Half of all teenage marriages dissolve within 5 years; those resulting from pregnancies are three times as likely to dissolve.

Yet, the trend is away from "hurry-up" marriages inspired by the desire to legitimize a pregnancy. The number of out-of-wedlock births is rising. Between 1968 and 1973 the percentage of live births which were out-of-wedlock increased from 81 to 85 percent for women under the age of 15 and increased from 27 to 34 percent for women age 15 through 19. As the number of out-of-wedlock births grows, so does the number of women who are the sole source of support for their children. Many face financial hardship.

Both married and unmarried mothers are often forced to drop out of school or job training as a result of their pregnancies. Therefore, they may permanently lose their chance for economic advancement. Often, they must rely on public assistance to enable them and their children to survive.

Appropriations for family planning services can thus be clearly justified by the tremendous human and social costs resulting from unwanted pregnancies. The money can also be justified on the basis of economic costs. It has been demonstrated that every dollar spent on family planning services in 1 year results in a savings of $2 the next year in maternal costs, infant care, and public assistance payments.

The substantial human, social, and economic costs of inadequate family planning services lead me to strongly urge the conferees for the Labor-HEW appropriations bill to adopt the higher Senate figure of $122.6 million for family planning. Three and a half million women, many of them teenagers, require services that present appropriations cannot provide. The allocation of $122.6 million provides a funding increase which will begin to solve this problem.

Mr. President, too much time has passed since Congress last took a significant step toward the objective of providing family planning services for all who need them. I hope we do not wait yet another year to meet the urgent needs of millions of Americans.

PRELIMINARY NOTIFICATION: PROPOSED ARMS SALES

Mr. HUMPHREY. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the RECORD in accordance with previous practice.

I wish to inform Members of the Senate that three such notifications were received on July 16, 1976.

Interested Senators may inquire as to the details of this preliminary notification at the offices of the Committee on Foreign Relations, room S-116 in the Capitol.

WEATHER WARFARE

Mr. CASE. Mr. President, I call the attention of my colleagues to an article on weather warfare written recently by Marquis Childs. There is an increasing interest in weather changes and a heightened realization, as Mr. Childs puts it, of "the power that man has acquired over the fragile atmosphere in which he has his being".

Mr. Childs reminds us that one of our colleagues, the Senator from Rhode Island, CLAIBORNE PELL, took the initiative in Congress some 5 years ago to sound a warning about the possibilities and dangers involved in the application of environmental modification techniques—particularly weather modification—for purposes of warfare. As Mr. Childs points out, it was the persistent prodding of Senator PELL that first brought to light the Defense Department's weather modification activities in Southeast Asia, and the implications of those activities.

His efforts convinced the State Department of the need for a treaty banning environmental warfare. Negotiations on such a treaty are nearing completion in Geneva, and a treaty may be ready for approval by the U.N. General Assembly as early as this fall.

I have been a strong supporter of this treaty, as I believe that the emerging science of climatology and other related environmental disciplines should be devoted to solely peaceful purposes. It is my hope that by clearly establishing that these new areas of inquiry shall be for the benefit and not the destruction of mankind, ways will be found to explain and deal with the kinds of erratic weather patterns which recently devastated the Sahel in Africa and are now threatening Western Europe.

Mr. President, I ask unanimous consent that Mr. Childs' article, which appeared in the Washington Post on July 13, be printed in the RECORD.

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

[From the Washington Post, July 13, 1976]

MAKING WAR WITH THE WEATHER

(By Marquis Childs)

The news from Britain and Western Europe is of an unprecedented drought. Crops are shriveling under a relentless sun and cattle are being slaughtered because pastures are drying up to a desert-like consistency. In Britain the scarcity of rainfall that has prevailed for months is the most severe since record-keeping first began more than 200 years ago.

The fear is that this may herald a profound change in weather patterns rather than being merely a one-time occurrence. It could be a shift related to such remote phenomena as the melting of the polar ice cap with winds and clouds concentrated in Northern, as against Western Europe.

What this dramatizes is the power that man has acquired over the fragile atmosphere in which he has his being. It is a power that, used selectively, can destroy the existence of life in a given area. Or, with no intention of destruction, the continued use of aerosol sprays along with supersonic planes can weaken the layer of ozone that shields the earth from destructive elements in the sun's rays. The consequences of the latter will be an unprecedented increase in the incidence of skin cancer.

Sen. Claiborne Pell (D-R.I.) has since 1971 made an attempt to outlaw the use of weather modification in warfare one of his principal concerns. Through a series of Senate hearings and finally in a proposed joint treaty put forward by the United States and the Soviet Union, the armament control committee of the United Nations is moving to place the proposal before the nations of the world.

It has been a slow process, with the Department of Defense resisting in the early stages every step of the way. Finally, in 1974, after repeated prodding by Pell, the Defense Department agreed to testify on the use of weather modification but only on a top-secret basis. Later they permitted the record of their use of their techniques in Vietnam to be made public, hoping apparently that they would be ignored or forgotten.

For two years the Defense Department used every known method to destroy the atmosphere in areas of North Vietnam and to blot out the Communist forces there. They used the fire bomb technique that, in both Hamburg and Dresden, during World War II created fire storms which suffocated thousands. But in the tropical atmosphere, three fire bomb attempts resulted in an updraft causing huge thunder storms that put out the fires.

Cloud seeding was frequently used to create floods. A substance like soap suds was dropped on the Hi Chi Minh Trail so that, in theory, it would become impassable for the work forces carrying arms to Communist troops in the South.

In 1969 a flood of torrential proportion hit North Vietnam. It was the worst since 1945 when more than a million persons died. While the Defense Department has denied any participation in acts that might have created the flood, an inquiry put to the CIA has gone unanswered.

Pell is concerned that modifications theoretically confined to a single area could have far wider effects, as with the torrential monsoons that swept North Vietnam in 1969. This is one reason he is unhappy about the language of the treaty which prohibits weather warfare to "long-standing, severe and widespread activities."

During the Senate hearings the question of Cuba was raised, together with, in the recent past, heavy floods at sugar cane harvest time as well as severe droughts. The Defense Department denied any activity that could have caused these phenomena. One of the world's most distinguished climatologists, Gordon J. F. MacDonald of the University of California at Los Angeles, warned that operations causing floods, tidal waves and droughts could be carried out secretly.

"Such a 'secret war,' " he said, "need never be declared or even known by the affected population. It would go on for years with only the security forces involved being aware of it. The years of drought and storm would be attributed to unkindly nature and only after a nation was thoroughly drained would an armed takeover be attempted."

Even though this dire prediction has some substance, a treaty would at least be a partial barrier in the event of open war. The U.S.-U.S.S.R. treaty prohibiting weather modification is winding its way at a snail's pace through the United Nations disarmament committee in Geneva with the prospect that it may be out by 1977 for action by the General Assembly.

TRIBUTE TO BARCLAY WARBURTON III

Mr. PELL. Mr. President, America's Bicentennial celebration this year has produced many special events and pageants as a result of millions of Americans volunteering their services. I should like to give special attention and thanks to one citizen, Barclay "Buzzy" Warburton III, a Rhode Islander and resident of my home city of Newport, who perhaps more than anyone else was responsible for bringing to our waters the largest and most spectacular celebration in our Nation's history—the tall ships.

The tall ships represent more than the greatest flotilla of sailing vessels ever assembled in modern times. They represent the active cooperation and good will of 23 nations and the participation and friendly competition of the youth from these countries.

The coming of the tall ships stirred memories in millions of citizens of the origins of America, a country peopled two centuries ago by immigrants arriving on its shores in wooden ships from all over the world. The bonds of friendship and good will that were established in this pageant of peace and spirit of celebration will be remembered for centuries to come.

Barclay Warburton had a most beautiful dream and deserves a special tribute for working so hard to make it a vivid reality for all of us.

Mr. President, I ask that the following article from the New Yorker magazine of June 21, 1976, be printed in the RECORD.

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

THE BICENTENNIAL BEAT

Tall Ships: When the Tall Ships sail up the Hudson in a parade past the city on July 4th, in celebration of the Bicentennial, one of the smaller ones, a fifty-one-foot brig named Black Pearl, will be watched with special pride by her owner, Barclay Warbur-

ton III, and also with a special sense of relief. More than anyone else, Mr. Warburton has been instrumental in bringing here the greatest gathering of sailing ships since the Battle of Navarino (British, French, and Russians versus Turks and Egyptians), just shy of a hundred and forty-nine years ago. Warburton will view the parade from the aircraft carrier Forrestal while his son Barclay Warburton IV sails Black Pearl. The elder Warburton is president of the American Sail Training Association and will be responsible for the Tall Ships during their stay in Newport, Rhode Island. Once they get under way for New York, a different organization, Operation Sail '76, takes over, and Warburton can relax.

We called on Warburton, a man of fifty-four, known to his friends as "Buzzy," aboard Black Pearl, berthed at the Williams and Manchester Shipyard (est. 1901), in Newport. We found him genial, charming, with eyes of nautical blue and a trim figure, impeccably dressed (navy-blue blazer with New York Yacht Club emblem on breast pocket and gilt buttons; captain's cap with high peak; white shirt; navy-blue tie, patterned in white with the logo of the Tall Ships; collar pin; white handkerchief in breast pocket gray flannels). He gave us a hand as we leaped from the dock to the scrubbed teak dock and led us below, down a spiral mahogany companionway, to the cabin. Through a porthole we could see blue sky, silver-gray pilings, and seagulls, and in an hour's talk we picked up the following information.

Tall ships (the phrase is taken from John Masefield's line "And all I ask is a tall ship and a star to steer her by") began to fade away at the turn of the century. Among the last to be used commercially were a fleet called the Flying P's—each ship's name began with "P"—built for a Hamburg shipowner, F. Laeisz, who used them in the grain trade with Australia until the Second World War, and Portugal's Grand Banks schooners, which carried cod fishermen to sea for five hundred years. Two of the present Tall Ships are survivors of these enterprises. The Soviet Union's huge Kruzenshtern was built for Laeisz in 1926 ad christened Padua. The Russians took her over in 1946. Gazela Primeiro, one of only four large ships in the Tall Ships fleet with a wooden hull, is the oldest.

She was built in 1883 and was working the Banks until seven years ago, but now takes it easy as the property of the Philadelphia Maritime Museum, which uses her as a sail-training ship. Herr Laeisz partly financed his ships by charging apprentice crewmen for the privilege of sailing on them. Loaded with grain, the ships raced back from Australia around the Horn. The last "grain race" was in 1938. The idea of training young men on sailing ships in preparation for a naval or merchant-marine career has remained alive in Europe, especially in Germany, and most of the Tall Ships are school ships. In 1955, a group of British yachtsmen formed the Sail Training Association, in order to make the experience of sailing available to more young people, whether or not they were preparing for a life at sea, and to promote international races that would bring together young sailors from a number of countries.

Four years ago, Warburton sailed Black Pearl across the Atlantic for one of these races and found that his was the first American yacht to enter. As an ardent yachtsman who had spent much of his youth sailing a sloop off Long Island and later owned a catboat fatefully named Enchantress, he deeply approved of the idea of giving young people a chance to learn about the sea. He and other sailing enthusiasts formed the American Sail Training Association, based in Newport, and they arranged that this year the British association's biennial international race would finish there.

About eighteen big, Class A square-riggers are entered, and eighty smaller Class B's—yawls, ketches, sloops, and so on. Warburton expects twenty-three nations to be represented. The race has three stages. It began May 2nd in Plymouth, England, on a course of 1,425 miles to the Canary Islands. Joined there by additional entries, the fleet sailed on May 23rd for Bermuda—a distance of 2,530 miles. On June 20th, with still more vessels added to make up the grand total of about a hundred, they will set sail for Newport—635 miles distant. For a few days, a small part of the Atlantic will be crowded with sail. It so happens that two other sailing races—the Newport to Bermuda and the Observer Singlehanded from England—may intersect the Tall Ships around June 22nd as they cross the Gulf Stream three or four hundred miles off Newport.

The first Tall Ships should cross the finish line, four miles southeast of the Brenton Reef Tower, on June 24th. The U.S. Coast Guard cutter Hamilton and the Race Committee will be waiting for them. Ships arriving at night will illumine their sails to show their number. Since the ships are handicapped by a complicated system, the first to cross the line is not necessarily the winner. All should be in port by June 27th. They will stay in Newport until July 1st, during which time their combined crews of about four thousand young men and a few young women will be busy with regattas and get-togethers of various kinds, and the ships will be open to the public. Logistical problems are numerous, and for a year Warburton and his staff have been trying to think of everything. Three radio stations will handle communications with arriving vessels. A dozen pilots have donated their services.

Tugs will stand by to assist big ships to their berths. Eight thousand feet of dock space has been reserved. Four or five of the big ships will be at wharves, and a number of nine-ton anchors have been set out to moor others. Navy landing craft will bring crews ashore, and commercial launches will take visitors to the ships. Provisioning and refuse pickup have been arranged. Interpreters have been lined up. Tourists—possibly a half million of them—must somehow be shuttled to the waterfront, since parking will be impossible. The Newport harbor master expects five thousand visiting small craft. Lobstermen expect that their trap buoys will be run over. Finally, Warburton and his aides pray for a light northerly wind and no fog on the morning of July 1st, when all hundred ships are to hoist their sails to parade up Narragansett Bay before heading for New York.

The rules of the transatlantic race require that fifty percent of the crew be trainees sixteen to twenty-five years old and that engine power be used only to pump bilge, to charge batteries, to weigh anchor, or to help in a dire emergency, such as a man overboard. Thus, with these exceptions, the ships will be sailed as they were a hundred years ago. How tall are the Tall Ships, and what are the problems of navigating them? Kruzenshtern's mainmast is a hundred and seventy-four feet ten inches above her deck. The length of the main yard is ninety-five feet six inches. She carries thirty-four sails, with such romantic names as double topsails, double topgallants, royals, and double spanker. It takes thirty-five men to haul them up. The U.S. Coast Guard's Eagle, a former German training ship, which will lead the parade up the Hudson, has a mainmast a hundred and fifty feet tall. Black Pearl, less than a quarter their size, has ten sails, and her mainmast is fifty-six feet above the deck. She is technically a "hermaphrodite brig," with her foremast square-rigged and her mainmast rigged fore and aft. Sailing a square-rigger is a special technique. The yards pivot at the mast and can be turned to catch the wind—"bracing the yards" is the term. Old-time captains were so adept at maneuvering that they could do almost anything with their ships—could even back through a crowded anchorage. Coming about, however, is a critical moment for a square-rigger—so critical that the captain always used to give the command "Mainsail haul" himself. If it is given too soon, the ship may be caught in stays (unable to move); if too late, she may gather sternway (start moving backward).

The sails of a square-rigger can be trimmed by hauling on lines from the deck, but to furl or unfurl the sails the crew must go aloft, climbing up narrow rope ladders called ratlines, and then go out on the yards. A sailor stands on a footrope just under the yard and drapes his body over it as he works. Warburton admits that it can be terrifying at first, but he breaks his trainees in gradually, and most of them feel at home aloft in a few days. Sail Training cadets wear a safety harness, and there have been no fatalities. "You learn to move with the ship," Warburton said, "It's beautiful up there, close to the sky, watching the sea—a wonderful feeling. I go up myself now and then, just to show the crew that the old man can still do it."

THE DEBATE ON DIVESTITURE

Mr. GARY HART. Mr. President, one of the greatest ironies in the debate on divestiture of the oil industry is that both the proponents and opponents of the issue claim to be fighting for the free enterprise system. The definition of "free enterprise" surely has a number of wildly different meanings in this country.

To me, a competitive marketplace, regulated by economic rather than government controls, is the essence of the free enterprise system. Creating genuine competition in the petroleum marketplace and removing the need for government controls is precisely the goal of divestiture.

It is disturbing to me that there is so much confusion over this basic principle. In a recent letter to the Washington Post, Charles E. Mueller, associate editor of the Antitrust Law and Economic Review, discussed the problem and posed the following rhetorical question: "How can it be that in this land of Jefferson, our great capitalists embrace government regulation rather than economic freedom and view as their 'radical' enemy a Senator who wants to make them compete rather than collude?"

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

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

ANTITRUST LAW &
ECONOMICS REVIEW,
Washington, D.C., June 22, 1976.

The EDITOR,
Washington Post,
Washington, D.C.

I am concerned with the Post's position on the monopoly/oligopoly question or, perhaps more accurately, with its lack of one to date and its treatment of the "Break Up Big Oil?" question (Post, June 20).

I understand, of course, that Mr. Samuelson is a freelancer, not an editorial writer of yours, and hence that his views may not necessarily reflect the official position his views may not necessarily reflect the official position of the Post itself. And your staff

reporting has given me no cause for suspecting a pro-monopoly bias in your newsroom. Indeed, your economic reporters, particularly Hobart Rowen, Morton Mintz, and Carole Schifrin, have always impressed me as being properly suspicious of corporate oligopoly as the ideal way of running an economy.

Finally, I have never suspected the Post of waffling on the oligopoly question out of a fear that its own corporate interests might be adversely affected either directly or, through the interests of some of its advertisers, indirectly. I have always assumed that the Post, as Irving Kristol has said of the Times, is simply above this sort of thing: "One can be reasonably certain that, where there is a conflict between an opportunity to make (or save) money, and an opportunity to fulfill its self-imposed journalistic obligations, the Times will resolve this conflict in favor of the latter—and won't even deliberate overly long before doing so."

Still, I can't seem to recall an instance in which the Post has expressed a firm editorial opinion on the merits of the oligopoly question. The Star, displaying more courage than wisdom, has done so in admirably firm tones: It is in favor of oligopoly. ("Oh, Those Wicked Oligopolies," Star, June 6.) Joining Professor Galbraith and the Wall Street Journal, the Star has no quarrel with a policy of allowing each industry to be "dominated by wicked oligopolists" so long as this dominance is "monitored" by someone, presumably the government.

Does the Post share this complacent view of the oligopoly problem and the efficacy of government regulation?

Let me return here to the "Break Up Big Oil?" debate between Bob Samuelson and Senator Gary Hart (D-Colo.). My concern goes beyond the relatively narrow question of whether this particular industry ought to be restructured. I happen to think it should but, given the complicating role of OPEC in the whole affair, I can see how Mr. Samuelson might conclude otherwise. One should not get concerned with the way a man reads the evidence in a particular case if his analytical apparatus and beginning premises are themselves acceptable.

But that is precisely where I believe Mr. Samuelson has gone astray. I read him as saying that, not just in the petroleum industry, but in our other major oligopolies as well, he shares the view of the Star, the Wall Street Journal, and Professor Galbraith that oligopoly is a benign force in the national economy.

To be sure, Mr. Samuelson does not say this in so many words. But that is surely the overall impression the reader gets. Before getting to such matters as the "mammoth legal and financial job of splitting the oil companies into basic parts"—and without mentioning how casually those "parts" were put together by a series of mergers in the first place—he gives passing notice to the potential usefulness of a "debate about the desirable size of business enterprise" in the economy at large. "Should these large concentrations of corporate power be fractured? How much do people really support this goal? Would it change the nature of our economic system? If divestiture is to be debated seriously, these are some of the questions people ought to be asking. Do divestiture proponents eschew them because they suspect public support is wafer thin?"

As Mr. Samuelson surely knows, the amount of public support a given proposal enjoys is a political question, a matter of raw power and not of whether the proposed action would be in the public interest and hence "ought" to be implemented. A great newspaper like the Washington Post cannot fairly allow its editorial positions on the great issues of the day to be governed by anything so gross as a conclusion that, while a given set of proposed remedies might be objectively sound and morally right, they must be rejected out of hand if they're not politically expedient at the moment.

The bottom line in any meaningful discussion of the oligopoly question is, as Mr. Samuelson correctly points out, whether an industry dominated by oligopolists charges higher or lower prices than it would charge under a less concentrated industry organization. He concludes, as I read him, that oligopoly yields prices that are at least as low as those produced by competition. I think he is wrong and by, as they say where I come from, a country mile.

Why do I think so? Well, I can't point to Industry X and say, "Look, Industry X was broken up and prices promptly dropped by 32% or 64%." The reason I can't do that is because our two antitrust agencies, the FTC and the Antitrust Division of the Justice Department, have never had the guts to actually break up one of our oligopolies.

But I have the next best thing to point to. These two agencies have occasionally managed to break up a price fixing conspiracy in such industries as bread, tetracycline, liquid asphalt, electrical equipment, bleachers, and quinine. When they do so, prices invariably fall by 15% (milk) to 75% (tetracycline and liquid asphalt). If ITT, Wonder Bread, and Safeway Bakeries can whip 55 bakers in Seattle into line and jack Seattle bread prices up by 15% above the previous competitive price, does it make sense to conclude that General Motors, U.S. Steel, Exxon, and the other giants of our major oligopoly industries have been unable to do at least as well in their more conveniently organized industries?

I would be astonished if a break-up of any American oligopoly didn't produce a price drop of say 25% or more. While our great oligopolies aren't particularly efficient at producing goods and services, there's surely every reason to believe they are at least as competent in setting and maintaining a monopoly price as these little groups of price fixers the Justice Department is constantly flushing out of the economic woodwork.

If oligopoly means anything, then, it means the economic equivalent of price fixing. Breaking up an oligopoly is therefore the economic equivalent of breaking up a price fixing conspiracy. The price effects of doing so would undoubtedly be at least as great, namely, an average price decline of, as noted, some 25% or more.*

Finally, let me express my astonishment and even alarm at a comment by Mr. Samuelson's opponent in the big-oil debate, Senator Hart. Correctly noting that the country now "confronts a crossroads in its economic evolution" and that, in supporting divestiture of the oil firms, he is "also supporting a return to a petroleum market free from government interference," the Senator characterized himself as a "radical free enterpriser."

This conjunction of the word "radical" and the phrase "free enterpriser" is the cause of my concern here. Have we really reached a point in our national life where being for free enterprise makes a man a "radical"? How can it be that in this land of Jefferson our great capitalists embrace government regulation rather than economic freedom and view as their "radical" enemy a Senator who wants to make them compete rather than collude?

If Mr. Samuelson is right about oligopoly being more popular than competition, then he is surely sounding the death-knell for democratic capitalism. Oligopoly, as institutionalized price fixing, is also institutionalized theft. Allowing the stockholders of our 200 largest firms to levy a 25% monopoly tax on the country's 220 million citizens obviously has the effect of "redistributing" income and wealth in a perversely regressive fashion, taking money from the relatively poor and giving it to the relatively rich.

With friends like Mr. Samuelson, Professor Galbraith, the Wall Street Journal, and the Star, free enterprise doesn't need enemies. Their call for more oligopolies and less competition could hardly be improved upon as prescription for realizing all of free enterprise's worst fears. By the latest United Nations count, some 120 of the world's just over 150 countries (with about 75% of the world's population) have already turned socialist. And while that list grows longer with each edition of the newspapers, here at home our most "conservative" leaders content themselves with a lot of whining about the evils of unrestrained competition and the necessity for the government to come into their industries and help them "regulate" their cartel prices upward.

In this kind of Alice-in-Wonderland world, perhaps Senator Hart is right. As a genuine free enterpriser, one who would establish real competitive structures and then turn our industries loose to price and profit on their own, perhaps he is in truth something of a cultural freak, a "radical" in some Kafkaesque sense of the word.

In any event, however, we have indeed reached, as the Senator says, a crossroads in terms of our basic economic structure and thus the mechanism to be used in distributing our future income and wealth.

It is a fateful question. The socialists of the future will surely nationalize our great oligopolies. The deconcentration of a dozen or so of these major industries over the next decade or two would just as surely spare them—and us—the dubious blessings of living in a government-owned economic system.

Let me ask again: Where does the *Washington Post* stand on the oligopoly question? Or does journalistic prudence dictate that questions like this be left to pro-monopoly free-lancers and gutsy "radical free enterprisers" like Senator Hart?

Put me down on Senator Hart's side. Any man who's shrewd enough to sense that being a serious enterpriser today automatically makes him a radical is sure to get his name inscribed on the endangered species list but I'll join him just for the hell of it. A man like that deserves at least one salute before the price fixers get him.

Sincerely,

CHARLES E. MUELLER,
Associate Editor.

* In case Mr. Samuelson wants to raise that old chestnut about "how could prices fall 25% in an industry whose profits are 'only' 4% or 6% or 16% of sales?," ask him to drop me a line and I'll explain it to him.

TREATMENT OF SCIENTIFIC RESEARCH IN LAW OF THE SEA CONFERENCE

Mr. PELL. Mr. President, as my colleagues are aware, I am an ardent advocate of long standing of a law of the sea treaty. In fact, I first introduced a Senate resolution in 1967 on a third law of the sea conference. The prospects for concluding a treaty within a reasonable period of time were significantly improved as a result of the most recent session which was held in New York from March 15 until May 7, but the treaty which emerges from these negotiations must be a sound one which fairly balances the interests of all of the participants. The revised single negotiating texts which resulted from the New York session generally are much improved versions of the texts which came out of the previous session in Geneva, but the latest texts are not yet the kind of documents which the United States ought to accept.

Although I am deeply committed to the necessity of a law of the sea treaty, I am equally committed to insuring that the basic U.S. interests in the oceans are protected. That is why I have spoken out against setting any arbitrary time limit for concluding a treaty which is unrelated to whatever progress is being made in the negotiations.

It is particularly distressing in this regard to hear that many nations have not yet accepted the improved portions of the single negotiating text as a basis for continued negotiations. That attitude augurs ill for improving other sections.

Today, I wish to direct my remarks at that much overlooked section of the single negotiating text relating to marine scientific research in the economic zones of coastal States extending beyond the territorial sea out to 200 miles, and on the Continental Shelf beyond that distance. These areas contain approximately 37 percent of the Earth's surface covered by the oceans, but they contain an even greater portion of the scientifically interesting subjects of marine research. As the importance of the oceans becomes more evident to governments and peoples around the world, so too will the importance of marine scientific research be better appreciated. For only with adequate and broadly disseminated research will the world know more about the extent and sources of marine pollution, the role that knowledge of the oceans can play in long-range weather forecasting, and the future uses to which the oceans can be put.

The United States originally took the position that research in the economic zone or on the Continental Shelf of coastal States should not be subject to coastal State consent and that coastal State interests in those areas should be protected through a series of agreed obligations upon the researcher. On April 8, however, Secretary of State Kissinger modified that position by stating that the United States is prepared to agree to coastal State control of scientific research which is directly related to the exploration and exploitation of resources of the economic zone, but that other research must not be hampered. He further promised that coastal States would receive advance notice of scientific research, would have the right to participate in that research, and would receive data and results of such research as well as assistance in interpreting the significance of those results. That is an eminently reasonable proposal which demonstrates the willingness of the United States to accommodate the legitimate interests of other coastal States.

The revised single negotiating text, however, does not reflect this or any similar accommodation that places some research under the control of the coastal State but guarantees the right to conduct other research upon compliance with internationally established conditions. This would have been a creative accommodation placing some research under a consent regime and protecting the right to conduct other research. The revised single negotiating text places all research under a consent regime. Rather than providing a guaranteed right to conduct certain research, the revised text imposes some form of tenuous duty on the coastal State not to withhold its consent.

U.S. scientists find the text unacceptable. In addition to no guaranteed right to conduct some forms of research, the revised text does not even include meaningful provisions that would provide the predictability necessary for the planning and conduct of research. The text even includes a repugnant provision restricting publication of research results. In short, rather than fostering knowledge, the revised text appears designed to curtail the acquisition of knowledge.

More is at stake than the loss of valuable scientific knowledge. If the American scientific community joins other interest groups in the United States who believe that it would be better not to have any law of the sea treaty at all rather than one based on the current single negotiating text. I fear there is additional risk that Senate approval might not be forthcoming.

I urge the administration to maintain its original position and to insist on reciprocal accommodation of U.S. interests.

Looking beyond the specific issue of marine research, I would like to reiterate that I am delighted that Secretary of State Kissinger will personally be leading the U.S. delegation at the next session of the Law of the Sea Conference which will be held in New York in August and September of this year. I would urge, however, that the Secretary of State become actively engaged in law of the sea issues well before August, particularly by discussing those issues in meetings with foreign leaders.

BEEF PURCHASES

Mr. DOLE. Mr. President, the Senator from Kansas would like to call to the attention of the Senate the timely action of the Department of Agriculture in announcing the start of a major ground beef purchase program for distribution to school lunch programs and institutional and elderly feeding programs throughout the country.

GOOD FOR TAXPAYERS

Last week I urged Secretary Butz to take this very action.

It is a wise and responsible use of taxpayer funds. That is because the price of finished cattle and wholesale beef has steadily dropped to a very low level. Beef is presently a good buy for the money.

With the prices for cattle the way they are, now is the time to get the most meat for the taxpayer's dollar. It is an efficient expenditure of Federal funds. I wish we could be assured that Federal revenues are being spent as efficiently in other programs.

GOOD FOR RECIPIENTS

Schoolchildren, elderly people and other recipients under this program will also benefit. By getting meat at a cheaper price, there will be more beef for distribution. Beef, with its strong protein content, will result in a nutritionally improved diet that is so important to good health, especially for children.

As Secretary Butz emphasized, this is a very opportune time for USDA to enter the market. Although this buying announcement is essentially for a standard purchase, principally for the school lunch program, the purchase is being made earlier than usual and as large as possible in an administration effort to take advantage of the current low prices and the large supply situation.

STABILIZE THE INDUSTRY

Hopefully, the Government purchases will help stabilize prices or even boost them back to where cattlemen are again operating in the black. The cattle industry is now in the bottom part of one of its price cycles. Cattle prices have been steadily declining to the point now where most producers are operating in the red.

There is the possibility of substantial economic losses and disruptions if the depressed conditions in the industry continue. The Government has a legitimate interest in avoiding such disruptions.

In my opinion, this timely expenditure of Federal funds, which would be spent for beef in any event, will help avert disaster in the cattle industry, and hopefully put it on a healthy footing again.

CONSUMER INTEREST

Consumers have an interest to be served in this announcement as well. When the livestock industry is depressed to the point where disruptions occur—where cattlemen start going out of business—then ultimately a reverse trend has to occur where cattle are in short supply and prices rise to an extremely high level.

Allowing a situation to continue that might eventually lead to a short supply and extremely high prices would not be in the best interests of consumers. So USDA's timely action today is in the best interest of consumers in that it will help stabilize the industry and encourage the continued production of adequate supplies of beef at reasonable prices.

A "food marketing alert" was also issued by USDA calling consumers' attention to the availability of beef and urging retailers to continue their beef promotional efforts as a means of increasing movement of beef through channels of trade.

Mr. President, I applaud the responsive action by the administration and wish to call it to the attention of my colleagues.

AMERICANS IN VIETNAM

Mr. KENNEDY. Mr. President, I was gratified to receive today a cable and a telephone call from the Vietnamese Embassy in Paris indicating that American citizens still in South Vietnam will be authorized to leave Vietnam with their wives and children beginning August 1, with the assistance of the United Nations High Commissioner for Refugees.

I want to commend the Government of the Socialist Republic of Vietnam for another gesture of good will to the American people, and for continuing to respond to the many humanitarian issues that remain in the aftermath of the long war.

In authorizing the speedy departure

of those Americans and their families who now wish to leave Vietnam, the Government of Vietnam has taken another important step in promoting better relations between our two peoples and countries. And this act will give hope to other families separated by the events of last year. Such humanitarian issues, including the question of obtaining information on Americans still considered missing in Indochina, remain a source of deep concern to all Americans.

Mr. President, Americans have already acknowledged with appreciation the repatriation by Vietnamese authorities of the American missionaries and others caught in the conflict last year. And they have also acknowledged with appreciation the repatriation of the remains of three American pilots previously missing in action, and the remains of the two marines who were the last two American casualties of the war.

I share the hope with many Americans that the end of battle and the beginning of a new era on the Indochina Peninsula will see the building of good relations, and the resolution of outstanding questions between our two nations—including those Americans still missing in Vietnam.

It is time for our Government to take some real steps in moving from a position of hostility and neglect toward Vietnam, to a policy of reconciliation and normalization.

ELMER F. MUNSHOWER: CITIZEN, SOLDIER

Mr. MATHIAS. Mr. President, many Americans are called upon from time to time to serve our country. But only a very few have demonstrated the unusual combination of competence and patriotism which results in repeated calls to public service. Such a man was Elmer F. Munshower of Frederick, Md., who died on July 6, 1976, at the age of 91. It is significant that Colonel Munshower's career comprehended both civil and military service and both elective and appointive office. It was a sure measure of the wide recognition of Colonel Munshower's integrity and ability that he was drafted to serve by the votes of the people as well as by the commissions of governors and presidents.

There was a standard of quality that was a characteristic of Colonel Munshower's conduct as mayor of Frederick, as superintendent of the Maryland State Police, and as an officer in the Army and the National Guard. In all of his long career he enjoyed the support and encouragement of his wife, Nellie, who predeceased him in 1973.

I want to extend my sympathy to Colonel Munshower's daughter, Mrs. John Sommer of Silver Spring, Md. I ask unanimous consent that the attached editorial which appeared in the Frederick Post on July 8, 1976, be printed in the RECORD.

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

COL. ELMER MUNSHOWER

For three-quarters of a century the name of Elmer Floyd Munshower has been prominent in the life of Frederick and Maryland.

Colonel Munshower died Tuesday, June 6, at the age of 91.

Though retired from public service since June 1959, he remained active in many community activities almost until the end.

Colonel Munshower rose to the top in so many challenges in life that he was probably one of Maryland's most widely known sons, certainly one of the most revered and respected men in our times.

To recount his achievements, most of which are in the news account of his passing, would be redundant and not in keeping with the strong, forceful character that was his.

But Colonel Munshower lived a productive and exemplary life, beginning in farming as a youth in his teens, moving into the painting business, and then into electrical engineering which was to be his main business.

He was a veritable "one man regiment," entering the military as a national guardsman in 1906, advancing to lieutenant in 1916 and serving his country at the Mexican Border. As a captain, Company A, 115th Infantry, in 1917, he distinguished himself overseas in World War I with the 20th Division at Verdun. He rose to major, commanding the First Battalion, Maryland National Guard, and serving as executive officer of the regiment.

He was elected a Frederick Alderman in 1925 and 1928, and was elected Mayor in 1931, the second Republican in 30 years to head the city government.

He was appointed head of the Maryland State Police in February, 1937, by Gov. Harry Nice and served in that capacity two years, then becoming consulting superintendent for reorganizing the Baltimore County police department.

With the advent of World War II, Colonel Munshower again answered the call and served as commanding officer of Camp A. P. Hill in Virginia, remaining at that military training center until his retirement at the end of the war in 1945.

He returned to civil duties after the war, serving as superintendent of the Maryland State Reformatory for Males, and under his direction, instituted policies of vocational training and rehabilitation, in addition to religious instruction and special physical training.

In 1950, he was again elected mayor of Frederick, a post he held until June 1951, at which time he was reappointed superintendent of the Maryland State Police, where he remained until his retirement from public service in June, 1959.

Active in many local organizations, including the Independent Hose Company, of which he was a past-president and the Kiwanis Club of Frederick, of which he was a charter member, Colonel Munshower was a lifelong member of the Calvary United Methodist Church. He was active in the early days of the YMCA and continued to support the association to his last days.

Having received many honors, three which came late in life, gave him much pleasure—the Golden Hand of Friendship Award in 1973 conferred by Harry Rosenfeld and the Frederick Shopping Center Merchants Association, the Maryland Distinguished Service Cross in 1974, and the honor of King of the Mardi Gras in February, 1975.

He received a standing ovation when introduced at the recent retirement banquet for his longtime friend Major Charles V. Main, who credited Colonel Munshower with his becoming both a State Policeman and later Frederick Chief of Police.

Wherever he went, Colonel Munshower was warmly welcomed. He was a pleasant conversationalist and enjoyed a hearty exchange of banter with his friends. His mind was always alert and he was a wealth of information. State troopers of all ages knew him and respected him, and he annually attended the academy's graduation programs to meet and encourage the new troopers.

Colonel Munshower's wife, Mrs. Nellie Stratton Munshower passed away in 1973.

He leaves one daughter, Mrs. John Sommer of Silver Spring. Also surviving are one sister, Mrs. Carroll Rector of Frederick; one granddaughter, Mrs. George W. Fisher, Burlington, N.C.; one nephew, Donald Kreh, Hagerstown; one niece, Mrs. John L. Kline, near Poolesville; one great-nephew, Dr. Donald W. Kreh, Kingsport, Tenn.; two great-nieces, Mrs. Nevins Todd, Salisbury, and Mrs. Robert Harley, Frederick, and a number of great-great nieces and nephews.

Friends are being received at the Smith, Fadeley, Keeney and Basford Funeral Home in Frederick from 7 to 9 this evening. Funeral services will be at 11 a.m. Friday at the Calvary United Methodist Church, the Rev. Robert E. Zimmerli, pastor, and the Rev. Raymond L. Roderick, associate pastor, officiating. Interment will be in Mt. Olivet Cemetery.

(Memorials may be made in Elmer Munshower's name to the Frederick County Unit of the American Cancer Society).

Colonel Munshower lived a long and useful life. His contributions to Frederick, to his State of Maryland and to his Country were many. He will never be forgotten. He made his mark on our lives and the record will forever show it in our favor. That is the way he lived it; that is the way he wanted it. That was Elmer Munshower—born September 1, 1885, the son of William Munshower and Amanda Routzahn Munshower.

THE IMPORTANCE OF ENERGY CONSERVATION

Mr. PELL. Mr. President, recently, the Christian Science Monitor published an excellent article on the energy crisis, examining specifically our progress toward energy independence, the domestic options available to our Nation in achieving this goal and the importance of a vigorous national energy conservation effort.

This article, Mr. President. is especially timely in view of the resumption later this week of the conference committee meetings on the Federal Energy Administration extension legislation. This measure, adopted by the Senate in June, includes amendments establishing for the first time a much needed national energy conservation program.

As an original cosponsor of the energy conservation amendments introduced by Senator KENNEDY and in view of the pending consideration by the conferees, I believe this timely article is worthy of the attention of my colleagues and members of the conference. The article is important because of the misconceptions about our energy shortage in 1973–74, the need to increase public awareness of the energy issue and its complexity, and the alarming increase in our dependency upon imported oil, especially from the Middle East and Africa.

Mr. President, I ask unanimous consent that the Christian Science Monitor article be printed in the RECORD.

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

ENERGY

Summer '76 has opened with renewed warnings of possible gasoline shortages. But it is doubtful that even this can arouse the American public from the apathy that has dulled national awareness of the chronic overall energy shortages that are staring the United States in the face.

Most Americans seem to have convinced themselves that the "energy crisis" so dramatically brought to their attention by the Arab oil embargo in 1973–74 was a hoax.

But since that time U.S. dependence on foreign oil has jumped from 35 to 40 percent and this figure is growing daily. At the current rate of increase, imports could reach 50 percent by 1980. In a country where oil and natural gas supply 77 percent of the energy needs, this directly reflects the widening gap between domestic supply and demand.

Frank Zarb, head of the Federal Energy Administration (FEA), warns that an embargo today could throw a million Americans out of work. Yet there is no national plan for meeting such a contingency. At this writing Congress has not even funded the buildup of a billion-barrel strategic oil reserve which it has authorized.

Rep. Mike McCormack (D), Washington, has described the nation's attempts to grapple with the issue of energy policy as similar to "wrestling over deck chairs on the Titanic as it is sinking." Congressional inability to come up with a national energy plan arises in part because few of the nation's political leaders have really attempted to understand this complex and long-term issue and also because they are targets for vigorous, and often conflicting, lobbying on almost every energy issue.

Industrialists, union leaders, environmentalists, and an assortment of other special-interest groups have realized the importance of energy and its intimate relationship to military, economic, and political power. The United States's dominant position in the world today is largely due to the historical fact that the potential of oil as a cheap energy source was realized during the nation's industrially formative years and the country has been blessed with large domestic reserves.

Clearly the United States must develop new energy sources and better ways to use them. The important questions are: When will this transition come, how can it best be accomplished, and what are the most acceptable alternatives?

We feel that the "energy crisis" represents both a difficult challenge and a golden opportunity. It demands that Americans, as a people, rethink many of their national and personal priorities. It demands that they define what they mean by quality of life so that they can preserve it even if some material indices of their standard of living should decline.

It is clear that the consumptive lifestyle which has developed in the United States in the last quarter century cannot continue indefinitely. Lined up behind the energy crisis are materials shortages, water shortages, and other physical limitations. All these problems are similar in nature. Solving them will require cooperation and restraint.

Estimates of the nation's energy future vary widely. The basic assumptions of each forecaster influence the outcome of the projections to a greater degree than do the facts each works from. More often than not these basic values are hidden from public view. In general, they range from the desire for zero growth to a fatalistic belief that high historic trends will continue.

A set of typical projections was made last April at a conference of Americans for Energy Independence (AEI), a group of industrialists, union officials, energy experts, and other citizens groups.

The group used 1973 as a baseline, a year when the country consumed 74.6 quadrillion Btus of energy. A Btu is the energy it takes to raise the temperature of a pound of water one degree Fahrenheit. So a quadrillion Btus is a handy term for a lot of energy, and is called a "quad" by energy specialists.

Projecting the country's energy use at a modest 2.3 percent annual growth rate, the conference forecast a need for 98 quads in 1985. Over the decade preceding 1973, the growth rate had been 4.2 percent. At this annual rate, the U.S. would need 122 quads by '85. The actual 1975 growth rate, held in check somewhat by depression, was 3.5 percent—between the two projections.

Vigorous, but not necessarily puritanical, energy conservation can keep the energy growth to the lower, 2.3 percent rate, the FEA's latest study concludes. This would lead to important savings. However, at this level, conservation alone would not solve the problem.

Estimates of domestic oil production in 1985 ran from 10 million barrels per day to about 14. This would provide between 21 and 29 quads. Natural gas may supply anywhere from 18 to 22 quads. If 1,025 million tons of coal a year can be mined and used by 1985 (which means an annual coal industry growth rate of 5 percent), this energy source could provide 23.2 quads. A conservative prediction for geothermal, hydroelectric, and solar energy is 4.6 quads. This gives a rounded total of between 67 and 79 quads and a shortfall of anywhere from 21 to 33 quads. This would be made up by nuclear power and imported oil.

You can quarrel with the numbers in any such projection. But the basic trend of a growing energy gap becoming a yawning chasm without vigorous preventive effort which these forecasts portray is valid. This is the short-term energy challenge which the United States has yet to face realistically.

Without a major conservation effort to cut the historical growth of energy use in half, the picture looks bleak. There is as yet no well-defined national conservation plan, although many industries have already concluded that vigorous steps in this direction are both essential and economic for themselves.

The country's massive coal reserves must be mined more extensively. Yet there is no agreement on how that can be done in a popularly acceptable manner. Increasing coal production 60 percent by 1985 means bringing into production four times as many mines as were opened in the last 25 years. It means finding $18 to $20 billion in new capital for what is presently a $5 billion industry. Using more coal also means solving massive transportation, air pollution, mining safety, and environmental problems that may create as much resistance as nuclear power does today.

Then there is nuclear power. Until the issue of public acceptance is resolved, something not likely within the next few years, this will remain an uncertain factor in energy planning.

Beyond 1985, the question of what to do when the oil and gas run out dominates America's energy horizon.

Most countries foresee world petroleum shortages developing sometime after the end of the century. And even before such a general shortage develops, rising world demand may make it impossible for the U.S. to rely heavily on imported oil even if it wants to. For this reason alone, the United States must resolve the issue of nuclear power versus its alternatives and begin building its long-term energy supply.

Much of the controversy which surrounds energy issues, including nuclear power, stems from the relationship of energy to lifestyle. The energy establishment—both in industry and in government—seems to assume that the American people only want more of the same. On the other hand, opponents to nuclear power, many in the environmental movement, and many public-interest groups advocate a substantially different set of priorities. Yet seldom are these differences articulated. Instead the debate is muddled by arguments over scarcely intelligible technical points.

NUCLEAR POWER

Without the breeder reactor, which literally breeds new atomic fuel as it runs, nuclear power holds little long-term promise. Natural uranium contains about 0.7 percent of a form of the metal that fissions to release energy. This concentration is enriched to about 3.2 percent for U.S. reactor fuel. The rest of the metal is of a form that does not readily fission. It must be transformed to fissionable uranium or plutonium to be used as fuel. Breeder reactors are being designed to accomplish this transformation with an efficiency that produces more fuel than they consume.

With breeders entering the energy economy in force after 2000, the United States could have all the nuclear fuel it needed. Without breeders, the country could run out of fissionable uranium before it runs out of oil. Estimates vary. But none, including official projections of the Energy Research and Development Agency (ERDA), expect domestic uranium resources to stretch much beyond 2000 without breeders. A pessimist like M. A. Lieberman of the Energy and Resources Group at the University of California can show cogent reason for saying that domestic uranium probably won't fully fuel the 160,000 to 185,000 megawatts worth of nuclear power plants anticipated by ERDA's national plan for the 1980's (up from 39,600 megawatts today). There is foreign uranium available to be imported, and heavy foreign competition for it.

Right now, American breeder development languishes as issues of cost, safety, design fitness, and industrial participation are debated. But even if the breeder moved smartly forward tomorrow, many new ordinary reactors may be needed between now and the late 1990s. So the nuclear issue has two major aspects: Does the country want nuclear power, that is the breeder, to play a major long-term role; and, to what extent will it use nuclear power, that is, ordinary reactors, in the short run?

We believe the resolution of these many-faceted issues depends critically on public perceptions of safety. Can nuclear waste be safely disposed of? Will safeguards be instituted which provide a reasonable defense against terrorist attack? Can the amount of plutonium which finds its way into the environment be kept at an acceptably low level? Is the remote possibility of a major power plant accident and its probable consequences acceptable?

The answers to some of these questions are not going to be as reassuring as one would like. But the hazards of nuclear energy must be seen in the perspective of the alternatives: the dangers of pushing the development of coal use and production; and, the hardships of severe energy curtailment.

COAL

There is no doubt that the United States has enough coal in the ground to meet all foreseeable energy needs. The question is how much can be recovered how fast and at what economic, social, and environmental costs? These costs still are largely undetermined.

Western coal looms large in energy planning. It cannot be had without massive strip mining and, if it is turned into gas or liquid fuels, without diversion of much scarce water. It may be possible to repair the mining damage in most areas and without exorbitant cost, given the will and necessary laws. But already the Sierra Club has warned of loss of a cherished way of life, presaging stubborn environmental opposition to strip mining.

There also are serious air pollution problems when coal is burned. Unlike the major risks of nuclear power, which are largely theoretical, what is known of coal's hazards is based on actual mortality and public health data. Environmental Protection

Agency (EPA) studies suggest that, unless the strict 1975 standards for keeping sulfur oxides out of the air are adhered to, the number of deaths attributable to coal burning could be many times greater than those arising from routine operation of an equivalent number of nuclear power plants.

Compared to the billion dollars that has been spent studying the health hazards of radiation, intensive research into the adverse effects of coal pollution and what to do about them look feeble. Only in the last two years has the government begun sponsoring this research, with EPA allocating $5.4 million in 1975, $9.5 million in 1976, and $13.5 million in 1977. Until this newborn research effort bears fruit, it will not be possible to make an informed judgment of the relative risks of coal versus the atom.

For the next two decades, a decision against nuclear power seems to entail a greater commitment to coal. Unless the growth psychology built into almost all of our economic institutions changes with surprising rapidity, the effects of major energy shortages in this country will be grim. It will be a pleasant surprise if conservation efforts do more than hold the nation's energy growth rate to 2.5 percent a year, let alone make up for possible loss of the nuclear option.

In the long run, however, the nation has alternatives.

FUSION AND SOLAR ENERGY

The promise of harnessing some form of the fusion process that powers the sun is tantalizing, but the engineering outlook for so doing is uncertain. If practical, fusion theoretically could supply all the nation's—and world's—energy needs at a presently unknown but probably bearable economic and environmental cost. But no one has yet gotten the process to work in the laboratory. The U.S. program couldn't usefully absorb much more money than it is getting. Under the circumstances, one can only wait and see what develops.

Solar energy, on the other hand, looks better every day. There seems little doubt it can supply many of the heating and cooling needs of housing and, according to the range of estimates, could account for at least 6 to 13 percent of U.S. energy use by the century's end. What is needed here are tax and financial incentives to encourage market development.

A second potential pay-off is the use of solar energy to create electricity. Generators "fired" by arrays of mirrors, solar cells that convert sunshine directly into electricity, sun-tapping satellites beaming power to earth; these are technologies being researched. The major uncertainties involve cost and technical feasibility.

Compared to fusion there seems a much clearer hope that solar power will be viable in the next century. Nevertheless long-range solar research will receive only one-fifth the money of fusion and one-tenth that of fission in 1977. Although it would be foolish to divert massive sums from other energy options, federal support for solar research should be increased as fast as is prudent until it is in better balance with support for development of other long-term options.

As for other energy sources—hydro, geothermal, wind, and sea—these will be useful, even important in some local or regional situations. But they are likely to remain subsidiary.

CONSERVATION

Important both for the short term and the long range, conservation can make an energy contribution equivalent to that of a new basic supply. For example, halving the historic energy use growth rate in the AEI projections cited earlier could cut anticipated 1985 energy demand by 20 percent. There are major opportunities for savings in housing and buildings, in industry, and in transportation. Dr. Stephen Berry of the University of Chicago estimates that doubling the average gasoline mileage in the U.S. auto fleet could save 7 percent of the U.S. annual energy budget: in 1985 this would amount to 1.2 billion barrels of oil.

We welcome the change of emphasis in ERDA's latest energy plan which places conservation among the top priorities. Yet we cannot help noting that the energy agency will be putting only 3.8 percent of its money into this type of research in 1977 (up from 3 percent in fiscal 1976).

Unfortunately, the conservation leadership from Washington is weak. Throughout the country, effective conservation measures—such as revised building codes—are spotty. Skeptics, especially those in the energy industry, continue to cite the close historic correlation between growth of gross national product (GNP) and growth of energy use as evidence that more than a modicum of conservation threatens employment and living standards.

Growth of energy use and of GNP have indeed been correlated, as have GNP and employment. But the direct correlation between energy use growth and employment is not as clear. We doubt that it is a cause-and-effect relationship. The fact that other nations, such as Sweden, have high employment and a high standard of living with substantially lower per capita energy consumption throws doubt on any glib conclusion that an energy-conserving economy must be a less productive economy.

In short, we believe the United States can have the energy it needs given the vision, the will, and the cooperative effort to effectively husband its resources.

At this point, there are too many unknowns to draw up a definitive national plan. What is needed is a flexible approach, one that can be modified to take future facts and realizations into account.

Because the problem touches almost every aspect of modern life—technology, economics, national defense, social organization, lifestyle—an institutional framework is needed which integrates all these aspects. The nation's approach is still piecemeal.

The course the nation needs to take must be more purposeful than the vacillation that has so far characterized its energy posture. Setting such a course is not just a job for government. All segments of society need to take up their responsibilities from the householder who douses unnecessary lights and adds extra insulation to the steel management that opts for a more energy-efficient process.

Facing up to the energy challenge demands the best thinking of all citizens. It is past time to move the national debate out of the arena of an adversary process and into a forum that gives priority to finding constructive solutions.

There are immediate needs that Washington has neglected and that must be met to help the country begin to meet the energy challenge.

Congress should give serious consideration to combining FEA and ERDA into a single energy agency with Cabinet-level representation. This may be necessary to orchestrate policy and technology considerations.

The studies of the hazards of coal which EPA and ERDA are sponsoring should be pursued on a top priority basis.

The FEA should prepare a detailed, but flexible, provisional plan for obtaining the massive increase in coal supply it thinks will be needed within the next decade.

The FEA or ERDA should commission a task force to study the relation between energy use and the economy, admittedly a difficult subject to analyze. If growing energy use is not needed to sustain economic growth, how does the country attain the needed degree of conservation?

Since the effect of a new oil embargo would likely be more devastating than the crisis of winter 1973–1974, the FEA should draw up a detailed national contingency plan. Congress should promptly fund the strategic oil reserve.

FEA or ERDA should develop a model building code, both for saving energy in new buildings and in insulating and otherwise adapting existing houses and buildings to be more energy efficient. This model code should be periodically updated to reflect evolving knowledge. The federal government should also take a more vigorous lead in helping states and local communities adapt their building codes for energy conservation.

Congress should enact consumer incentives for making existing homes more energy efficient, specifically tax credits for installing insulation and storm windows.

The U.S. should sponsor several studies of the relation between energy use and the various lifestyles. All major supply-demand projections include implied assumptions about life-style. Yet no one has studied the lifestyle-energy relations systematically as related to the country's energy options. It is essential for Americans to have this information to make intelligent energy choices.

The U.S. should undertake a study of how the public perceives the energy issue. Politicians, energy managers, and special interest groups often confuse the energy debate by not speaking directly to public concerns and misconceptions. It is essential that such a study be undertaken.

We have restricted ourselves to recommendations that may seem simple and that are short term. We are aware of too many uncertainties to try to write a national energy plan, to take sides in the nuclear debate, or be partisan to solar power which does seem attractive in the long run. We favor making conservation the No. 1 national energy priority.

We favor more emphasis on public transportation. But recognizing the massive investment in highways and the fact that constructing a transit system is a heavy drain on energy resources in itself, we conclude that mass transit is a long-term measure to be approached carefully and can at this time only urge the Department of Transportation and the FEA to study this complex problem intensively. Meanwhile, since raising gasoline mileage on cars can reap large energy savings, we urge Washington to keep on the back of Detroit to meet the 1980 goal of 20 miles per gallon and 1985 goal of 27.5 m.p.g. something automakers do seem to have made up their minds to do.

NEW SERIES OF SENATE BUDGET SCOREKEEPING REPORTS FOR FISCAL YEAR 1977

Mr. MUSKIE. Mr. President, each Senator has on his desk the first of a new series of Senate budget scorekeeping reports for fiscal year 1977 that has just been issued. I would like to take a moment to describe the new report since it represents a significant departure from the reports issued for fiscal year 1976.

The major new innovation contained in this report is a table for each Senate committee—and also a table for each subcommittee of the Appropriations Committee—showing the relationship of each committee's budget actions to the first concurrent resolution on the budget, Senate Concurrent Resolution 109. A breakdown by committee is possible for the first time this year due to the implementation of section 302 of the Congressional Budget Act—the so-called crosswalk provision—under which the statement of managers accompanying the

conference report on the budget resolution allocates the budget spending totals among Senate committees, which the committees themselves then subdivide among subcommittees or programs. The implementation of section 302 of the Budget Act permits the scorekeeping system to keep track of budgetary actions in a manner consistent with the way the Senate does its work.

This report also continues the practice begun last year of including information relating to possible future congressional budgetary actions for fiscal year 1977. Though such information is tentative, its inclusion, along with information on actions completed or underway, enhances the value of the report in presenting a full budgetary picture.

Each committee or subcommittee table in the report has the same basic format. The table begins with the first budget resolution allocation made to the committee. Action to date is then reported, and the difference between the allocation and action to date shows us the current status of the committee's actions relative to the first budget resolution. Possible later requirements are then listed, and when these are added to action to date, the committee's potential status in relation to the first budget resolution is calculated.

All of the committee tables present information on direct spending jurisdiction, that is, the portion of the budget over which a particular committee has direct control in the sense that legislation under its purview, when enacted, directly provides budget authority which forms part of the budget totals. All standing committees of the Senate with the exception of the Budget Committee have some direct spending jurisdiction, although the bulk falls to two Committees—Appropriations and Finance.

In addition, the tables for the authorizing committees present information on entitlement programs subject to appropriations action that fall within the authorizing committee's area of responsibility. The dollar amounts for these programs fall within the direct spending jurisdiction of the Appropriations Committee, but since any action by the authorizing committee on such entitlements essentially locks in the appropriations process, these amounts were crosswalked to both the appropriations and the authorizing committees in the first budget resolution. This information is also necessary for determining whether referrals of entitlement bills to the Appropriations Committee are necessary under section 401(b) of the Congressional Budget Act.

In addition to the committee and subcommittee spending tables, the report includes a series of summary tables showing the status of the budget as a whole, both in terms of revenues and spending. A summary table is also included showing budgetary status by function. Finally there is a table summarizing the individual committee tables.

The report also contains a section comparing congressional action on appropriation bills to the President's budget request which should be of particular interest to the Appropriations Committee. Finally, there is a section containing summary budget status information on the transition quarter between fiscal years 1976 and 1977.

Mr. President, I believe this new report, which will be issued weekly between now and the end of the congressional session, should assist each Senator in understanding the relationship of individual budgetary actions to the first budget resolution targets. By focusing on committee splits, the new report should be easier to understand than the reports issued last year. The staff of the Budget Committee will be happy to assist anyone who has questions regarding the report. Needless to say, we would be happy to receive suggestions for further improvement in the report. Our aim is to make the report as useful as possible for each Senator.

RECOMMENDATIONS FOR THE DISTRICT OF COLUMBIA

Mr. MATHIAS. Mr. President, on July 1, 1976, the Senate adopted H.R. 11009, a bill to provide for an independent audit of the financial condition of the government of the District of Columbia. Cities throughout the Nation are facing tremendous financial pressures and the experience of New York has emphasized the need for clear accounting information. By undertaking a thorough overhaul of the financial management system in the Nation's Capital, we can establish a model for good municipal accounting that can be followed by cities throughout the country.

In 1972 the Nelsen Commission completed an exhaustive study of the Organization of the District government. The report of the Nelsen Commission contains more than 400 recommendations on every aspect of local government. While some of these recommendations relate specifically to the unique characteristics of the District, many of the report's findings might be applied to other cities as well.

I think that our colleagues would find the specific recommendations of the Nelsen Commission on Financial Affairs of special interest. I have selected a few recommendations of the Nelsen Commission that relate most directly to the current problems of financial management and I ask unanimous consent that they be printed in the RECORD.

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

REPORT OF THE COMMISSION ON THE ORGANIZATION OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA

CHAPTER VI. FINANCIAL AFFAIRS

A. Budgeting

1. The Commission recommends that the District Government include long-term fiscal projections in the annual budget justifications to reflect the impact of capital projects on the operating budget, the impact of operating requirements on the need for future capital projects, financial commitments under approved retirement plans, and debt servicing for capital projects.

2. The Commission recommends that the Mayor-Commissioner direct the "mandatory" budget concept be minimized in all phases of the budget preparation, review and execution cycles, and that a policy of zero-base examination of budget requests be increasingly emphasized within agencies during preparation of the budget, and in the Central Budget Office during the review of agency budgets.

3. The Commission recommends that the Mayor-Commissioner, concurrent with the development and installation of an improved citywide accounting system, direct all District Government agencies to develop capability to produce work measurement and productivity statistics on a continuing basis as support for the budget justifications.

4. The Commission recommends that the District Government retain the current practice of financing capital projects through Treasury borrowings but that continuing and serious consideration be given to the relative merits of various other proposals for financing capital projects.

5. The Commission recommends that the revenue section of the annual budget justification assess the effect of debt servicing requirements for capital projects now under way, and assist in establishing priorities for projects in the planning stage by closely examining the ability of the District Government's revenue base to sustain the future debt service costs.

6. The Commission recommends that the Treasury Department establish interest rates for District Government borrowings at a level which will result in debt servicing costs generally comparable to those being paid by other cities, all factors being taken into consideration.

7. The Commission recommends that the Office of Management and Budget direct all Federal agencies or instrumentalities to process grant funds for any department or agency of the District Government through the District Government's Central Budget Office for centralized fund and allotment control.

8. The Commission recommends that the Mayor-Commissioner periodically report to the Congress the steps he has taken to implement his order of January 3, 1972 establishing an internal financial management improvement program consistent with Recommendation No. I-1 relating to implementing instructions and reporting procedures.

The Commission recommends Congress simultaneously consider certain steps it can take to assist the District Government in the financial management improvement program. One important step in this direction has already been taken by the Congress in enacting a multi-year Federal Payment authorization. Other suggested areas include (1) a clarification of the authorization process; (2) a relaxation of reprogramming authorities with appropriate reporting requirements and (3) the possibility of some form of joint hearings during the budget cycle.

9. The Commission recommends that the Congress clarify the authorization process as it applies to District Government appropriations by reconstituting the Appropriation Act as a combination Authorization/Appropriation Act containing specific control amounts and limitations, or by printing the control amounts and limitations in the Report of the Conferees on the Appropriation Act.

10. The Commission recommends that the Congress work toward establishing procedures for closer liaison between the four Congressional Committees concerned with District Government affairs, looking toward the undertaking, at least on a trial basis, of some form of joint Senate/House hearings to assist in simplifying the District Government's budget process. Joint hearings between the two House Committees approving substantive legislation and expenditure requests (House District Committee and House District Appropriations Subcommittee) and between the two similar Senate Committees is another approach that offers promise.

11. The Commission recommends that the Mayor-Commissioner by personal example and leadership, continue to instill a spirit of cost consciousness throughout the District Government with the goal of identifying demonstrated savings and achieving related budgetary reductions.

B. Accounting

1. The Commission recommends that the Mayor-Commissioner take such administrative action as may be required to assure that the approved statement of the District Government Accounting Principles and Standards are fully implemented in the development of a revised, integrated accounting system.

2. The Commission recommends that the Mayor-Commissioner assign to a single individual (the Comptroller) responsibility for design, implementation, and operation of a comprehensive integrated accounting system to serve the needs of all levels of management.[1]

3. The Commission recommends that the Mayor-Commissioner expedite the design and application of an integrated accounting system which will produce timely and reliable financial information at the operating level as well as the executive level and which will avoid the present duplication of effort. (The General Accounting Office has offered to cooperate during the preparation of a system design which will meet the requirements of that office.)

4. The Commission recommends that the Mayor-Commissioner assign to the Comptroller the responsibility for establishing accounting policy and communicating that policy to accounting personnel by the issuance of a currently maintained accounting manual.

5. The Commission recommends that the Mayor-Commissioner (1) issue an order to encourage the use of effective cost accounting techniques throughout the departments and agencies of the District Government, (2) direct the new Office of the Comptroller to publish criteria and guidelines to ensure the effective development and operation of cost accounting systems and (3) provide the Office of the Comptroller with a small but highly competent cost analysis staff to promote management use of cost information throughout the District Government, and to make special cost studies and analysis available to the Mayor-Commissioner and other officials.

6. The Commission recommends that the Mayor-Commissioner direct the Comptroller to (a) immediately develop and implement procedures for adequate maintenance of the real property accounts providing for the capitalization of roads, streets and bridges; (b) establish a project to determine the best way to inventory and capitalize all property, both real and personal, which is not currently reflected in the central accounts, and (c) assure that the integrated accounting system provides a positive inventory control for materials, supplies and equipment.

7. The Commission recommends that the Mayor-Commissioner take the necessary steps to develop and implement an effective reporting system which, in coordination with an integrated accounting system, will provide complete and timely financial information for operating management, for executive review and decision-making by the Mayor-Commissioner and his principal staff and line subordinates, and for the information of the public.

8. The Commission recommends that the Congress favorably consider pending legislation which would establish an open-ended authority for use of revolving funds for the District Government, amending it to (a) include criteria for establishing a monetary ceiling on capitalization of such funds, (b) provide for annual review of the fund operations to preclude excessive accumulation of profits, and (c) provide for submission of business type budgets to the Congress in accordance with the provisions of the Government Corporation Control Act, as amended, U.S. Code, sec. 31–481 et seq.

9. The Commission recommends that the Mayor-Commissioner, pending enactment of legislation, (a) develop a program and criteria for the most effective use of the new revolving fund authority and (b) plan for the accounting for such funds to become an integral part of the proposed new integrated accounting system. (See Recommendation No. VI–29.)

10. The Commission recommends that the Mayor-Commissioner, following enactment of enabling legislation, transfer both the D.C. Postage Account and the Share Computer Program operation to the new revolving fund, and that the accounting for this fund be accomplished in accordance with the new integrated accounting system.

The Commission recommends that the Mayor-Commissioner take immediate action to bring the Construction Services Fund accounting under positive control to preclude the over-obligation of "in-house" services on approved capital outlay projects.

The Commission recommends that the Mayor-Commissioner take prompt action to formalize the establishment of mail room procedures to provide for positive control over all cash receipts and the separation of all cash receipts from personnel who have control over the bills and other related documents.

C. Expenditures, revenues, and federal payment

1. The Commission recommends that the Mayor-Commissioner continue efforts to develop meaningful inter-community expenditure and revenue comparisons in conjunction with the Government Divisions, Bureau of the Census, and that the results of studies in this area be made available to the Federal Office of Management and Budget for their use in submitting recommendations concerning the level of the Federal Payment.

2. The Commission recommends that the Federal Payment should: be predictable; operate to encourage District efforts to raise move revenue; use the prior year authorization level as a base; operate to avoid wide flunctuations impacting adversely on the District's ability to plan and finance operations; and, to the extent possible, reflect the unusual costs to the District of its role as the Nation's Capital.

3. The Commission recommends that once the District is granted the authority, subject to Congressional veto, to set the rates for all existing taxes and charges, as recommended by the Commission, it should conform its overall revenue effort as closely as possible to that of comparable metropolitan centers, taking into consideration its relationship with its immediate environs.

4. The Commission recommends that the Congress continue to authorize the Federal Payment at least one fiscal year in advance.

5. The Commission recommends that the Office of Management and Budget specifically recommend and justify the amount of the authorization and appropriation for each Federal Payment. In determining such amount, the Office of Management and Budget should consider, among others, the factors bearing on the proposed Payment level as discussed on page 510, volume II.

D. Users charges

1. The Commission recommends that the Mayor-Commissioner issue an order which establishes basic policy, assigns responsibility, sets up a continuing program for the administration of user charges, throughout the District Government, and provides for periodic reviews and reports by the internal audit organization on the program's effectiveness. (A draft of a suggested directive has been provided the Mayor-Commissioner's staff.)

2. The Commission recommends that the Mayor-Commissioner (a) initiate immediately a comprehensive review of all charges and fees currently in effect to determine what revisions should be made, (b) make appropriate changes within his authority, and (c) where authority rests with either Congress or the District Council, make appropriate recommendations to those bodies.

[1] On April 5, 1972, the Mayor-Commissioner established an Office of Budget and Financial Management with broad authority to act on improvements in financial management. (See Appendix, VI–9, p. 159.)

BLACK MEDICS GAIN TOP POSTS IN CEDAR RAPIDS HOSPITAL

Mr. CLARK. Mr. President, the residents of Cedar Rapids, Iowa, are very proud of their fine medical facilities, as well they should be.

The largest of the city's medical centers is St. Luke's Methodist Hospital, and some of the hospital's top personnel were recently featured in a story in Ebony magazine.

The story describes the rise of four men, all black, to top positions at St. Luke's, a hospital located in a city where few members of racial minorities reside.

These men—Dr. Percy G. Harris, president of the medical staff; Dr. Montague S. Lawrence, chief of surgical services and chairman of the credentials committee; Dr. Kingsley B. Grant, chief pathologist and director of laboratory services; and Vernon Smith, supervisor of special chemistry—are a credit to their city. Their accomplishments have not come easily, and they have had to work hard to overcome the traditional barriers that exist for blacks in education, jobs, and housing. Their success is largely the result of their diligence and talents, as noted in the story:

Professionally, there seems to be no mystery about why and how three black doctors, two of whom were born in Mississippi and the other in Belize, came to command so much respect and hold so much authority in the city like Cedar Rapids. The answer, according to just about everyone at St. Luke's, is that the three doctors and Mr. Smith are very, very good at what they do.

As a resident of the Cedar Rapids area, I know the high standing in which these men are held in the community. I ask unanimous consent that the article from Ebony magazine of June, 1976, be printed in the RECORD.

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

BLACK MEDICS IN CONTROL

TALENTED MEDICAL MEN HOLD KEY POSITIONS IN MIDWEST HOSPITAL

The last place most people would expect to find a group of high-powered, black, medical professionals is Cedar Rapids, Iowa, a relatively small, rural-oriented, politically conservative urban community of approximately 110,000 people (99 per cent of whom are white); yet four of the most influential professionals at St. Luke's Methodist Hospital, the city's largest medical center, are black. Dr. Percey G. Harris is president of the hospital's 216-member medical staff; Dr. Montague S. Lawrence is chief of surgical services and chairman of the credentials

committee; Dr. Kingsley B. Grant is chief pathologist and director of laboratory services; and Vernon Smith is the biochemist and supervisor of special chemistry. Another black physician, Dr. Reid E. Motley, is also on the staff at the 580-bed facility but holds no other position. In all, there are four black doctors in the city (Smith has a master's degree in organic chemistry).

Perhaps the achievements of these men wouldn't seem so extraordinary if it were not for two widely held perceptions of places like Cedar Rapids—places located in the food-producing heartland of the nation. For whatever reason and whether it is a correct perception or not, many people consider Middle America a code name for bigotry and intransigent opposition to progressive social reforms. In other words, many black folk think of Cedar Rapids as enemy territory. The other popular perception of mid-America has to do with folkloric fantasies, nostalgia and cultural myths—the frontier, reverence for the land, rock-ribbed faith in the simple virtues like honesty, thrift and loyalty. The truth is probably more complicated than either description. Certainly, the achievements and experiences of the four black movers and shakers at St. Luke's do not fit either stereotype.

Of the four, only Dr. Harris and Smith have geographical reasons for being in Cedar Rapids. Smith was born in the city, and Dr. Harris, though born in Durant, Miss., grew up in Waterloo, Iowa, not far from Cedar Rapids. Grant and Lawrence, however, had to go out of their way to get to Eastern Iowa.

Dr. Lawrence was born in Laurel, Miss., and received his undergraduate degree from Alcorn State University in Lorman, Miss., and his M.D. from Meharry Medical College in Nashville, Tenn. In 1953, however, when he emerged from the armed services, ready to begin his residency training, there were very few places in the country able to train a physician interested in thoracic and cardiovascular surgery and even fewer willing to admit a black doctor. The University of Iowa at Iowa City, about 20 miles south of Cedar Rapids, was an exception. Dr. Lawrence says he remained on the medical school staff following his residency and was eventually appointed full professor. Although he still teaches at the University, he moved to Cedar Rapids in 1971 and entered private practice. The move, he explains, was a logical one, because most of his patients at the University live in the area.

Dr. Grant, a Howard University graduate from Belize (formerly British Honduras) in Central America, came to Cedar Rapids in 1959 to begin his internship. He says his application to St. Luke's was a matter of economics. "In looking around for a place to do my internship," he recalls, "St. Luke's was included just by chance, because at the time I was looking, hospitals weren't paying very much and St. Luke's had better salaries." He says he was unaware that Dr. Harris was in Cedar Rapids when he applied, though he had known him at Howard. After applying, however, Harris "wrote me and told me that he was in the area and that he had done an internship (at St. Luke's) two years before and had been satisfied with it (the hospital)."

According to Dr. Harris, he was the first black intern at St. Luke's, but only the second in the City. Smith joined St. Luke's laboratory staff in 1956 after receiving his master's degree from the University of Iowa and battling polio for four years.

Smith is employed by the hospital and works under Dr. Grant, who has a contractural arrangement with the hospital which allows him to engage in private practice. Smith's specialty is toxic substances (poisons). Dr. Grant has supervisory control of all laboratory services at the hospital. As a pathologist, however, his function is to interpret and diagnose the changes caused by disease in tissues—i.e., to determine whether suspected cancerous tissue is malignant or benign.

Doctors Harris and Lawrence have no official tie to the hospital. "We are in private practice," Dr. Harris explains, "and we have privileges to practice at St. Luke's—it so happens that all of the physicians in this community practice at both hospitals. But aside from that, we have no direct tie or link with the hospital." The president of the medical staff, he says, and the chief of surgical services are selected by their colleagues to serve for a one-year period. The chairman of the credentials committee, Dr. Lawrence adds, is appointed by the president of the medical staff. Among its many responsibilities, according to Dr. Lawrence, the credentials committee decides who may enter or practice at St. Luke's. The committee, he says, also has a degree of disciplinary authority. The president of the medical staff, Harris explains, "is basically responsible for the professional conduct of the professional staff of the hospital."

All four men agree that Cedar Rapids took some getting used to, but not much. Of the four, Dr. Harris had the hardest go of it. "At first," he recalls, "I didn't get a lot of help from other physicians in this community. Basically, without the help of one man, Dr. Maurice Estes, I might not have survived in Cedar Rapids." Professionally, however, he says, "I could count on one hand the number of known instances of racial resentment I've encountered."

Dr. Lawrence and Dr. Grant agree, and Dr. Harris adds: "The disadvantages have not been very great. I've learned to like Cedar Rapids very much and sometimes I've said, facetiously of course, that I like the city so well that if God would make a deal with me I'd rather stay here than take a chance on heaven."

Smith has a theory about why it has been so relatively easy for black doctors to establish themselves in the basically conservative and overwhelmingly white community of Cedar Rapids: "I think we have to recognize that Cedar Rapids is an economically sound community with some good people living here, otherwise the community wouldn't thrive and do as well as it does. Consequently, if you have something to offer—I like the term marketable commodities—and certainly a physician, if he's good, has a marketable commodity, the make up of this community is such that it will recognize what you have to offer and utilize it."

It has not all been smooth sailing, however. "We've had our demonstrations," according to Dr. Grant, who served as chairman of the city's Human Relations Commission for two-and-a-half years. "They were small, it is true, but there were demonstrations and they brought to the attention of the white community the fact that things were not as the British would say 'approximately all right.' For instance, it has only been in the past two or three years that blacks have been shown homes regardless of the locale."

Dr. Harris has good reason to remember that "one of the biggest racial disputes" involved the property on which he built his home. The property, he says, was sold to him by the church he belongs to, "and the sale of that property to me nearly split that church. But, again, that was a long time ago, and there were people who were willing to take a stand. Enough, in fact, to make a difference."

Harris, who is the only medical examiner Linn County has ever had, explains that "one of the reasons why things have been fairly easy here is that there are so few blacks in the city—the small number does not pose such a threat. But there is another reason, which is perhaps a bit more intangible. It seems to me that in Cedar Rapids there are more than enough people who really care about their fellow citizens."

Professionally, there seems to be no mystery about why and how three black doctors, two of whom were born in Mississippi and the other in Belize, came to command so much respect and hold so much authority in a city like Cedar Rapids. The answer, according to just about everyone at St. Luke's, is that the three doctors and Mr. Smith are very, very good at what they do.

THE BISHOPS' CALL FOR PEACE AND SELF-DEVELOPMENT OF PEOPLES

Mr. McGOVERN. Mr. President, as we know too well, for many years the Vietnamese struggled and suffered for national independence. They have now achieved that goal, but they still face the mammoth internal task of physical reconstruction and political, economic and cultural consolidation.

During the war, the United States was miscast in a disgracefully large and heavy-handed role in that conflict. But now that the war is over and the healing and rebuilding have begun, is there not a more worthwhile, more appropriate role for the United States to play?

The mistake of our initial involvement in the war should not have rendered us forever hostile to the very people for whom we were, at one time, not so long ago, willing to sacrifice so much. A mission for the United States in Vietnam does still exist. If we ever truly believed in unity, self-determination and self-development for the Vietnamese people then it seems to me that now is the time to prove it.

Last spring my good friend James Armstrong, Methodist Bishop for the Dakotas and president of the United Methodist Board of Church and Society, led a delegation of religious and peace group leaders to Vietnam. He saw firsthand, as I did last January, the spirit and determination of the Vietnamese people who are working hard to repair the division and the destruction caused by 20 years of war. But he also saw, the desperate need of these people for help and support in their efforts if they are to succeed.

In May of this year, at the General Conference of the United Methodist Church held in Portland, Oreg., Bishop Armstrong delivered the Bishops' Call for Peace and Self-Development of Peoples. In his remarks, he focused on the situation in Vietnam and he urged the United States to demonstrate our own spiritual vitality and hope in a new life for others by developing programs of healing, reconciliation and reconstruction for Vietnam. We, he said, "who paid for that war—must—be willing, in the name of Christ, to help pay for the peace.

I agree with Bishop Armstrong. If we are to be a nation possessing the wisdom, sensitivity and compassion for which we would like to be known, then some degree of U.S. assistance to Vietnam, conditioned on the comprehensive accounting of Americans still listed as missing in action, would be the most

positive and logical response to the end of the war.

Mr. President, I ask unanimous consent that the report of Bishop James Armstrong to the 1976 General Conference of the United Methodist Church be printed in the RECORD.

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

THE BISHOPS' CALL FOR PEACE AND THE SELF-DEVELOPMENT OF PEOPLES

Last Sunday, April 25, 1976, after twenty years of ruinous, tragic struggle, the people of Vietnam voted for the reunification of their land. Vietnam is a continuing embarrassment to us—as a nation and a church. We wish it would go away. We try to ignore it; we try to forget it. But the reality of the self-development dreams of 45,000,000 people in Southeast Asia is with us yet. Perhaps if, for the moment, we try to see Vietnam as a microcosmic view of the "enemies" and the "sources" of peace, we will better understand the implications of the Bishops' Call for Peace and the Self-Development of Peoples.

(Let me insert a parenthetical word of explanation and apology to those who are delegates or visitors from other nations. In speaking of Vietnam I will be specific and direct, for without such honesty any talk of Vietnam in retrospect is meaningless. Therefore, I will speak as a citizen of the United States and will make repeated references to the moods and policies of my own country—a country which I love even as you love yours.)

VIETNAM AND THE "ENEMIES OF PEACE"

"Economic exploitation" was listed as an enemy of peace by the Bishops' Call. The clash of economic systems provided the real reason for U.S. military involvement in Vietnam. Ignoring the well-being of the people, we argued that the struggle being waged was between capitalism and communism. We had to stem the communist tide, we said; we had to keep the dominoes from toppling.

The people were not the object. Some two million of them were killed between 1954 and 1974. More than 80 per cent of the casualties were civilian.

Freedom was not the object. The Saigon government, from beginning to end, was a corrupt military police state.

The culture was not the object. The culture was nearly destroyed. Peasants were torn from their villages, from their sacred lands and traditional graveyards. Families were ripped apart or flooded into already overcrowded cities. Children became beggars. Girls became prostitutes. Confucian family concepts, Buddhist pacifism and the Christian love ethic were all flaunted by the brute irrationality of hatred and violence.

A young attorney, a member of the National Assembly of South Vietnam, told a group of us in Saigon in 1969: "The best thing you can do for us is to save us from your salvation."

If not for freedom, if not to preserve traditional values, if not for the sake of the people involved, why were we there? To serve the political and economic interests of the United States of America.

"Nation worship" was listed as an enemy of peace by the Bishops' Call. The "national interest" has been used to justify everything, in this country, from McCarthyism to the Bay of Pigs, from the criminal misadventures of the FBI and the CIA to Watergate—to Vietnam.

"But, of course," say certain of our leaders. "Domestic practice and foreign policy must be based on the national interest. That's the way it's always been. That's the way it must continue to be." But think for a moment! If we have a right to exalt and make secure our nation at the expense of others, then so do 150 other nations across the face of the globe. The law of the jungle is legitimized. It rules out any possibility of international law and international order. It makes inevitable the violent chaos of international anarchy. And all of this in a moment of time when human survival depends upon a sense of global community, mutual responsibility and the development of structures of interdependence. Nation worship, whether in Russia or Rhodesia, China or Chile, Israel or Syria—or the United States of America—contains the seeds that in a near and altogether predictable future can destroy us all.

"Racism" was listed as an enemy of peace by the Bishops' Call. At its best, war brutalizes everyone involved. The Vietnamese were "gooks" and "slants"; they were not seen as persons. Read the testimony surrounding the My Lai massacre. Human beings were not murdered; they were "wasted." Babies and young mothers and helpless old men were not people—not once did Lt. Calley refer to them as "people"—they were "the enemy." And always the words were there: "gooks," "slants," "slants," "gooks,"—racism.

"Continued reliance upon military violence" was called an enemy of peace by the Bishops' Call.

In 1954 the Geneva Agreement called for a temporary division of Vietnam. Within two years elections would be held over *all* the country to choose the leadership for a united Vietnam. That was twenty years ago. Those elections were never held. Ngo Dinh Diem, the ruler of South Vietnam who was living in the U.S. when the Geneva Agreements were signed, would not permit them. Our State Department backed him to the hilt. Why? Because both Diem and John Foster Dulles knew that an election in 1956 would have brought Ho Chi Minh an overwhelming landslide victory. And we talk about the self-determination of peoples.

Gareth Porter in his significant new book, *A Peace Denied*, points out how time after time after time, when negotiations were in progress and political solutions seemed within reach, we chose the military alternative instead. In January 1973, when the peace agreements were signed, we received less than we could have in 1969; far less than we could have in 1954. And that after twice as much bomb tonnage had been dropped on a people as in all previous wars combined. During the six years of the Battle of Britain, Germany dropped 80,000 tons of bombs on England. During the handful of days of the so-called "Christmas bombing" we dropped more than 90,000 tons of bombs on Vietnam.

Early this month I stood on the site of the Bach Mai Hospital in Hanoi. On December 22, 1972, one hundred bombs were dropped on the hospital. It was destroyed. Today, partially rebuilt, it stands as a grim reminder of the fact that modern warfare is no respecter of persons—it is as indiscriminate as it is insane. Certainly, in Vietnam, it was born—and in the end it proved nothing except its own futility.

You will remember, the Call began by saying that "blind self-interest" is an enemy of peace. That included us all. Reference was made to "greed and cowardice, silence and truculence, arrogance and apathy"—to sin. In analyzing the tragedy of Vietnam, it is not enough to blame economic, political and military institutions, it is not enough to blame opposing ideologies or superpowers vying for supremacy. We are involved. Those very traits we have referred to—

Greed—cowardice—silence when voices should be heard—arrogance—indifference—blind self-interest—are expressed in the natural depths of our own beings. Even as nations need spiritual renewal so do we, and we cannot expect nations to change unless our own attitudes, values and life-styles are converted. Whether looking at an international disgrace like Indochina, or a national shame like Watergate, or our most private pitfalls, we need to know the hope and the power and the promise of new birth.

VIETNAM AND THE "SOURCES OF PEACE"

We have talked about the enemies of peace. As we take this microcosmic view of Vietnam, where do we see the "sources" of peace.

"Liberation"—the genuine self-development of peoples—must supplant continuing patterns of exploitation.

Vietnam is not a perfect society today. No thoughtful person would claim that. However, Vietnam has been returned to the hands of the Vietnamese. For a thousand years they defended themselves against the Chinese. Then the outsiders were the French. Then the Americans. Now the aliens are gone and Vietnam is left with a legacy of overwhelming problems: unemployment, a lack of food, disease epidemics, crippled transportation and communication systems, and the challenge of building a new and equitable society.

When Ho Chi Minh emerged from the jungles at the end of World War II as the socialist leader of a nationalist movement, he borrowed heavily from our own Declaration of Independence in writing a Constitution. Even as we have much to learn from Vietnam about sacrifice and collective responsibility, so, too, can they learn much from us about individual freedom. Perhaps, in a new atmosphere of humility and mutual respect we will be willing to learn from one another. As freedom and justice, as individual rights and collective responsibility are joined, liberation becomes a reality.

Wherever one travels in Vietnam today, one sees this quotation from Ho Chi Minh emblazened against the sky: "There is nothing more precious than independence and freedom." Let us pray that this war-ravaged people may find them both.

Another source of peace? Racial justice.

Look about you in this assembly. Asia is here. Europe is here. Africa is here. South and North America are here. The islands of the sea are here. Black, brown, red, yellow, white—all are one in the Creator's sight. No one here would presume to say he or she is inherently superior to anoher. In Christ there is no East, no West, no Jew, no Arab, no male, no female, no communist, no capitalist, no black, no white, no "Jap", no "spick", nor "gook", nor "slant"—for *all* are one.

For years idealists and activists among us have been singing: "we shall overcome, someday." But, time is running out—that "someday" of racial justice must soon come if peace is to be made real.

Another source of peace? The demilitarization of our psychology, of our economy, of our approach to fundamental human problems.

How long, O Lord, how long, will we permit military budgets to soar while people programs suffer?

How long, O Lord, how long, will we permit the tentacles of a military/industrial network to ensnare and stifle the free and peace-loving instincts of the Republic?

How long, O Lord, how long, will we train and support military dictatorships around the world, arming virtually every side of every war, while paying lip service to human rights and impartial justice?

How long, O Lord, how long, will we allow the most nationalistic and militaristic of our presidential candidates to set the ground rules for foreign policy debate in an election year—a debate that becomes a disgrace in the light of international need and global reality?

What right have we as a people to go through the agony of Vietnam if we fail to learn and apply the harsh lessons therefrom? Somehow we must become convinced that the true glory of this republic rests in something other than a battle hymn!

Another source of peace? Let's be specific: Self-development programs, humanitarian

aid programs, reconstruction programs that will help heal the wounds of the past and build for a more secure and just tomorrow.

Following World War II the United States helped rebuild vanquished nations. Germany and Japan, totalitarian countries responsible for crimes against humanity, were granted massive economic and technological assistance that helped lift them from the ruin of their defeat. For the Allies, at least, the issues in that war seemed clear. Right was right and wrong was wrong—and right, we felt, was clearly on our side.

Not so in Vietnam. The issues were not clear. The more we learned about Indochina, the more confused we became. The United States was sharply divided. A sense of shame followed our confusion. Yet now, in the aftermath of that sort of war, the United States has withheld diplomatic recognition, vetoed United Nations membership, imposed a trade boycott and steered clear of logical steps that would lead to the normalization of relationships.

Apparently, the humiliation was too great. How could a tiny, peasant people; a hardy, gentle people stave off the economic and technological power, the air and naval power, the man-power of a "super-power"? We don't know, but they did! So today we would rather not talk about it; rather not think about it. Rebuild Vietnam? We don't seem ready yet to extend our traditional response to a devastated people (their spirit is not broken and they were not defeated). We don't seem ready yet to assume our moral obligation.

In February, 1973, in private correspondence now made public, President Nixon promised Vietnam $3.25 billions of reconstruction aid with no conditions, with no political strings attached.

In the Paris Agreements Articles 8 and 21 lead naturally to the "normalization" of relationships referred to in Article 22. Article 8 deals with the "missing in action" question and it must be dealt with. The Congressional committee under the chairmanship of Mississippi's "Sonny" Montgomery is dealing with it. And Congressman Montgomery, a so-called "hawk" during the war, insists that we must respond to Article 21, calling for significant reconstruction aid, if we expect Vietnam to respond further to the MIA proviso. Montgomery, who with his committee has recently visited Vietnam, has also called for the lifting of the embargo and the normalization of ties between the two lands.

Surely on the basis of past precedent (remember World War II), international morality, and Christian conscience, the government of the United States has no choice but to offer massive assistance to a people devastated by thirty years of continuous warfare. We bore 80% of the French costs during the French-Indochinese War. We paid the full tab for the twenty years of ruinous violence that followed. American dollars paid for the carpet-bombing and napalm, for the levelling of forests and the chemical rape of countless rice paddies and sweet potato fields; for the irreparable mutilation of a land and the indescribable sufferings of a people. We paid for the war. Now, in the name of God and for the sake of humanity, let us help pay for the peace! "Peace with honor"? There will be no legitimate claim to national honor for us this side of a significant role in the reconstruction of a ravaged Vietnam.

Our churches have a role to play in this. Through UMCOR and Church World Service, through the Fund for Reconciliation and Reconstruction in Indochina of the World Council of Churches and the humanitarian aid programs of Friendshipment, we will be called upon to help with food, with the restoration of agriculture and the rural base, with resources to help in the development of indigenous industries, with medical supplies and educational equipment, and in a thousand gestures designed to symbolize reconciliation and friendship.

Toward the end of the General Conference in 1972 the Council of Bishops asked me to leave Atlanta and attend the 3rd United Nations Conference on Trade and Development being held in South America. There I represented the Bishops' Call for Peace and the Self-development of Peoples. During the last days of this General Conference I have been asked to chair a press conference and enter into conversation with Congressional leadership in Washington to plead for a humanitarian response to the urgent needs of Vietnam—again as a representative of the Bishops' Call.

These activities symbolize, in some small way, the relationship of a legislative body like this General Conference to a real world out there where exploitation and tyranny and suffering and war continue to plague God's created order.

For just as the enemies of peace must be personalized, so must the sources of peace. As the Bishop's Call said:

"New life based upon an honest awareness of past failures and sins is a requisite for peace . . . If God's conditions for peace include penitence and new life, they can also be summarized with one word: LOVE . . . Freedom is love's expression. Justice is love's demand. Believing that those who live by the sword will perish by the sword, and that those who find their security in nuclear stockpiles may well be destroyed by that weaponry, love seeks to overcome evil with good. God was in Christ reconciling the world to himself . . . he has entrusted us with the message of reconciliation."

We began by saying that Vietnam offers a microcosmic study of the enemies and sources of peace. Let me close with a note of hope and promise drawn from the pen of a Vietnamese poet:

"I would like to say some simple things,
Simple as a field of rice or sweet potatoes,
Or a silent early morning.
Please let me breathe again the air of yesterday,
Let children frolic in the sun
With kites over bamboo bridges.

"Just a narrow little space will be enough
For rows of bamboo trees around it;
And leave a little space for an entrance,
A place for a girl and boy to tell the story of the moon,
For old women with babies to gather and chatter.

"Please give me back these things I've mentioned
A story as simple
As a bird's unbroken song,
As a mother, as a baby,
As the life of long ago the poets used to tell . . ."—(Hoang Minh Nhan)

RECONCILIATION AND RECONSTRUCTION IN INDOCHINA

Only the General Conference speaks officially for The United Methodist Church. This resolution was adopted by the 1976 General Conference meeting in Portland, Oregon, May 1976.

The wounds caused by the war in Vietnam will be long in healing. Many persons may be tempted to ignore or forget, to avoid the burden of remembering. But Jesus Christ is the healer of broken lives, divided peoples and devastated nations. Those who follow Him are called to help heal the wounds left from that war. One mark of our own spiritual vitality and of our hope in a new life for others is our sensitivity in dealing with the human concerns that still remain. This, likewise, will be a measure of the spiritual renewal of the nations involved.

The United States poured our tremendous wealth in the course of the war which destroyed villages, ravaged farm lands and resulted in death, suffering, and homelessness for millions of human beings in Indochina as well as thousands from the United States and other nations. Will the many who paid for that war be willing, in the name of Christ, to help pay for the peace?

Therefore, we urge a program of healing, reconciliation and reconstruction which would include:

1. The provision of humanitarian aid for such purposes as the restoration of agriculture and village life, indigenous industries, medical and educational facilities, and supplies, through the efforts of Christian churches and related agencies, including UMCOR, Church World Service and the Fund for Reconciliation and Reconstruction in Indochina of the World Council of Churches and the humanitarian aid programs of Friendshipment.

2. The normalization of relations with Vietnam including diplomatic recognition, trade, and membership in the United Nations.

3. The participation of the United States government, as in the case of Japan and Germany following World War II, in assisting the reconstruction of Vietnam by economic aid, preferably through international agencies.

4. The completion of other unfinished business: information on the missing in action and the possible recovery of their remains, and a program of broad amnesty, with the church continuing a ministry to the families of all youth who were victims of the war.

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

WATERGATE REORGANIZATION AND REFORM ACT OF 1976

The PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 495, which will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 495) to establish certain Federal agencies, effect certain reorganizations of the Federal Government, and to implement certain reforms in the operation of the Federal Government recommended by the Senate Select Committee on Presidential Campaign Activities, and for other purposes.

The PRESIDENT pro tempore. Under the previous order, only title I is open to amendment, except for amendments to be offered by the Senator from Nebraska (Mr. HRUSKA) to titles II and III.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the calendar under new reports.

There being no objection, the Senate proceeded to the consideration of legislative business.

The PRESIDENT pro tempore. The nominations will be stated.

NATIONAL MEDIATION BOARD

The assistant legislative clerk read the nomination of David H. Stowe, of Maryland, to be a member of the National Mediation Board.

The PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

The assistant legislative clerk proceeded to read sundry nominations in the National Commission on Libraries and Information Science.

Mr. MANSFIELD. I ask unanimous consent that the nominations be considered en bloc.

The PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

Mr. MANSFIELD. Mr. President, I request the President be notified.

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

(All nominations confirmed today are printed at the end of the Senate proceedings.)

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

WATERGATE REORGANIZATION AND REFORM ACT OF 1976

The Senate continued with the consideration of the bill (S. 495) to establish certain Federal agencies, effect certain reorganizations of the Federal Government, and to implement certain reforms in the operation of the Federal Government recommended by the Senate Select Committee on Presidential Campaign Activities, and for other purposes.

UP AMENDMENT NO. 214

Mr. RIBICOFF. Mr. President, I send to the desk an amendment in the nature of a substitute for title I of S. 495, the Watergate Reform Act of 1976, as reported, and ask for its immediate consideration.

The PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Connecticut (Mr. RIBICOFF) proposes an unprinted amendment (No. 214) in the nature of a substitute.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

Mr. RIBICOFF's amendment is as follows:

Strike all from line 17 on page 37, through and including line 22 on page 53 and insert in lieu thereof the following:

TITLE I—AMENDMENTS TO TITLE 28, UNITED STATES CODE

REORGANIZATION OF THE DEPARTMENT OF JUSTICE

SEC. 101. (a) Title 28, United States Code, is amended by adding after chapter 37 the following new chapter:

"Chapter 39—OFFICE OF SPECIAL PROSECUTOR AND OFFICE OF GOVERNMENT CRIMES AND OFFICE OF PROFESSIONAL RESPONSIBILITY

"Sec.
"591. Special Prosecutor: Appointment and Removal
"592. Jurisdiction
"593. Authority
"594. Office of Government Crimes
"595. Jurisdiction
"596. Reporting
"597. Disqualification of Officers and Employees of the Department of Justice
"598. Office of Professional Responsibility

"§ 591. Special Prosecutor: Appointment and Removal

"(a) There is established within the Department of Justice an independent Office of Special Prosecutor which shall be headed by a Special Prosecutor appointed by the President, by and with the advice and consent of the Senate.

"(b) The Special Prosecutor shall be appointed for a term of three years and shall be compensated pursuant to Level II of the Executive Schedule, section 5313 of Title 5, United States Code. No person shall serve as Special Prosecutor for more than a single term.

"(c) A person shall not be appointed Special Prosecutor if he has at any time during the five years preceding such appointment held a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of, a candidate for any elective Federal office. The confirmation by the Senate of a Presidential nomination of a Special Prosecutor shall constitute a final determination that such officer meets the requirements of this subsection.

"(d) A Special Prosecutor shall only be removed by the President for extraordinary improprieties, for malfeasance in office, or for any conduct constituting a felony. An action may be brought in the United States District Court for the District of Columbia to challenge the action of the President under this subsection by seeking reinstatement or other appropriate relief. In the event of any removal, the President shall promptly submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report describing with particularity the grounds for such action. The Committees shall make available to the public such report, except that each Committee may, if necessary to avoid prejudicing the legal rights of any individual, delete or postpone publishing such portions of the report, or the whole report, or any name or other identifying details.

"(e) The special prosecutor shall report no less than annually to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives and shall include in such reports information concerning his relationship with the Attorney General, United States Attorneys, other agencies of government, the degree of independence exercised under section 593, the types and numbers of matters of which he has declined jurisdiction under section 592(b) and such other matters as he deems appropriate. However, the report shall not include any information which might impair or compromise an ongoing matter, or which the special prosecutor determines would constitute an improper invasion of personal privacy or other improper disclosure.

"§ 592. Jurisdiction

"(a)(1) The Special Prosecutor shall have jurisdiction to investigate and prosecute possible violations of Federal criminal law by a person who holds or who at the time of such possible violation held any of the following positions in the Federal Government: (i) President, Vice President, Attorney General, or Director of the Federal Bureau of Investigation; (ii) any position compensated at a rate equal to or greater than level I or level II of the Executive Schedule under sections 5312 of 5313 of Title 5, United States Code, (iii) Member of Congress, or (iv) any member of the Federal judiciary.

"(2) The Attorney General shall promptly refer to the Special Prosecutor for investigation and, if warranted, prosecution any information, allegations or complaints relating to any violation specified in paragraph (1). In addition, the Attorney General shall promptly refer to the Special Prosecutor for investigation and if warranted prosecution any matter where the Attorney General determines that in the interest of the administration of jusice it would be inappropriate for the Department of Justice (other than the Office of Special Prosecutor) to conduct such investigation or prosecution.

"(b) The Special Prosecutor may in his discretion decline to accept referrals under subsection (a)(2) of this section. The Special Prosecutor may decline to assert jurisdiction under subsection (a)(1) of this section when the matter over which he has jurisdiction is a peripheral or incidental part of an investigation or prosecution already being conducted elsewhere in the Department of Justice, or when for some other reason he determines it would be in the interest of the administration of justice to permit the matter to be handled elsewhere in the Department: *Provided, however,* That any such declination shall be accompanied by the establishment of such procedures as the Special Prosecutor considers necessary and appropriate to keep him informed of the progress of the investigation or prosecution as it relates to such matter; and *Provided further,* That the Special Prosecutor may at any time assume responsibility for investigation and prosecution of such matter. If the Special Prosecutor declines to accept a referral under subsection (a)(2) or declines to assert jurisdiction under subsection (a)(1) he shall submit his reasons for taking such action in writing to the Attorney General.

"§ 593. Authority

"(a) The temporary special prosecutor shall have, within the jurisdiction specified by section 592 over matters which he has assumed responsibility, full power and independent authority, subject only to the power of the President, under section 591(d) to—

"(1) conduct proceedings before grand juries and other investigations;

"(2) participate in court proceedings and engage in any litigation, including civil and criminal matters, as he deems necessary;

"(3) appeal any decision of a court in which he is a party;

"(4) review all documentary evidence available from any source;

"(5) determine whether or not to contest the assertion of any testimonial privilege;

"(6) receive appropriate national security clearances and, if necessary contest in court, including where appropriate participation in in camera proceedings, any claim of privilege or attempt to withhold evidence on grounds of national security;

"(7) make applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory

requirements, or for warrants, subpenas, or other court orders, and for purposes of sections 6003, 6004, and 6005, of title 18, United States Code, as amended, the Special Prosecutor may exercise the authority vested in a United States Attorney, or the Attorney General;

"(8) inspect, obtain, or use the original or copy of any tax return, in accordance with the applicable statutes and regulations, and for purposes of section 6103, of title 26, United States Code, as amended, and the regulations thereunder, a Special Prosecutor may exercise the powers vested in a United States Attorney or the Attorney General;

"(9) initiate and conduct prosecutions in any court of competent jurisdiction, frame and sign indictments, file information, and handle all aspects of any case in the name of the United States;

"(10) communicate with, and appear before, and provide information to appropriate Congressional committees;

"(11) exercise all other powers as to the conduct of criminal investigations and prosecutions which would otherwise be vested in the Attorney General or the United States Attorneys under the provisions of chapters 31 and 35 of title 28 of the United States Code, as amended, and the regulations thereunder, coordinate and direct the activities of all Departments of Justice personnel, including United States Attorneys, and act as attorney for the Government in such investigations and prosecutions except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 3516 of title 18, United States Code.

"(b) The Special Prosecutor shall have power to appoint, fix the compensation, and assign the duties of such employees as he deems necessary, including but not limited to investigators, attorneys, and part-time consultants, without regard to the provisions of title 5, United States Code, governing appointments in the competitive civil service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title. The Department of Justice shall provide assistance to the Special Prosecutor which shall include but not be limited to, affording to the Special Prosecutor full access to any records, files, or other materials relevant to matters within his jurisdiction, providing to the Special Prosecutor the resources and personnel required to perform his duties, and use by the special prosecutor of the investigative and other services of the Federal Bureau of Investigation.".

"(c) The Special Prosecutor may from time to time make public such statements or reports as he deems appropriate. The Special Prosecutor may present reports, statements, or recommendations to the Congress, the President or the Attorney General.

"(d) Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making presentations to any court as to issues of law raised by any case or appeal.

"§ 594. Office of Government Crimes

"(a) There is established within the Department of Justice an Office of Government Crimes, which shall be headed by a Director appointed by the President by and with the advice and consent of the Senate. The Director shall report directly to the Attorney General on a regular basis when he deems it necessary, and shall report to any other person the Attorney General directs. The Attorney General shall determine the organization placement of the Office within the Department.

"(b) A person shall not be appointed Director of the Office of Government Crimes if he has at any time during the five years preceding such appointment held a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of, a candidate for any elective Federal office. The confirmation by the Senate of a Presidential nomination of a Director shall constitute a final determination that such officer meets the requirements of this subsection.

"§ 595. Jurisdiction

"(a) The Attorney General shall, except as to matters referred to the Special Prosecutor pursuant to section 592 of this Chapter, delegate to the Office on Government Crimes jurisdiction of (1) criminal violations of Federal law related directly or indirectly to his Government position, employment, or compensation, by any individual who holds or who at the time of such possible violation held a position as an elected or appointed Federal Government officer, employee or special employee; (2) criminal violations of Federal laws relating to lobbying, conflicts of interest, campaigns, and election to public office committed by any person except insofar as such violations relate to matters involving discrimination or intimidation on the grounds of race, color, religion or national origin; (3) the supervision of investigations and prosecutions of criminal violations of Federal law involving state or local government officials or employees; and (4) such other matters as the Attorney General may deem appropriate.

"(b) Jurisdiction delegated to the Office of Government Crimes pursuant to subsection (a) of this subsection may be concurrently delegated by the Attorney General to. or concurrently reside in, the United States Attorneys or other units of the Department of Justice. In the event of such concurrent delegation, the Director shall supervise the United States Attorneys or other units in the performance of such duties. This section shall not limit any authority conferred upon the Attorney General, the Federal Bureau of Investigation, or any other department or agency of government to investigate any matter.

"§ 596. Reporting

"At the beginning of each regular session of the Congress, the Attorney General shall report to the Congress on the activities and operation of the Office of Government Crimes for the preceding fiscal year.

"Such report shall specify the number and type of investigations and prosecutions subject to the jurisdiction of such unit and the disposition thereof but shall not include any information which would impair an ongoing investigation, prosecution, or proceeding, or which the Attorney General determines would constitute an improper invasion of personal privacy.

"§ 597. Disqualification of Officers and Employees of the Department of Justice

"The Attorney General shall promulgate rules and regulations which require any officer or employee of the Department of Justice, including a United States attorney or a member of his staff, to disqualify himself from participation in a particular investigation or prosecution if such participation may result in a personal financial, or partisan political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

"§ 598. Office of Professional Responsibility

"(a) There is established within the Department of Justice an Office of Professional Responsibility, which shall be headed by a Counsel on Special Responsibilitiy appointed by the Attorney General. The Counsel shall be subject to the general supervision and direction of the Attorney General and shall report directly to the Attorney General or, in appropriate cases, to the Deputy Attorney General or the Solicitor General.

"(b) Except as to matters which are to be referred to the Special Prosecutor under Section 592 of this Chapter, the Counsel on Professional Responsibility shall be responsible for reviewing any information or allegation presented to him concerning conduct by an employee of the Department of Justice that may be in violation of law, of Department Regulations or orders, or of applicable standards of conduct, and shall undertake a preliminary investigation to determine what further steps should be taken. On the basis of such investigation the Counsel shall refer the matter to the appropriate unit within the Department or shall recommend to the Attorney General or, in appropriate cases, to the Deputy Attorney General or Solicitor General, what other action, if any should be taken. The Counsel shall undertake such other responsibilities as the Attorney General may direct.

"(c) Nothing in this section shall derogate from the authority of internal inspection units of the Department of Justice and the heads of other units to receive, investigate and act upon information or allegations concerning unlawful or improper conduct."

(b) The analysis of part II of title 28, United States Code, is amended by adding after the item following chapter 37 the following new item:

"39. Office of Special Prosecutor, Office of Government Crimes, and Office of Professional Responsibility.....591".

(c) (1) Section 5315 of title 5, United States Code, is amended by adding "§ (105) Director of Office of Government Crimes."

(2) Section 5313 of title 5, United States Code, is amended by adding "Special Prosecutor".

SEPARABILITY

SEC. 102. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 103. There are authorized to be appropriated for each fiscal year through September 30, 1981, such sums as may be necessary to carry out the provisions of this title.

Mr. RIBICOFF. Mr. President, I point out that this amendment in the nature of a substitute is being offered in behalf of myself, the Senator from Illinois (Mr. PERCY), the Senator from New York (Mr. JAVITS), the Senator from Connecticut (Mr. WEICKER), and the Senator from Massachusetts (Mr. KENNEDY), and they should be considered as coauthors and cosponsors of the amendment.

This amendment is the product of 18 months of work by the Government Operations Committee, tireless work by interested Senators on the Judiciary Committee, extensive time and effort on the part of the Attorney General and significant contributions and support from President Ford.

The Government Operations Committee has been concerned with how we presently handle investigations and prosecutions of possible criminal activity by high-level Federal Government officials. The serious deficiencies of our present system of handling these cases were

highlighted by Watergate but were in no way caused by or limited to Watergate.

The Government Operations Committee held extensive hearings on this subject and initially considered a proposal for a permanent office of special prosecutor. Because of objections raised by the Department of Justice and others that there was not enough work to keep such an office busy and that a high caliber individual could not be attracted to such a position, the Government Operations Committee adopted the approach recommended by the American Bar Association for a statutory mechanism requiring the appointment of a temporary special prosecutor when needed by the Attorney General or the court.

Mr. President, the Government Operations Committee is proud of its proposal and of the extensive support from the legal community for that proposal. In order that we have a complete record and because of my respect for these individuals, I ask unanimous consent that at the conclusion of my remarks, letters endorsing the committee's proposal from Archibald Cox, Leon Jaworski, and Henry Ruth be printed in the RECORD.

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

(See exhibit 1.)

Mr. RIBICOFF. During the last 3 weeks, Senators PERCY, JAVITS, WEICKER, KENNEDY, and I and our staffs have had extensive discussions with the Attorney General and his staff.

Three major factors discovered in the course of those discussions led us to decide to return to our original concept of a permanent special prosecutor. First, we were told that there were many more presently active cases than we had expected which would have required the appointment of a temporary special prosecutor under the Committee's bill. We were told that anywhere from 6 to 40 temporary special prosecutors could be required at this time. Therefore, the concern that a permanent special prosecutor would be bored or have nothing to do was not as serious a possiblity as we thought.

Second, the Department expressed great concern about the actual operation of a mechanism requiring the appointment of a temporary special prosecutor at an early stage in an investigation. While the Committee was prepared to offer amendments to minimize these problems, the legitimate concerns of the Department had to be weighed against any disadvantages of a permanent special prosecutor.

Third, the President is now willing to support a permanent independent special prosecutor. This is highly significant. The fair administration of justice should not be a partisan matter or a matter of one branch of Government pitted against another. I am proud that every Republican member of the Committee on Government Operations is a cosponsor of this legislation. Congress and the President working together can this year establish the necessary institutional framework to insure that whatever high level government corruption which exists now or in the future will be investigated impartially, vigorously, and most importantly fairly.

The compromise proposal introduced this morning is much less complex than the version of S. 495 reported by the Committee on Government Operations. At this point I will briefly describe the major provisions of this compromise which follows the basic format and critical details of President Ford's proposal of July 19 while substantially accomplishing the major goals of title I of S. 495.

The first part of the amendment establishes a permanent independent Office of Special Prosecutor within the Department of Justice headed by a Special Prosecutor appointed by the President by and with the advice and consent of the Senate. The Special Prosecutor would be appointed for a 3-year term, and would not be eligible for reappointment to that office.

No person could be appointed Special Prosecutor if he has at any time during the preceding 5 years held a high-level position working on the campaign of any candidate for any elective Federal office.

A Special Prosecutor could only be removed by the President for cause.

The Special Prosecutor would have jurisdiction to investigate and prosecute possible violations of Federal criminal law by a person who holds or who at the time of such possible violation held any of the following positions in the Federal Government: President, Vice President, Attorney General, or Director of the Federal Bureau of Investigation, any Cabinet member, and other high-level Government officials compensated at a rate at least equal to level II of the Executive Schedule, all Members of Congress, and all members of the Federal judiciary.

The Attorney General is also required to refer to the Special Prosecutor any matter where the Attorney General determines that in the interests of the administration of justice it would be inappropriate for the Department of Justice, other than the Office of Special Prosecutor, to conduct such investigation or prosecution. Thus in cases where the subject of an investigation is a top aide to the President or is a very powerful staff aide to a Member of Congress, and the Attorney General believes that he or the President has a very serious conflict of interest because of the appearance that partisan political considerations might influence their handling of the case, the Attorney General would refer such a case to the Special Prosecutor.

The authority of the Special Prosecutor is specifically set forth. It is based on the powers given the Watergate Special Prosecution Force. The Special Prosecutor is totally independent of the Attorney General except that the approval of the Attorney General is still required for the use of a wiretap under section 2516 of title 18, United States Code.

The Special Prosecutor has the authority to select his employees, to make public statements or reports and to present reports, statements or recommendations to Congress, the President or the Attorney General. The Special Prosecutor will also have to periodically report to the Judiciary Committees of the House of Representatives and the Senate.

It is important to note that this proposal only contains an authorization for a period of approximately 4 years. At the expiration of that period, the President, Congress, the legal community and the public can review the operation of this office and determine whether it should be continued, abolished; or altered.

The next major section of this substitute amendment to title I would create an Office of Government Crimes rather than a Division of Government Crimes as presently contained in S. 495. The creation of an office will provide additional flexibility to the Attorney General while accomplishing the principal goals of the supporters of a new division.

The Office of Government Crimes would be headed by a Director who is appointed by the President with the advice and consent of the Senate. The Director serves at the pleasure of the President. No person may be appointed Director if he has actively participated in a political campaign on behalf of a candidate for elective office during the 5 years preceding the appointment.

The Office of Government Crimes except as to matters referred to the Special Prosecutor would have jurisdiction over:

First. All criminal violations of Federal law by any past or present Federal Government officer, employee or, special employee if the violation relates to the person's Federal Government employment;

Second. Criminal violations of laws relating to lobbying, conflict of interest, campaigns and election to public office by any person except violations related to discrimination on the grounds of race, color, religion, or national origin; and

Third. Any other matters the Attorney General believes are appropriate.

The Attorney General is specifically given the discretion of placing this Office of Government Crimes anywhere administratively within the Department. Thus he could place it in the Criminal Division under the supervision of the Assistant Attorney General heading that Division. However the Director of this Office would also report directly to the Attorney General no matter who else also supervises his work and coordinates it with other Department activities.

The proposed substitute amendment also includes a section directing the Attorney General to promulgate rules and regulations requiring the disqualification on a particular matter of any Justice Department employee, including a U.S. attorney, if participation by that person may result in a personal, financial, or partisan political conflict of interest, or the appearance thereof. Present departmental regulations only cover financial conflicts of interest. This provision would require the Attorney General to broaden those regulations.

Finally, the amendment includes the President's proposal for establishing an Office of Professional Responsibility. This Office now exists in the Department and this proposal would simply legislatively sanction what already exists.

The Office of Professional Responsibility does preliminary investigations on behalf of the Attorney General of wrongdoing by employees of the Department of Justice.

Mr. President, this proposed compro-

mise substitute amendment for title I of S. 495 meets the objectives of the sponsors of S. 495 and the objections and objectives of the President. I urge the Senate to enact this product of extensive hearings, study, and investigation. I believe it will serve the best interests of our Nation.

Mr. President, I take this opportunity to commend Attorney General Levi and President Ford for their deep interest in this entire problem. I also take this opportunity again to pay special tribute to the skill, persistence, and hard work of my colleague from Connecticut, Senator WEICKER, and of our colleagues Senator PERCY and Senator JAVITS, who have made such great contributions toward this measure. I also commend the various members of our respective staffs.

May I say, Mr. President, that personally I like title I as it is now presented.

I did have some concerns with the committee proposal. I thought it was unduly complicated.

I know that the Senator from Nebraska (Mr. HRUSKA) had often talked to me about his concern about some of the proposals in S. 495, and it is my feeling that as a result of the hard work by the Attorney General and his staff and the hard work and cooperation of the Committee on Government Operations we now have a solid piece of legislation that will do the job.

All the members of the Committee on Government Operations, the President, and the Attorney General should be pleased with the results of all our efforts.

EXHIBIT 1

HARVARD LAW SCHOOL,
Cambridge, Mass., June 2, 1976.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR SENATOR RIBICOFF: This will acknowledge your letter of May 17 inviting my comments upon Title I of the Watergate Reorganization and Reform Act of 1976 (S. 495).

I agree that it is very important to put in place a statutory mechanism for the designation of a Special Prosecutor to investigate and, upon probable cause, prosecute high level federal officials so closely linked to the President and Attorney General as to raise a question concerning the ability of the Attorney General to avoid both the actuality and appearance of conflicting interests. The mechanism which would be established by enactment of S. 495 as amended by your committee seems, in general, the most satisfactory that could be devised.

I recognize that the proposed procedure would call for supplanting the Attorney General even in situations in which the President and the Attorney General were fully prepared to prosecute vigorously and fairly a high level official who had proved faithless to the trust reposed in him. It seems regrettable that they should be precluded from applying high standards of honor and integrity to former associates. I am satisfied, however, that this disadvantage in situations in which the proposed procedure is not required is more than offset by the benefits of a firm and established rule applicable to all Presidents and Attorneys General under all conditions.

Some of the details of Sections 591–597 seem questionable. I mention them seriatim against the chance that the committee will offer perfecting amendments on the floor.

1. Section 594(c)(1) seems ambiguous. Subsection (c) appears to envisage two kinds of conflict of interest. One kind is the conflict or appearance of conflict which exists whenever the subject of the criminal investigation or prosecution occupies one of the positions described in subdivision (2). The other kind is any case not within subdivision (2) in which the President or the Attorney General has "a direct and substantial personal or partisan political interest in the outcome of the proposed criminal investigation or prosecution."

The quoted words are ambiguous as to character of the personal interest which may give rise to the conflict. Does a conflict arise when the Attorney General has "a direct and substantial personal . . . interest in the outcome" or only when he has "a direct and substantial personal . . . political interest in the outcome?"

If the former reading is correct, then the provision is too broad. Suppose that an investigation were instituted by the Anti-trust Division which might lead to prosecuting under the Sherman Act a corporation of which Attorney General's brother is a major shareholder and the chief executive officer. Plainly, the Attorney General should disqualify himself from any participation. The Deputy Attorney General should act in his place. It would be foolish, however, to call for the appointment of a Special Prosecutor in such a case.

If the purpose is to limit subsection (c)(1) to conflicts arising from personal political interest, the objection fails. This intent could be made much clearer by putting commas around the phrase "personal or partisan" so that the whole would read "a direct and substantial, personal or partisan, political interest in the outcome." This would also make it clear that the conflicting interest must be direct and substantial in all cases.

2. Subsection (d)(1) on page 44 would be clearer if the comma in line 6 were removed.

3. Subsection (d)(2), in lines 4–9 on page 47, very properly permits the court to maintain the secrecy of a report where necessary to avoid prejudicing the rights of an individual, but the power is limited by line 6 on page 47 to "rights under federal law." I see no reason for the limitation. If the individual's right to a fair trial under federal law is more important than the public interest in knowledge of the full content of a report under the reasons for removing a temporary Special Prosecutor, his right to a fair trial upon any State charge would also seem superior. Is it not unseemly for Congress to declare that it is willing to override an individual's interest in a fair trial in a State court although it would protect him if he were prosecuted in federal court?

In my opinion, subsection (d)(3) on page 47 contains an unwise invitation to litigation. The phrase in lines 10 and 11 "any aggrieved person" leads me to conclude that any volunteer could sue to challenge the removal of a temporary Special Prosecutor. True, one usually need show some harm in fact in order to be aggrieved, but in this instance it is hard to imagine any person who can suffer harm except the Special Prosecutor. Since the provision for suit by an aggrieved person must mean something, one is forced to conclude that the intent is to allow persons to sue without showing harm.

I think it unwise to extend standing so widely. The temporary Special Prosecutor may have very good reasons for not seeking review, drawn from his conclusion concerning the public interest or his personal knowledge of the facts. Also, volunteers should not be put in a position to tie up further action by the Attorney General. There will be few cases in which a temporary Special Prosecutor is removed with a view toward frustrating investigation or prosecution. There may be more in which one Special Prosecutor is under fire and the Attorney General deems it advisable to replace him with another. If third persons are allowed to sue in the latter and numerically more likely cases, they could easily tie up pursuit of the investigation or prosecution.

4. Two provisions of Section 597, "Expedited judicial review," seem objectionable. All ad hoc provisions for appeal as of right to the Supreme Court of the United States are unwise. Ad hoc provisions for expediting particular classes of appeals are equally unwise. The difficulty, in both instances, is that the enactment is drawn without reviewing other classes of cases which have equal or greater claim to the Supreme Court's attention. Although there might be some instances in which the status of the Special Prosecutor and constitutional challenge were of major national significance, it is more likely that the question will be raised in some relatively unimportant case without great attention focussing upon the constitutional issue.

With these changes I urge the enactment of Title I. I have no doubt about the constitutionality of the method provided for the appointment of a temporary Special Prosecutor, and no serious doubt about the constitutionality of the restrictions upon his removal.

S. 495 fails to deal with dangers brought to light by the Watergate affair which I consider much more serious than any subject covered by the bill.

One group of omitted subjects is suggested by such abuses of constitutional power as the use of investigative agencies for political purposes, electronic surveillance without judicial authorization upon a showing of probable cause, the infiltration of political organizations, and similar activities. Perhaps such matters are not within the committee's jurisdiction.

Equally important is the matter of executive privilege. Although the country did not suffer through most of our history from the absence of definitive resolutions of conflicts between the Congress and the President over furnishing information desired by the Congress, the extraordinary increase in the number and importance of refusals under President Eisenhower and Nixon and the breadth of the privilege asserted by them convince me that Congress should face up to the question while public recollection of the Watergate affair is still fresh. For the President to claim executive privilege is too easy a way to hide such wrongs as corruption, malfeasance, sheer carelessness or ineptitude, and unilateral exercise of questionable executive authority. The ability to make such claims successfully encourages resort to secrecy and manipulation as techniques of executive power. Although I am skeptical about congressional reliance upon litigation as a way of protecting the Congress against executive encroachment, in this instance no better alternative is available.

It has been suggested that Congress might solve the problem by conferring jurisdiction upon a United States District Court to enforce congressional subpoenas against officials in the executive branch, leaving it to the courts to work out the scope of executive privilege. These proposals seem unwise. A court has no satisfactory method of determining the extent of the legislative need for particular documents or information. The distinctions worked out by courts in ruling upon claims of executive privilege in ordinary civil and criminal litigation are not suitable for passing upon the enforceability of congressional subpoenas because the objects of the inquiry and the underlying rules of competency and relevancy are altogether different.

I submit that Congress should enact legislation setting up a procedure by which the Senate or the House would review any subpoena issued by one of its committees to an official in the executive branch prior to enforcement if executive privilege were claimed. The vote of the entire chamber would pro-

tect against rash judgment or abuse of power by a single committee. If either the Senate or the House did vote to enforce the subpoena, it should be the legal duty of the executive official to comply and that duty should be made enforceable by judicial proceedings.

Such a measure might be thought to intrude upon a constitutional privilege of the President as described in *United States* v. *Nixon*, but the relevant language in the opinion is unclear and I believe that such an act would ultimately be held constitutional by the Supreme Court.

I am glad to have this opportunity to comment upon such important legislation.

Sincerely,

ARCHIBALD COX.

FULBRIGHT & JAWORSKI,
Houston, Tex., May 6, 1976.

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

MY DEAR SENATOR RIBICOFF: For the record, I would like to note my approval of S. 495, the "Watergate Reorganization and Reform Act of 1976." It is a constructive piece of legislation that I hope will be adopted. May I add my commendation on the excellence of your Committee's work.

With kindest personal regards and every good wish, I am

Sincerely yours,

LEON JAWORSKI.

BETHESDA, MD.,
May 11, 1976.

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

DEAR MR. CHAIRMAN: I have read closely the provisions of Title I of S. 495, as amended and ordered reported by the Committee on Government Operations. In my testimony last year before the Committee, I had opposed the original bill's creation of a permanent special prosecutor.

I certainly endorse the amended bill in its proposed creation of a Division of Government Crimes in the Department of Justice and in its proposed vehicle, when needed, for the creation of a temporary special prosecutor. The temporary nature of any special prosecution effort, and the inclusion of a triggering mechanism to invoke the temporary appointment, represent an ideal solution for balancing the need for prosecutive independence against the potential abuses which exist in a permanent, independent office.

I appreciate the opportunity you have given me to comment on this amended bill and I certainly admire the skill and persistence of you, your Committee and the Committee staff in trying to ensure that appropriate institutional reform follows in the path of recent prosecutions and revelations about government abuses of power.

Sincerely,

HENRY S. RUTH, Jr.

Mr. WEICKER. Mr. President, the importance of this amendment now before the Senate is best illustrated by its bipartisan support and the bipartisan spirit in which it is offered. Putting aside party labels and all other interests—the sponsors of this proposal choose to place the interests of justice above all other considerations.

It is our intent to restore the confidence of the American public in their system of justice.

It is our intent to remove from the administration of justice all consideration of partisan political gain or loss.

Likewise, it is our intent that, no matter who the offender, the hand of Justice will move swiftly, deliberately, and without the slightest taint of partiality.

For these reasons, I support this amendment to create a permanent Special Prosecutor and an Office of Government Crimes within the Department of Justice.

Jurisdiction over such sensitive cases involving the President, Vice President, Cabinet officers, high-level government officials, and Members of Congress, in addition to other cases which the Attorney General may wish to refer, is sufficiently broad to avoid the spectre of a prosecutor investigating for the sake of investigation; and abusing his authority.

Senate confirmation, coupled with the reporting requirements in the amendment, assure accountability.

The Office of Government Crimes constitutes an important initiative designed to increase the priority given to the enforcement of existing laws governing the conduct of Federal employees, as well as our lobbying and elections laws. The Director of this Office will be appointed by the President, by and with the advice and consent of the Senate, and will have direct access to the Attorney General.

This proposal, and the statutory mandate for the Office of Professional Responsibility, establish a national commitment to vigorously pursue and enforce our precepts of equal justice.

The provisions of this title establish procedural safeguards to insure against abuses of power similar to those which tormented our nation. We will act through law to establish these safeguards against future violations of law.

Through this bill—and through this—law we will revitalize our system of criminal justice, restore its integrity, and build a future which rests not so much on the interests of the few as on the interests of the many to whom we are accountable. Never again can we or any of our leaders lose sight of this—the highest and most important principle of a democracy.

Mr. President, I have often said during the course of this legislation that were it not for the expertise and the dedication of the senior Senator from Connecticut, the chairman of the Committee on Government Operations, the measure would not be before the Senate at this time.

It should be pointed out that, in addition to those admirable qualities, what has made it possible for all hands to get together is the eschewing of partisanship by Senator RIBICOFF. At all times, he has attempted to include Republicans, Democrats, the executive branch, and the legislative branch, in order to obtain a bill that will work for the American people.

At this time, I pay a special tribute to Dick Wegman, Dave Schaefer, and Claudia Ingram, of my staff, for the enormous amount of the work which has gone into this final effort.

In conclusion, I praise the role played by President Ford, Attorney General Levi, and the administration.

I realize that in an election year, the name "Watergate" is not a pleasant thing for anyone in my party to contemplate or to have raised again. On the other hand, as was pointed out, Watergate was nothing that could be attributed to a particular political party. It was an abuse of power by certain individuals. I think it is abundantly clear in the statements and the actions of President Ford, Attorney General Levi, and this Republican administration that their dedication to a system of justice politically free is unmatched by anyone.

We realize, the President realizes, the importance of a system of justice that is equal for all Americans. Indeed, without a standard of justice for all, the country will fall from within, rather than from outside pressures.

All last week and through this week, I have been in communication with the President and with Attorney General Levi. What they wanted was a bill that was constitutional, that was capable of becoming law, and they wanted it done by this Congress.

I am proud of the President, and the members of my party who have participated in putting together this reform measure: Senator PERCY, the ranking member; Senator CASE, on financial disclosure; Senator JAVITS, insofar as title II is concerned. They all have worked hard with their Democratic colleagues to assure their fellow citizens of the United States that what was a national nightmare a few years ago will not be an encore of reality in the future.

Mr. HRUSKA. Mr. President, I regret very much that I was unable to participate in yesterday's debate on S. 495, but a death in my family kept me in Nebraska and away from the Senate Chamber.

It is my belief that this body will make a serious mistake if it approves the legislation now being considered. My reasons for opposing this bill are presented in some detail in a statement on page 22092 of the July 2 RECORD. I refer my colleagues to those comments.

I regret very much that my colleagues on the Committee on the Judiciary chose not to act on S. 495 during the period of time it was on referral to that committee. I believe that with a detailed investigation of all the aspects of this bill, my colleagues would have seen how bad this legislation really is. As I read the debate from yesterday, however, it appears that it is the will of the Senate to approve this legislation as reported by the Committee on Government Operations. I am saddened at that prospect, because I feel the bill is unsound and patently unconstitutional. I will vote against it.

Certainly, the objectives of S. 495 are admirable. The President wants reform in the areas covered by the bill. The Attorney General wants reform. The Senate wants reform. I want reform. The question is, of course, What route do we take to achieve the reform we all want? I submit that the bill before us is not the right means to the desired end.

Mr. President, the administration is not pleased with this bill as reported. In fact, President Ford has been negotiating for some time for an acceptable compromise on several aspects of this legislation. The President has been more than

fair in this matter. On Monday of this week, the President sent a proposal by way of a substitute for S. 495, together with a transmittal letter of the same date on that subject. I ask unanimous consent that the text of the proposed bill and of the President's letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HRUSKA. Mr. President, I do this so a viable option to S. 495 will be in the public record. It is a workable bill and I urge my colleagues to give it their serious consideration. It should serve as a basis for debate and comparison to the Government Operations Committee bill in this body and to any proposal on this subject to be considered by the House of Representatives.

Mr. President, I am gratified that the proponents of this bill have agreed to accept, in somewhat modified form, title I of the President's proposal. The President's proposal goes far in removing some of the fundamental constitutional infirmities contained in the bill as reported from committee, although not completely.

Mr. President, it is extremely difficult to draft a bill which accomplishes the purpose of preventing the recurrence of incidents such as Watergate without violating the constitutional principle of separation of powers.

Unpleasant as was that recent traumatic episode we in Congress must be aware of the certain constitutional limitations in legislating against future similar situations. Alleged disregard for constitutional principles by a previous Chief Executive does not excuse the Congress in neglecting the separation of powers required by the Constitution. Such departures from the constitutional framework will only tend to diminish the strength of the constitutional balance on which our system rests.

Mr. President, quite simply under our system of Government, the Constitution grants different duties and responsibilities for the three branches of Government. The prosecution of crimes is one of the central responsibilities of the executive branch. The Constitution specifically provides that "the executive power shall be vested in a President of the United States," and that the President's basic obligation is to "take care that the laws be faithfully executed."

Given the principle that criminal prosecution is a core executive function and that a long line of court decisions have upheld the President's authority to discharge executive branch employees, I am concerned that any limitations in this regard will be held unconstitutional.

Mr. President, on June 25 the Attorney General addressed a letter to the Senator from Connecticut and the Senator from Illinois on the subject of title I of S. 495.

The Attorney General's letter of June 25, and the Deputy Attorney General's testimony of May 26, 1976, before the Judiciary Committee set forth the strong objections of the Department of Justice to title I of S. 495, the "Watergate Reform Act." Title I, as reported, would require appointment of temporary special prosecutors in certain cases and would establish a Division of Government Crimes within the Department of Justice. Mr. President, I subscribe to those strong objections raised by the Attorney General. I supplement them now as follows:

Section 594 of the bill, as reported, provides for appointment of a temporary special prosecutor in each case in which the President or Attorney General have a conflict of interest or an appearance of a conflict. Conflict of interest is generally defined as having "a direct and substantial personal or partisan political interest in the outcome of the proposed criminal investigation or prosecution" and includes all cases involving certain present and former officials of the executive branch (section 504(c).)

The bill as reported is an understandable effort to remove personal or partisan bias—or the public perception of such bias—from law enforcement. Its proponents believe it would only rarely require the appointment of a special prosecutor.

As set forth in the Attorney General's letter of June 25, 1976, the Department of Justice believes there are substantial questions regarding the constitutionality of the proposal. The Department also believes that the practical effect of the bill would be to enhance the opportunities for and the appearance of partisan law enforcement; to require many special prosecutors at any time; and to diminish the liklihood of equal justice for similarly situated individuals. The bill would also seriously erode the authority of the Department in dealing with other agencies.

The bill would have disqualified the Department of Justice from conducting certain cases and has been analogized to the principle that a private attorney or law firm should not represent clients with conflicting interests. The policy of encouraging private attorneys to avoid situations in which they have divided loyalties is premised on the belief that a private party can obtain effective representation from many other lawyers who would not have any possible conflict of interest. While there are many private attorneys, there has been but one Department of Justice.

That is an immutable fact, constitutionally provided and, of course, guarded and safeguarded by the doctrine of separation of power. Federal prosecutorial responsibility has been vested in a single agency to promote the uniform application of established policies and procedures by experienced individuals, and under strict accountability along constitutional lines, also. The possible value of disqualifying the Department in particular cases is outweighed by the inevitable risk that a series of special prosecutors will result in a form of ad hoc, unequal justice.

Removing from the Attorney General the authority to prosecute high public officials would seriously erode his ability to persuade his colleagues to follow his legal advice. Without the knowledge that failure to accede to the Attorney General's view would be prosecutable, other Cabinet officers would be likely to regard him as just another lawyer with his own opinion and would feel free to rely on other counsel who gave more desirable advice.

Legislation based on the principle that the Attorney General and the Department are necessarily partisan and untrustworthy is likely to become a self-fulfilling prophecy. It would promote the appointment of politically oriented Attorney Generals and the recruitment of line attorneys who believe that some partisanship is expected of them. This would be damaging indeed, particularly in the numerous difficult cases not requiring a special prosecutor in which fairness and professionalism—and the appearance of these qualities—are essential to public confidence in the administration of justice.

Mr. President, on July 8, Prof. Philip Kurland of the University of Chicago Law School faculty addressed a letter to the Senator from Connecticut, the distinguished chairman of the Committee on Government Operations, and the Senator from Illinois, who is the ranking Republican on the Committee on Government Operations. This letter had to do with comments on title I of the pending bill. Mr. Kurland had testified during the hearings before the Committee on Government Operations on S. 495 as it was originally introduced. The bill as reported, however, differs vastly and greatly from the introduced bill. Hence the supplemental letter of July 8 by Professor Kurland. I ask unanimous consent that the text of the letter so referred to be printed in the RECORD at this point.

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

THE UNIVERSITY OF CHICAGO,
Chicago, Ill., July 8, 1976.

DEAR SENATORS RIBICOFF AND PERCY: When I was in Washington last week, at the Senate Subcommittee on Separation of Powers, I was given a copy of the revised S. 495 with the report and hearings thereon. Inasmuch as you solicited my opinion, over two years ago, on the original bill, I venture to offer my opinion on the present version, or at least one aspect of it, that which relates to special prosecutors. I must say that I find that part of S. 495 unfortunate at best, dangerous at worst.

It is unfortunate because it offers as a cure for Watergate ills something that is totally extraneous to the problems uncovered by Watergate. It is dangerous because it affords a potent, new device for what can be described in terms of the pre-Watergate governmental crisis as McCarthyism.

1. You have certainly misconstrued history if the concept of a special prosecutor is based on the notion that the Watergate special prosecutor contributed to the discovery and remedy for the Watergate abuses. The discovery and remedy for the Watergate abuses are correctly attributable to two other institutions. The first and foremost was Congress: the Senate Select Committee, operating in the best traditions of Congressional responsibility for oversight of executive behavior, and the House Judiciary Committee, again responsibly assuming the difficult task of determining whether a government official should be removed from office. It should be remembered that impeachment is a proper inquiry for all those who would be made subject to special prosecutions by S. 495, except the Senators and Congressmen, for

whom separate mechanisms exist. The second was the press: it, too, acted responsibly in uncovering the details of Watergate, despite extraordinary criticism and pressures to abandon it.

Dean and Magruder went to the grand jury before the special prosecutor took hold, primarily because the Senate Select Committee was already on their tails. The revelation of the existence of the tapes came through the investigations of the Senate Committee, not the special prosecutor. The special prosecutor undertook criminal prosecutions of those malefactors uncovered by the Congress and the ordinary processes of the law. That is the role of a special prosecutor generally: not so much investigative, as prosecutorial. I do not mean to disparage the Watergate special prosecutor. But I should insist that his was not an important role—except perhaps as Archie Cox became a martyr—in l'affaire Watergate.

Moreover, the utilization of special prosecutors at a stage prior to criminal trial is once again an evasion of Congressional responsibility, not an effectuation thereof. It should not be forgotten that the primary problems revealed by Watergate were an undue concentration of power within particular branches of the executive department—the Department of Justice was not among them—and an unwillingness of Congress to assume its place of primacy in the constitutional scheme. Every time an important governmental problem has arisen in recent decades, Congress has pusillanimously delegated the treatment of the ailment to someone else. Thus, the proposed public prosecutorial scheme in S. 495 is only another symptom of the Watergate syndrome rather than a contribution toward its elimination. Once more Congress will be saying, "Please, someone else, perform our job of executive oversight for us."

2. Let me turn to the dangers of the proposal. Who are the targets for action as set out in the bill? All elected officials, and all federal judges, and all executive branch personnel who hold responsible jobs. The only elected federal officials are the President and Vice-President and all members of the Senate and House of Representatives.

The special prosecutorial mechanism could be triggered whenever a charge of misfeasance, malfeasance, or nonfeasance was levelled by any person who chose to make such a charge. This is what I term the "Joe McCarthy" aspect. Just imagine if each of the phony McCarthy charges against executive branch officials were to require special prosecutors to investigate and prosecute. Just imagine the official Cohens and Schines who might offer such charges. Just imagine the extraordinary number of unofficial individuals eager to assert such charges.

It is not enough to say that an Attorney General could cut off such frivolous—however defined—charges. The fact is that no Attorney General in his right mind would dare to cut off such prosecutions, if he could. The minute he did so, he would become suspect of political activity. Moreover, his decisions would be subject to judicial challenge, at which time the whole matter would take on the same costume as if the special prosecutor had begun an investigation.

It is not my imagination that conjures up a parade of horribles. Personal experience as a law clerk at the United States Supreme Court and the United States Court of Appeals has taught me that the number of charges levelled against judges is enormous. A short term with the Department of Justice revealed that even such lowly officials as I was are subject to the same kinds of attack by those who are disappointed in their demands. And my service as a staff member to a Senate subcommittee was equally revealing of the distemper of many of our citizenry. I don't know whether you get to see your own "crank mail," if you do, you know that I am not exaggerating. Nor does this take into account the very large number of individuals who would and do enjoy the role of "private prosecutor." The number of calls for special prosecutions may well be enormous.

If, as is likely, most of the claims prove invalid, the accused will nevertheless have been blighted. And perhaps more important, the accused will—like the President during Watergate—not be able to perform his duties while the charges are pending. The special prosecution provisions of S. 495 afford adequate means for bringing large portions of government to a standstill. Perhaps we do have too much government, but again it should be Congress that makes the decision where and when it should be diminished or eliminated.

Moreover, the specter of a large number of special prosecutions will soon overshadow the few important situations where specific remedial action is really required. It will demean the major cases by inclusion of them in a large series of minor ones. It will, also, tend to reduce both the actuality and possibility of Congressional investigations. It should be recalled that if Archie Cox had his way, the Senate Select Committee would have ground to a halt while he carried on his investigations and prosecutions. And then where would we have been?

The provision for a special judicial panel to oversee the role of the Attorney General and the special prosecutor is also bothersome. I put to one side the constitutional questions, the answers to which are far from clear. What concerns me is the expansion of the judicial power and particularly when it is relegated to the hands of superannuated federal justices and judges. You must not think of senior federal judges in terms of Learned Hands or Henry Friendlys. Let me assure you that those are the exceptions rather than the rule. Most superannuated judges were of no great competence while they performed active service and have since necessarily retired for age and the physical and mental deterioration that age brings on. To entrust them with charge of highly volatile political affairs is to put dynamite in the hands of an incompetent.

Allow me two points in closing. First I would repeat an anecdote and leave you to draw your own inferences. After Robert Jackson had been appointed a Supreme Court Justice and Francis Biddle had been appointed Attorney General in his place, President Roosevelt took some glee in reporting to Jackson that he, Roosevelt, had decided to appoint Samuel Roseman as counsel to the President in the White House. He asked Jackson's opinion. Jackson told him he regarded Roseman very highly indeed, but if the President wanted Roseman as his lawyer he should appoint him Attorney General. He went on to say that if Roosevelt had appointed a house counsel while Jackson was Attorney General he would have resigned his office.

Second, I assume that my credentials as a supporter of the primacy of Congress and an antagonist of all that Watergate stands for are adequate to avoid any charge of bias against reform. I urge the deletion of the special prosecutor provisions of the bill because they neither serve to enhance the authority of Congress nor preclude the centralization of undue power in portions of the executive branch. These were the evils revealed by Watergate. The criminal trials were byplays that tended to take attention away from the fundamental questions. The special prosecutions afforded by this bill will have the same effect: the assumption that the criminal trials are directed to reform when they are not; the subordination of Congressional power and duty to executive and judicial authority for, after all, the special prosecutors are still executive officials and superannuated judges are still judges.

The creation of the Congressional counsel should serve well toward Watergate reform. Much more is needed by way of attention to appropriate Congressional and executive reorganization plans, so that Congress can operate more efficiently and the power in the executive can be dispersed in order that it not be readily abused. I think that the passage of special prosecutor legislation will hinder rather than aid these goals. You will do a service to our country if you help eliminate these provisions from S. 495.

With all good wishes,

As always,

PHILIP B. KURLAND.

TITLE II

Mr. HRUSKA. Mr. President, I also invite the Senate's attention to title II of S. 495, the Watergate Reorganization and Reform Act of 1976, as reported by the Committee on Government Operations.

As with title I of S. 495 as reported, title II presents very serious questions both as to the constitutionality and workability of its provisions.

Section 201 of title II would establish, as an office of Congress, the Office of Congressional Legal Counsel to be headed by a Congressional Legal Counsel and a Deputy Congressional Legal Counsel, appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives from among recommendations submitted by the majority and minority leaders in the Senate and the House of Representatives. It appears that the duties of the Congressional Legal Counsel would fall into the following three categories:

First. At the direction of Congress or the appropriate House, the Congressional Legal Counsel would defend Congress—this would include either House, an officer or agency, Member, committee, subcommittee, officer, or employee—in any civil action pending in any Federal, State, or local court in which such entity is a party defendant and in which the validity of an official congressional action is placed in issue. This would, I understand, include actions involving subpenas or orders.

Second. The Congressional Legal Counsel, at the direction of Congress or the appropriate House, could bring a civil action to enforce a subpena or order issued by Congress, a House of Congress, a committee, or subcommittee authorized to issue such subpena or order. A new section 1364 would be added to title 28 of the United States Code giving the U.S. District Court for the District of Columbia original jurisdiction over any civil action brought by Congress to enforce any subpena or order issued by Congress, a House of Congress, a committee, subcommittee, or joint committee of Congress.

Third. Another major duty of the Congressional Legal Counsel would be to intervene or to appear as amicus curiae, at the direction of Congress, in any legal action pending in any Federal, State, or local court in which the constitutionality of a law of the United States is challenged, the United States is a party, and the constitutionality of that statute is not adequately defended by counsel for the United States. An intervention or ap-

pearance as amicus curiae may also be directed when the pending case concerns the powers and responsibilities of Congress under article I of the Constitution.

It seems to me that serious constitutional questions accompany both the method of appointments of the proposed Congressional Legal Counsel and the threat inherent in S. 495 to the doctrine of separation of powers.

APPOINTMENT OF CONGRESSIONAL LEGAL COUNSEL

Under the bill the Counsel would be appointed by the Speaker of the House and the President Pro Tempore of the Senate from among recommendations submitted by the majority and minority leaders of the House of Representatives and the Senate. It would seem that the Counsel would be an officer of the United States and the Constitution does not authorize the appointment of officers of the United States in the manner envisaged by the bill.

Article II, section 2 of the Constitution provides that the President—

> * * * by and with the advice and consent of the Senate shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and *all other Officers* of the United States, whose Appointments are not herein otherwise provided for * * *; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments. (Underscoring added).

It should be noted that this section relates to "all other officers of the United States," not merely the officers in the executive branch. It is well established that the judicial officers and many legislative officers, such as the Comptroller General, the Librarian of Congress, the Public Printer, and so forth, are appointed in accordance with the procedures established in this section.

The Congressional Legal Counsel would not come under any of the exceptions to article II. The method of appointment, that is, by the Speaker of the House and the President pro tempore of the Senate is not one of the means provided for in the final clause of section 2, namely, the President alone, the courts of law, or the heads of departments. Nor does the Constitution provide "otherwise" for the appointment of congressional officers. True, article I, section 2, clause 5 provides that the House of Representatives shall choose their Speaker and other officers, and article I, section 3, clause 5 provides similarly that the Senate shall choose "their other officers" that is, its officers other than Vice President. The Constitution, however, does not provide "otherwise" for the appointment of joint congressional officers. We believe that this was a deliberate omission and not an oversight. The Constitutional Convention deliberately split the legislative branch into two Houses lest it overwhelm the other two branches of the Government. As James Madison stated in the Federalist No. 51:

> In republican government the legislative authority, necessarily, predominates. The remedy for this inconveniency is, to divide the legislature into different branches; and to render them by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society, will admit * * * As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive branch may require * * * that it should be fortified.

Legislative precedent supports this conclusion. The principal joint congressional officers are appointed in this manner: The Comptroller General (31 U.S.C. 42); the Librarian of Congress (2 U.S.C. 136); and the Public Printer (44 U.S.C. 301) are appointed by the President by and with the advice and consent of the Senate; the Architect of the Capitol is appointed by the President alone (40 U.S.C. 162). Significantly, the Legislative Counsel appointed by the President pro tempore of the Senate and by the Speaker of the House of Representatives, respectively (2 U.S.C. 272), are officers of the House of which they have been appointed and not officers of Congress at large (2 U.S.C. 273, 276. See also Congressional Directory, 93d Cong., 2d Sess., pp. 418, 426.).

It follows that the Constitution does not provide "otherwise" for the appointment of congressional officers; hence, if the Congressional Legal Counsel is an officer he has to be appointed as provided for in article II, section 2—that is, by the President.

SEPARATION OF POWERS

Section 205(a)(1) of S. 495 authorizes the Congressional Legal Counsel to intervene or appear as amicus curiae in any legal action pending in any court of the United States or of a State in which the constitutionality of any law of the United States is challenged. As pointed out by the Department of Justice during hearings on S. 495, the intervention or appearance by the Congressional Legal Counsel as amicus merely because the constitutionality of a law is challenged is inextricably intertwined with the vindication of "public rights". The Supreme Court of the United States, in the recent decision in Buckley against Valeo, January 30, 1976, held, inter alia, that the "responsibility for conducting civil litigation in the courts of the United States for vindicating public rights" may only be discharged by "officers of the United States."

In his statement on S. 1384 before the Senate Separation of Powers Subcommittee in 1967, the late Prof. Alexander Bickel of Yale stated this encroachment problem convincingly:

> To be sure, appearances as amicus in behalf of Congress, such as are provided for by section 2(a)(4) in the version of the bill that I have seen, have been fairly customary where an interest of the Congress separable from that of the Executive, and not subsumed in the Executive's duty to take care that the laws are faithfully executed, is present. But I think it is constitutionally very dubious, and in any event quite unwise, to have Congress represented, either as amicus or of right, by its own lawyer in any case in which the validity or interpretation of an act of Congress is involved, as provided also by section 3(a).
>
> Enforcement of the law is part of its execution, and litigating its constitutionality or interpretation is part of its enforcement. I do not think Congress can take over or, as of right, share these functions. Section 2(a)(5) and 3(b) in the version that I have seen, providing that the Legislative Attorney General shall displace the Attorney General of the United States as counsel for any Member or officer of either House of Congress in defending any official action seem to me perhaps constitutionally more supportable, but also of dubious wisdom.
>
> What Congress does sorely need, it seems to me, by the name of Legislative Attorney General or any other name, is an officer whose duty it would be routinely to review actions of courts and of administrative agencies which lay bare, as they do by the dozen each year, points of policy either omitted or made insufficiently clear in existing legislation. Such an officer could take the initiative in starting up the legislative process to supply omissions in existing legislation, or to review questionable constructions of existing legislation. He could present Congress at each session with an agenda of necessary law revision. By thus systematically coordinating the work of Congress with that of the courts and of the administrative agencies, such an officer could vastly enhance the policy-making authority of Congress.

The argument that Congress should be represented in these legal proceedings is probably based upon the theory that since Congress makes the laws, it may also supervise the manner in which they are enforced and interpreted. This argument is not persuasive. Congress is restricted by principles of separation of powers to the enactment of legislation; the functions of executing and interpreting the laws are vested in executive and judiciary branches which must remain coequal with Congress.

My concerns are not limited to the proposed Congressional Legal Counsel intervening or appearing as amicus under section 205 where the constitutionality of any law of the United States is challenged. The same difficulties could also be raised as to the bringing of civil actions to enforce subpenas or orders under section 204 as well as defending Congress and its constituent parts in actions relating to orders or subpenas issued by or directed to Congress. The Supreme Court in *Buckley* v. *Valeo*, 44 L.W. 41668, suggested that legislative power may come to an end at the courtroom door.

The Court stated:

> The discretionary power to seek judicial relief . . . cannot possibly be regarded as merely in aid of the legislative function of Congress.

Accordingly, I must express strong reservations regarding any granting of litigative functions to a Congressional Legal Counsel who would certainly be a nonexecutive officer.

The institution of a Congressional Legal Counsel could well be of great use to Congress and I favor further consideration of such a proposal. But for reasons I have stated, I cannot support title II of S. 495 as reported to the Senate.

In sum, the provision in title II for an Office of Congressional Legal Counsel is unnecessary, and raises serious policy and constitutional problems.

The responsibility for representing individual Members of Congress and congressional entities in actions arising out of the discharge of official duty is vested in the Justice Department. In discharging this responsibilty, the Department has vigorously asserted congressional

prerogatives such as the speech or debate clause. It is only in those cases where the Department has been presented with conflicts of interest that congressional representation has been declined. Such cases have been few, only five within the past 5 years. Since nonrepresentation because of conflicts is so rare, and since in those isolated cases, representation by private counsel is a readily available alternative, the more drastic remedy of permanent establishment of an Office of Congressional Legal Counsel seems unnecessary.

Moreover, there is an inevitable relationship between Government lawyering and law enforcement, which, as the Supreme Court recently reminded us again in Buckley against Valeo, is the exclusive responsibility of the Executive. This bill confers upon the Office of Congressional Legal Counsel a shared responsibility in some cases and exclusive responsibility in others, for legal representation in cases that would necessarily involve the faithful execution of the laws. The exclusive right of representation in cases covered by section 203 which could test the constitutionality of legislation effectively vests enforcement responsibility in such cases in the legislative rather than the executive branch.

For these reasons, it seems unnecessary, unwise, and of dubious constitutionality to establish a permanent congressional lawyering force with the kinds of law enforcement responsibilities conferred by title II of S. 495.

TITLE III

Mr. President, I find the provisions of title III of S. 495 distressing from both a policy and constitutional standpoint.

This title would lay bare on the public record virtually all of the financial holdings, liabilities, and transactions of Members of Congress, judges, high executive officials, and senior civil servants. The same information would also be required of their wives and dependents.

It should be noted, Mr. President, that this requirement is not limited to financial activity which is related to Government service such as honorariums or gifts which an individual may receive during the year. The requirement to disclose is not based upon some supposed area of criminal or ethical misconduct. Rather it is the blanket public disclosure of an individual's total financial situation which, in most cases, was developed prior to an individual's public career.

Mr. President, I contend that there will be a great number of people who will balk at this public financial undressing in public. It is difficult enough now to attract qualified people into the public service. This public disclosure will certainly not encourage any to enter such service who have any notion of or respect for the concept of privacy.

I can well imagine that there are those who do not wish to have their friends and neighbors know of their financial picture. There may be some men of ordinary means who have married rich women who would not wish to have such knowledge bantered about. Or there may be the public servant who has meager financial assets who would be embarrassed to make such a public disclosure.

It has been suggested also that some individuals who are heavily in debt may become the target of unscrupulous agents or groups who are attempting to advance their cause with the Government. I know that most of our public officials and civil servants would not fall for the temptations which may be offered, but I am not willing to make them exposed targets to such inducements and harassments.

Mr. President, the Supreme Court has for some time recognized the concept of privacy. I suggest that the provisions of title III, broad as they are, would invade the individual's right to privacy. As noted, the degree of disclosure is far beyond the financial activity which pertains to an individual's Government service. Although the Supreme Court has yet to directly address this question, the overbreadth of this provision, I am sure, if enacted, will be subject to litigation.

Mr. President, this Senator cannot argue with attempts to require the reporting of property which is gained by public officials by virtue of their governmental position. It is rather the overbreadth of the measure before us which disturbs me. A fine analysis of this question of overbreadth has been prepared by the Library of Congress. I ask unanimous consent, Mr. President, that portions of this document appear in the RECORD following my remarks.

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

CONSTITUTIONAL ISSUES WHICH MAY ARISE IN BILL PROVIDING FOR FULL FINANCIAL DISCLOSURE BY FEDERAL OFFICIALS

This report discusses the constitutional issues which may arise in a law which requires the disclosure of personal finances of certain Federal officers and employees. . . .

RIGHT OF PRIVACY

The primary constitutional concern with respect to a scheme of personal financial disclosure by public officials is the possible intrusion upon the right of privacy of those individuals covered by the operation of the statute. Although not expressly stated within the Constitution, the Supreme Court has recognized a constitutional right of privacy of individuals in certain instances . . .

Although substantial arguments exist that a "fundamental" right of privacy is limited to intimate personal relationships, individual Justices of the Supreme Court have expressed concern over unwarranted governmental intrusions into an individual's expectation of financial privacy. Although refraining from categorizing the right to financial privacy as a "fundamental" right, Justices Powell and Blackmun, concurring in the Court's decision in *California Bankers Association* v. *Schultz*, 416 U.S. 21 (1974) which upheld a Federal provision requiring banks to report certain financial transactions of their customers thought to be engaged in illegal activities, presented considerations which may be used to contend that a zone of privacy in financial affairs emanates from First Amendment rights of association:

"A significant extension of the regulations' reporting requirements, however, would pose substantial and difficult constitutional questions for me. In their full reach, the reports apparently authorized by the open-ended language of the Act touch upon intimate areas of an individual's personal affairs. Financial transactions can reveal much about a person's activities, associations, and beliefs. At some point, governmental intrusion upon these areas would implicate legitimate expectations of privacy. Moreover, the potential for abuse is particularly acute where, as here, the legislative scheme permits access to this information without invocation of the judicial process. In such instances, the important responsibility for balancing societal and individual interests is left to unreviewed executive discretion, rather than the scrutiny of a neutral magistrate." (416 U.S. at 78)

In at least one instance, a State Supreme Court has applied the concept of a constitutional right of privacy to an individual's financial affairs, based primarily upon considerations of the Fourth Amendment. In the case of *Carmel-by-the-Sea* v. *Young*, 466 P. 2d 225 (Calif. 1970) the California Supreme Court overturned its State's financial disclosure law as an overbroad intrusion into an official's right of financial privacy:

"In any event we are satisfied that the protection of one's personal financial affairs and those of his (or her) spouse and children against compulsory public disclosure is an aspect of the zone of privacy which is protected by the Fourth Amendment and which also falls within that penumbra of constitutional rights into which the government may not intrude absent a showing of compelling need and that the intrusion is not overly broad." (466 P. 2d at 231–232) . . .

OVERBREADTH

It is generally required of statutes which may affect personal rights, even though the State may demonstrate a legitimate or even a compelling interest in the regulation, that the regulation "may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms" (*NAACP* v. *Alabama*, 377 U.S. 288, 307 (1964)). For a statute such as the one in question, this standard may require that the information which is required to be disclosed must bear "a reasonable relationship to the achievement of the governmental purpose asserted as its justification" (*Bates* v. *Little Rock*, 361 U.S. 516, 525 (1960). In a case dealing with rights which the Court held were fundamental First Amendment Rights, it stated that "it is an essential prerequisite . . . that the State convincingly show a substantial relation between the information sought and a subject of overriding and compelling State interest" (*Gibson* v. *Florida Legislative Investigating Committee*, 372 U.S. 539, 546 (1963).

This question of overbreadth was the primary concern of the California Supreme Court when it overturned its State's financial disclosure provision in the 1970 *Carmel-by-the-Sea case:*

"No effort is made to relate the disclosure to financial dealings or assets which might be expected to give rise to a conflict of interest; that is, to those having some rational connection with or bearing upon, or which might be affected by, the functions or jurisdiction of any particular agency, whether State or local, or on the functions or jurisdiction of any particular public officer or employee. Instead, the statute directs that *every* public officer and *each* candidate shall file as a *public record*, 'a statement describing the nature and extent of his investments' and those 'owned by either spouse or by a minor child thereof,' if 'such investment is in excess of' $10,000, excepting only a home and real property used primarily for personal or recreational purposes." (466 P. 2d at 232).

Thus, the Supreme Court of California concluded:

"We are satisfied that in light of the principles applicable to the constitutional rights here involved, no overriding necessity has been established which would justify sustaining a statute having the broad sweep of the one now before us, which, as stated, would intrude alike into the relevant and the irrelevant private financial affairs of the numerous public officials and employees covered by the statute and is not limited to only

such holdings as might be affected by the duties or functions of a particular public office." (466 P. 2d at 234.)

Mr. HRUSKA. Mr. President, by way of summary, I want to say again that all of us are interested in a proper statutory provision for effecting reforms and effecting such status as will result in an improved public image of the Congress, of the executive branch, and of the judiciary.

However, in the processing of this bill up to this point I do not see in it that degree of study, that degree of analysis, that degree of exploration in depth of the fundamental issues which such legislation raises.

Too often the Congress reacts to events by passing so-called good-government legislation which due to the passion of the day has not been given careful scrutiny that is our obligation to the American people. During these times, it is often politically difficult for a Member of this body to oppose such legislation. This is, of course, especially true in an election year. The undisputed fact remains, however, that bad legislation is still bad legislation.

Mr. President, it is common knowledge that I have chosen not to seek reelection to the Senate. I have, therefore, no vested interest in this legislation as I will not be directly affected by it. I oppose it on the principle that this great body which I have grown to cherish will be making a serious mistake and will come to regret it.

Mr. President, as I earlier indicated, it is my intention to vote against S. 495. My reasons are clear. I believe the bill is unconstitutional and I believe the courts will declare it so.

I yield the floor, Mr. President.

EXHIBIT 1

TEXT OF A LETTER FROM THE PRESIDENT TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE

JULY 19, 1976.

DEAR MR. SPEAKER: (DEAR MR. PRESIDENT:) One of the foremost objectives of my Administration has been to restore public faith and trust in the integrity of all three branches of our government, the executive, the legislative and the judicial. Much progress has been made, but we must take additonal steps to insure that public concerns are fully satisfied.

The Senate now has before it a bill, S. 495, which could serve these important objectives. However, as drafted, S. 495 contains serious Constitutional and practical problems, and it is so narrowly drawn that it does not fairly and adequately meet the objectives of such legislation.

I am writing to you today to propose a substitute to S. 495 that would correct the Constitutional deficiencies in the bill and would also expand its scope so that it would apply in equal force to the President, the Vice President, major appointees of the Federal government, and members of the Congress of the United States. I believe this new bill represents a sound, constructive approach and I would urge its adoption by the Congress.

In its current form, S. 495 provides for the appointment of temporary special prosecutors to deal with allegations of wrongdoing by key members of the government. The proposed legislation also would establish the Office of Congressional Legal Counsel to represent Congress before the Courts, and it provides for public financial disclosure by high level personnel in the government.

While I strongly support the principles underlying this legislation, I am especially concerned about three particular aspects of the bill in its present form:

"Title I, which provides for a series of different independent and special prosecutors for separate cases of alleged wrongdoing, is of highly questionable constitutionality because it would invest in the judiciary the power to review the role of the Attorney General in conducting prosecutions and the power to appoint special prosecutors not subject to Executive direction. To grant the judiciary such authority is contrary to the fundamental principles of separation of powers. Moreover, S. 495 requires the appointment of a different special prosecutor for each case, all on an *ad hoc* basis. The Department of Justice estimates if S. 495 were now law, approximately half a dozen special prosecutors would have to be appointed, and close to 50 other matters possibly requiring appoinment would be under advisement by a special court. This extraordinary result of the present bill would almost certainly produce inconsistency and inequity of prosecutorial action. I must also point out that Title I would not require direct referral to a special prosecutor of allegations of wrongdoing by most members of Congress, while it would require referral for all high level officers of the executive branch. I do not believe that such difference in treatment should be allowed to exist if public confidence in the government is to be maintained."

"Title II attempts to preempt certain law enforcement powers accorded to the President by the Constitution and vest them in the Congress.

"Title III, requiring financial disclosure by numerous government officers and employees, allows certain loopholes in reporting procedures, and has certain other deficiencies."

To remedy these defects, while advancing the principles of accountability by officers and employees in all three branches of the Federal government, I am transmitting today a substitute for S. 495. I urge the Senate to consider my modifications in proposals at the same time it considers S. 495. I also urge the House Judiciary Committee to consider my proposal at the time of its initial hearings on this matter later this week.

The highlights of my proposed legislation to maintain the public's confidence in the integrity of our government are as follows:

TITLE I—REORGANIZATION OF THE DEPARTMENT OF JUSTICE

To avoid the problems in Title I, my legislative proposal would establish a permanent Office of Special Prosecutor to investigate and prosecute criminal wrongdoing committed by high level government officials. The Special Prosecutor would be appointed by the President, by and with the advice and consent of the Senate, for a single three-year term. Individuals who hold a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of a candidate for any elective Federal office would be ineligible for appointment. The bill would sanction removal of the Special Prosecutor only for extraordinary improprieties and in the event of removal, the President would be required to submit to the Committees on the Judiciary a report describing with particularity the grounds for such action.

Any allegation of criminal wrongdoing concerning the President, Vice President, members of Congress, or persons compensated at the rate of Level I or II of the Executive Schedule would be referred directly to the Special Prosecutor for investigation and, if warranted, prosecution. The Attorney General could refer to the Special Prosecutor any other allegation involving a violation of criminal law whenever he found that it was in the best interest of the administration of justice. The Special Prosecutor could, however, decline to accept the referral of any allegation. In that event, the allegation would be investigated by the Department of Justice.

The Special Prosecutor would have plenary authority to investigate and prosecute matters within his jurisdiction, including the authority to appeal adverse judicial rulings. However, in the event of a disagreement with the Special Prosecutor on an issue of law, the Attorney General would be free to present his position to the court before which the prosecution or appeal is lodged.

My proposal would also institutionalize, by statute, the investigation and prosecution of violations of law by government officials and employees which do not fall within the jurisdiction of the Special Prosecutor. Title I would also establish by statute a Section on Government Crimes and an Office of Professional Responsibility within the Department of Justice.

TITLE II—CONGRESSIONAL LEGAL COUNSEL

I have also proposed a revised Title II that creates an Office of Congressional Legal Counsel and assigns the powers and duties of that Office. Like S. 495, this proposal gives Congress the legal assistance necessary to the proper discharge of its functions, but it does so in a manner consistent with the Constitution of the United States. Under my proposal, when the Attorney General certifies that he cannot represent Congress or a congressional entity, Congress or the appropriate house of Congress may direct the Congressional Legal Counsel to defend any legal action, enforce subpoenas, bring described civil actions, intervene in cases or appear as amicus curiae to defend the constitutionality of any law of the United States or the powers and responsibilities of Congress. Congressional Legal Counsel may request grants of immunity under the Organized Crime Control Act of 1970.

In all of these matters, my proposal like S. 495, provides for exclusive congressional control and direction of the activities of the Congressional Legal Counsel.

TITLE III—GOVERNMENT PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

My proposed bill recognizes and protects the public's right to be assured that public officials, regardless of which branch of government they serve in, disclose personal financial matters which could give rise to a conflict of interest in the performance of their official duties.

My proposal would require Federal public officers and employees to file financial reports with a designated office in their branch of government. In addition, public disclosure would be made of the financial statements of (i) all elected officials, (ii) high ranking officers or employees appointed by such officials, (iii) significant policy making and confidential employees, and (iv) other employees compensated at the rate of GS 16 or above (but not those in competitive civil service or who, save for certain legal exemptions, would be in the competitive civil service). My proposed legislation would also give the Comptroller General oversight authority to audit such statements as well as the authority to make findings of a conflict of interest and if the problem is not corrected, to make those findings public. Thus, the public's right to have accountability from public officers and employees is doubly protected: first, by the executive, legislative or judicial branch office with which reports are filed, and secondly, by the Comptroller General.

In addition, my proposal would close certain loopholes contained in the current Sen-

ate bill. For example, the present proposal requires the reporting of any item received in kind whose fair market value "for such item" exceeds $500. Such provision would allow a series of gifts from the same source, each valued at less than $500 to go unreported. Under my proposed legislation such gifts would be aggregated and hence require reporting. Moreover, my proposal would make clear that while property owned for personal use, such as the family home, furniture, jewelry, the family car, etc., need not be inventoried in disclosure forms, property of a business or investment nature must be reported. Assets unknown to the individual because they are held in a bona fide "blind trust" need not be identified, but the trust interest must be disclosed.

I believe these provisions better serve the public interest than those contained in S. 495. Therefore, I urge the Congress to give prompt and favorable consideration to my proposal.

Sincerely,

GERALD R. FORD.

TITLE I—AMENDMENTS TO TITLE 28, UNITED STATES CODE

REORGANIZATION OF THE DEPARTMENT OF JUSTICE

Sec. 101(a) Title 28, United States Code, is amended by adding after chapter 37 the following new chapter:

Chapter 39—Appointment of Special Prosecutor and Establishment of Government Crimes Section and Office of Professional Responsibility

§ 591. SPECIAL PROSECUTOR: APPOINTMENT AND REMOVAL

(a) There is established within the Department of Justice an Office of Special Prosecutor which shall be headed by a Special Prosecutor appointed by the President, by and with the advice and consent of the Senate.

(b) The Special Prosecutor shall be appointed for a term of three years and shall be compensated at a rate provided for level IV of the Executive Schedule under section 5315 of Title 5, United States Code. No person shall serve as Special Prosecutor for more than a single term.

(c) A person shall not be appointed Special Prosecutor if he has at any time during the five years preceding such appointment held a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of, a candidate for any elective Federal office. This provision shall not, however, form the basis for any challenge of the legitimacy of a Special Prosecutor or the validity of any of his actions, once he has been appointed.

(d) The grounds for removal of a Special Prosecutor should be, and to the maximum extent permitted by the Constitution shall be, limited to those which constitute extraordinary impropriety. In the event of any removal, the President shall promptly submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report describing with particularity the grounds for such action.

§ 592. JURISDICTION

(a) There shall be referred to the Special Prosecutor for investigation and, if warranted, prosecution all information, allegations or complaints indicating a possible violation of Federal criminal law by a person who holds or who at the time of such possible violation held any of the following positions in the Federal Government: (i) President, Vice President, Attorney General, or Director of the Federal Bureau of Investigation; (ii) any position compensated at a rate equal to level I or level II of the Executive Schedule under sections 5312 or 5313 of Title 5, United States Code; or (iii) Member of Congress.

(b) When the Attorney General determines that it is in the interest of the administration of justice, he may refer any other matter which he deems appropriate to the Special Prosecutor for investigation and, if warranted, prosecution.

(c) The Special Prosecutor may in his discretion decline to accept referrals under subsection (b) of this section. The Special Prosecutor may decline to assert jurisdiction under subsection (a) of this section when the matter over which he has jurisdiction is a peripheral or incidental part of an investigation or prosecution already being conducted elsewhere in the Department of Justice, or when for some other reason he determines it would be in the interest of the administration of justice to permit the matter to be handled elsewhere in the Department: *Provided, however,* That any such declination shall be accompanied by the establishment of such procedures as the Special Prosecutor considers necessary and appropriate to keep him informed of the progress of the investigation or prosecution as it relates to such matter; *And provided further,* That the Special Prosecutor may at any time assume responsibility for investigation and prosecution of such matter.

§ 593. AUTHORITY

(a) As to the matters described in section 592 of this Chapter for which he has assumed responsibility, the Special Prosecutor shall have authority (1) to conduct proceedings before grand juries and other investigations he deems necessary; (2) to review all documentary evidence available to the Department of Justice from any source, to which he shall have full access; (3) to determine whether or not to contest the assertion of Executive Privilege and any other testimonial privilege; (4) to determine whether or not application should be made to any Federal court for a grant of immunity to any witness, consistently with applicable statutory requirements, or for warrants, subpoenas, or other court orders; (5) to decide whether or not to prosecute any individual, firm, corporation or group of individuals; (6) to initiate and conduct prosecutions, frame indictments, file information, and handle all aspects of any cases within his jurisdiction, including any appeals; (7) to coordinate and direct the activities of all Department of Justice personnel, including United States Attorneys; (8) to deal with, appear before, and provide information to Congressional committees having jurisdiction over any aspect of the above matters.

(b) In exercising his authority hereunder, the Special Prosecutor shall not be subject to the direction or control of the Attorney General, except as to those matters which by statute specifically require the Attorney General's personal action, approval, or concurrence; provided, however, that nothing in this chapter shall prevent the Attorney General or the Solicitor General from presenting to any court views of the United States as to issues of law raised by any case or appeal.

§ 594. SECTION ON GOVERNMENT CRIMES

(a) There is established within the Criminal Division of the Department of Justice a Section on Government Crimes, which shall be headed by a Director appointed by the Attorney General. The Director shall be subordinate to the Assistant Attorney General for the Criminal Division, but shall also report directly to the Attorney General on a regular basis and when he deems it necessary.

(b) A person shall not be appointed Director of the Section on Government Crimes if he has at any time during the five years preceding such appointment held a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of, a candidate for any elective Federal office. This provision shall not, however, form the basis for any challenge of the legitimacy of a Director or the validity of any of his actions, once he has been appointed.

§ 595. JURISDICTION

(a) The Attorney General shall, except as to matters referred to the Special Prosecutor pursuant to section 592 of this Chapter, delegate to the Section on Government Crimes jurisdiction of (1) criminal violations of Federal law committed by any elected or appointed Federal Government officer, employee or special employee (other than members of the military) related directly or indirectly to his government position, employment, or compensation; (2) criminal violations of Federal laws relating to lobbying, campaigns, and election to public office committed by any person except insofar as such violations relate to matters involving discrimination or intimidation on the grounds of race, color, religion or national origin; and (3) such other matters as the Attorney General may deem appropriate.

(b) Jurisdiction delegated to the Section on Government Crimes pursuant to subsection (a) of this subsection may be concurrently delegated by the Attorney General to, or concurrently reside in, the United States Attorneys or other units of the Department of Justice. This section shall not limit any authority conferred upon the Attorney General, the Federal Bureau of Investigation, or any other department or agency of government to investigate any matter.

§ 596. REPORTING

At the beginning of each regular session of the Congress, the Attorney General shall report to the Congress on the activities and operation of the Section on Government Crimes for the preceding fiscal year.

Such report shall specify the number and type of investigations and prosecutions subject to the jurisdiction of such unit and the disposition thereof but shall not include any information which would impair an ongoing investigation, prosecution, or proceeding, or which the Attorney General determines would constitute an improper invasion of personal privacy.

§ 597. OFFICE OF PROFESSIONAL RESPONSIBILITY

There is established within the Department of Justice an Office of Professional Responsibility, which shall be headed by a Counsel on Special Responsibility appointed by the Attorney General. The Counsel shall be subject to the general supervision and direction of the Attorney General, and shall report directly to the Attorney General or, in appropriate cases, to the Deputy Attorney General or the Solicitor General.

§ 598. FUNCTIONS

(a) Except as to matters which are to be referred to the Special Prosecutor under Section 592 of this Chapter, the Counsel on Professional Responsibility shall be responsible for reviewing any information or allegation presented to him concerning conduct by an employee of the Department of Justice that may be in violation of law, of Department Regulations or orders, or of applicable standards of conduct, and shall undertake a preliminary investigation to determine what further steps should be taken. On the basis of such investigation the Counsel shall refer the matter to the appropriate unit within the Department or shall recommend to the Attorney General or, in appropriate cases, to the Deputy Attorney General or Solicitor General, what other action, if any should be taken. The Counsel shall undertake such other responsibilities as the Attorney General may direct.

(b) Nothing in this section shall derogate

from the authority of internal inspection units of the Department of Justice and the heads of other units to receive, investigate and act upon information or allegations concerning unlawful or improper conduct.

TITLE II—CONGRESSIONAL LEGAL COUNSEL

ESTABLISHMENT OF OFFICE OF CONGRESSIONAL LEGAL COUNSEL

SEC. 201. (a)(1) There is established, as an office of the Congress, the Office of Congressional Legal Counsel (hereinafter referred to as the "Office"), which shall be headed by a Congressional Legal Counsel; and there shall be a Deputy Congressional Legal Counsel who shall perform such duties as may be assigned to him by the Congressional Legal Counsel and, during any absence, disability, or vacancy in the office of the Congressional Legal Counsel, the Deputy Congressional Legal Counsel shall serve as Acting Congressional Legal Counsel.

(2) The Congressional Legal Counsel and the Deputy Congressional Legal Counsel each shall be appointed by the President pro tempore of the Senate and the Speaker of the House of Representatives from among recommendations submitted by the majority and minority leaders of the Senate and the House of Representatives. Any appointment made under this subsection shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the Office. Any person appointed as Congressional Legal Counsel or Deputy Congressional Legal Counsel shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during the term of such appointment.

(3)(A) Any appointment made under this subsection shall become effective upon approval, by concurrent resolution, of the Senate and the House of Representatives. The Congressional Legal Counsel and the Deputy Congressional Legal Counsel shall each be appointed for a term which shall expire at the end of the Congress following the Congress during which the Congressional Legal Counsel is appointed except that the Congress may, by concurrent resolution, remove either the Congressional Legal Counsel or the Deputy Congressional Legal Counsel prior to the termination of his term of office. The Congressional Legal Counsel and the Deputy Congressional Legal Counsel may be reappointed at the termination of any term of office.

(B) The first Congressional Legal Counsel and the first Deputy Congressional Legal Counsel shall be appointed and take office within ninety days after the enactment of this title, and thereafter the Counsel shall be appointed and take office within thirty days after the beginning of the session of Congress immediately following the termination of the Congressional Legal Counsel's term of office.

(4) The Congressional Legal Counsel shall receive compensation at a per annum gross rate equal to the rate of basic pay for level III of the Executive Schedule under section 5314 of title 5, United States Code. The Deputy Congressional Legal Counsel shall receive compensation at a per annum gross rate equal to the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b)(1) The Congressional Legal Counsel shall appoint and fix the compensation of such Assistant Congressional Legal Counsels and of such other personnel as may be necessary to carry out the provisions of this title and may prescribe the duties and responsibilities of such personnel. Any appointment made under this subsection shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the Office. Any person appointed as Assistant Congressional Legal Counsel shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during the term of such appointment. All such employees shall serve at the pleasure of the Congressional Legal Counsel.

(2) For purpose of pay (other than pay of the Congressional Legal Counsel and Deputy Congressional Legal Counsel) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as if they were employees of the Senate.

(c) In carrying out the functions of the Office, the Congressional Legal Counsel may procure the temporary (not to exceed one year) or intermittent services of individual consultants (including outside counsel), or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72(a)(i)).

(d) The Congressional Legal Counsel may establish such procedures as may be necessary to carry out the provisions of this title.

(e) The Congressional Legal Counsel may delegate authority for the performance of any function imposed by this Act except any function imposed upon the Congressional Legal Counsel under section 203(d)(2) of this title.

DUTIES AND FUNCTIONS

SEC. 202. (a) Whenever the Joint Committee on Congressional Operations (hereinafter referred to in this title as the "Joint Committee") is performing any of the responsibilities set forth in subsection (b), the Speaker of the House of Representatives, the majority and minority leaders of the House of Representatives, the President pro tempore of the Senate, and the majority and minority leaders of the Senate shall be ex officio members of the Joint Committee.

(b) The Joint Committee shall—

(1) oversee the activities of the Office of Congressional Legal Counsel, including but not limited to, consulting with the Congressional Legal Counsel with respect to the conduct of litigation in which the Congressional Legal Counsel is involved;

(2) pursuant to section 207 of this title, recommend the appropriate action to be taken in resolution of a conflict or inconsistency;

(3) pursuant to section 203(d)(2), cause the publication in the Congressional Record of the notification required of the Congressional Legal Counsel under that section.

(c)(1) Whenever the Congress is not in session, the Joint Committee may, in accordance with the provisions in section 203(b)(2), authorize the Congressional Legal Counsel to undertake its responsibilities under section 203(a) in the absence of an appropriate resolution for a period not to exceed ten days after the Congress or the appropriate House of Congress reconvenes.

(2) The Joint Committee may poll its members by telephone in order to conduct a vote under this subsection.

LEGAL ACTIONS INSTITUTED OR DEFENDED BY THE CONGRESSIONAL LEGAL COUNCIL

SEC. 203. Upon written certification by the Attorney General declining to provide legal representation in matters described in this section, the Congressional Legal Counsel, at the direction of Congress or the appropriate House of Congress shall—

(a)(1) defend Congress, a House of Congress, an office or agency of Congress, a committee or subcommittee, or any Member, officer, or employee of a House of Congress in any civil action pending in any court of the United States or of a State or political subdivision thereof in which Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency is made a party defendant and in which there is placed in issue the validity of any proceeding of, or action, including issuance of any subpena or order, taken by Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency; or

(2) defend Congress, a House of Congress, an office or agency of Congress, a committee or subcommittee, or a Member, officer, or employee of a House of Congress in any civil action pending in any court of the United States or of a State or political subdivision thereof with respect to any subpena or order directed to Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency.

(b)(1) Representation of a Member, officer, or employee under section 203(a) shall be undertaken by the Congressional Legal Counsel only upon the consent of such Member, officer, or employee. The resolution directing the Congressional Legal Counsel to represent a Member, officer, or employee may limit such representation to constitutional issues relating to the powers and responsibilities of Congress.

(2) The Congressional Legal Counsel may undertake its responsibilities under subsection (a) in the absence of an appropriate resolution by the Congress or by one House of the Congress if—

(A) Congress or the appropriate House of Congress is not in session;

(B) the interest to be represented would be prejudiced by a delay in representation; and

(C) the Joint Committee authorizes the Congressional Legal Counsel to proceed in its representation as provided under section 202.

(c)(1) The Congressional Legal Counsel, at the direction of Congress or the appropriate House of Congress, shall bring a civil action under any statute conferring jurisdiction on any court of the United States to enforce, or issue a declaratory judgment concerning the validity of any subpena or order issued by Congress, or a House of Congress, a committee, or a subcommittee of a committee authorized to issue a subpena or order.

(2) Nothing in subsection (a) shall limit the discretion of—

(A) the President pro tempore of the Senate or the Speaker of the House of Representatives in certifying to the United States Attorney for the District of Columbia any matter pursuant to section 104 of the Revised Statutes (2 U.S.C. 194); or

(B) either House of Congress to hold any individual or entity in contempt of such House of Congress.

(d)(1) The Congressional Legal Counsel, at the direction of Congress, shall intervene or appear as amicus curiae in any legal action pending in any court of the United States or of a State or political subdivision thereof in which—

(A) the constitutionality of any law of the United States is challenged and the United States is a party; or

(B) the powers and responsibilities of Congress under article I of the Constitution of the United States are placed in issue.

(2) The Congressional Legal Counsel shall notify the Joint Committee of any legal action in which the Congressional Legal Counsel is of the opinion that intervention or appearance as amicus curiae by Congress is necessary to carry out the purposes of this section. Such notification shall contain a description of the legal proceeding together with the reasons that the Congressional Legal Counsel is of the opinion that Congress should intervene or appear as amicus curiae. The Joint Committee shall cause said notification to be published in the Congressional Record for the Senate and House of Representatives.

IMMUNITY PROCEEDINGS

SEC. 204. The Congressional Legal Counsel, at the direction of the appropriate House of Congress or any committee of Congress, shall serve as the duly authorized representative of such House or committee in requesting a United States district court to issue an order granting immunity pursuant to section 201(a) of the Organized Crime Control Act of 1970 (18 U.S.C. 6005).

ADVISORY AND OTHER FUNCTIONS

SEC. 205. (a) The Congressional Legal Counsel shall advise, consult, and cooperate—

(1) with the United States Attorney for the District of Columbia with respect to any criminal proceeding for contempt of Congress certified pursuant to section 104 of the Revised Statutes (2 U.S.C. 194);

(2) with the Joint Committee on Congressional Operations in identifying any court proceeding or action which is of vital interest to Congress or to either House of Congress under section 402(a)(2) of the Legislative Reorganization Act of 1970 (2 U.S.C. 412 (a)(2));

(3) with the Comptroller General, General Accounting Office, the Office of Legislative Counsel of the Senate, the Office of the Legislative Counsel of the House of Representatives, and the Congressional Research Service, except that none of the responsibilities and authority granted by this title to the Congressional Legal Counsel shall be construed to affect or infringe upon any functions, powers, or duties of the Comptroller General of the United States;

(4) with any Member, officer, or employee of Congress not represented under section 203 with regard to obtaining private legal counsel for such Member, officer, or employee;

(5) with the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Parliamentarians of the Senate and House of Representatives regarding any subpena, order, or request for withdrawal of papers presented to the Senate and House of Representatives or which raises a question of the privileges of the Senate or House of Representatives; and

(6) with any committee or subcommittee in promulgating and revising their rules and procedures for the use of congressional investigative powers and questions which may arise in the course of any investigation.

(b) The Congressional Legal Counsel shall compile and maintain legal research files of materials from court proceedings which have involved Congress, a House of Congress, an office or agency of Congress, or any committee, subcommittee, Member, officer, or employee of Congress. Public court papers and other research memoranda which do not contain information of a confidential or privileged nature shall be made available to the public consistent with any applicable procedures set forth in such rules of the Senate and House of Representatives as may apply and the interests of Congress.

(c) The Congressional Legal Counsel shall perform such other duties consistent with the purposes and limitations of this title as the Congress may direct.

DEFENSE OF CERTAIN CONSTITUTIONAL POWERS

SEC. 206. In performing any function under section 203, the Congressional Legal Counsel shall defend vigorously when placed in issue—

(1) the constitutional privilege from arrest or from being questioned in any other place for any speech or debate under section 6 of article I of the Constitution of the United States;

(2) the constitutional power of each House of Congress to be judge of the elections, returns, and qualifications of its own Members and to punish or expel a Member under section 5 of article I of the Constitution of the United States;

(3) the constitutional power of each House of Congress to except from publication such parts of its journal as in its judgment may require secrecy;

(4) the constitutional power of each House of Congress to determine the rules of its proceedings;

(5) the constitutional power of Congress to make all laws as shall be necessary and proper for carrying into execution the constitutional powers of Congress and all other powers vested by the Constitution in the Government of the United States, or in any department or office thereof;

(6) all other constitutional powers and responsibilities of Congress; and

(7) the constitutionality of statutes enacted by Congress.

CONFLICT OR INCONSISTENCY

SEC. 207. (a) In the carrying out of the provisions of this title, the Congressional Legal Counsel shall notify the Joint Committee and any party represented or entitled to representation under this title, of the existence and nature of any conflict or inconsistency between the representation of such party and the carrying out of any other provisions of this title, or compliance with professional standards and responsibilities.

(b) Upon receipt of such notification, the Joint Committee shall recommend the action to be taken to avoid or resolve the conflict or inconsistency. The Joint Committee shall cause the notification of conflict or inconsistency and the Joint Committee's recommendation with respect to resolution thereof to be published in the Congressional Record of the appropriate House or Houses of Congress. If Congress or the appropriate House of Congress does not direct the Joint Committee within fifteen days from the date of publication in the Record to resolve the conflict in another manner, the Congressional Legal Counsel shall take such action as may be necessary to resolve the conflict or inconsistency as recommended by the Joint Committee. Any instruction or determination made pursuant to this subsection shall not be reviewable in any court of law.

(c) The appropriate House of Congress may by resolution authorize the reimbursement of any Member, officer, or employee who is not represented by the Congressional Legal Counsel as a result of the operation of subsection (b) or who declines to be represented pursuant to section 203(b) for costs reasonably incurred in obtaining representation. Such reimbursement shall be from funds appropriated to the contingent fund of the appropriate House.

PROCEDURE FOR DIRECTION OF CONGRESSIONAL LEGAL COUNSEL

SEC. 208.(a) Directives made pursuant to sections 203 (a), (c)(1), (d)(1), and 204, of this title shall be made as follows:

(e)(1) Directives made by Congress pursuant to section 203(a), (c)(1), and (d)(1) of this title shall be authorized by a concurrent resolution of Congress.

(2) Directives made by either House of Congress pursuant to sections 203(a), (c)(1), and 204 of this title shall be authorized by passage of a resolution of such House.

(3) Directives made by a committee of Congress pursuant to section 204 of this title shall be in writing and approved by an affirmative vote of two-thirds of the members of the full committee.

(b)(1) A resoluion or concurrent resolution introduced pursuant to subsection (a) shall not be referred to a committee, except as otherwise required under subsection (c)(1). Upon introduction or when reported as required under subsection (c)(2), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution or concurrent resolution. A motion to proceed to the consideration of a resolution or concurrent resolution shall be highly privileged and not debatable. An amendment to such motion shall not be in order, and it shall not be in order to move to reconsider the vote by which such motion is agreed to or disagreed to.

(2) If the motion to proceed to the consideration of the resolution or concurrent resolution is agreed to, debate thereon shall be limited to not more than five hours, which shall be divided equally between, and controlled by, those favoring and those opposing the resolution or concurrent resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution or concurrent resolution shall be in order, except an amendment pursuant to section 203(b) to limit representation by the Congressional Legal Counsel to constitutional issues relating to the powers and responsibilities of Congress. No motion to recommit the resolution or concurrent resolution shall be in order, and it shall not be in order to reconsider the vote by which the resolution or concurrent resolution is agreed to or disagreed to.

(3) Motions to postpone, made with respect to the consideration of the resolution or concurrent resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to the resolution or concurrent resolution shall be decided without debate.

(c) It shall not be in order in the Senate or House of Representatives to consider a resolution to direct the Congressional Legal Counsel to bring a civil action pursuant to section 203(c)(1) to enforce or secure a declaratory judgment concerning the validity of a subpena or order issued by a committee or subcommittee unless (1) such resolution is reported by a majority vote of the members of such committee or committee of which such subcommittee is a subcommittee, and (2) the report filed by such committee or committee of which such subcommittee is a subcommittee contains a statement of—

(A) the procedure followed in issuing such subpena;

(B) the extent to which the party subpenaed has complied with such subpena;

(C) any objections or privileges raised by the subpenaed party; and

(D) the comparative effectiveness of bringing a civil action to enforce the subpena, certification of a criminal action for contempt of Congress, and initiating a contempt proceeding before a House of Congress.

(d) The extent to which a report filed pursuant to subsection (c)(2) is in compliance with such subsection shall not be reviewable in any court of law.

(e) For purposes of the computation of time in sections 202(c)(1) and 207(b)—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period.

(f) For purposes of this title, when referred to herein, the term "committee" shall include standing, select, special, or joint committees established by law or resolution and the Techology Assessment Board.

(g) The provisions of this section are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and, as such, they shall be considered as part of the rules of each House, respectively, and such rules shall supersede any other rule of each House only to the

extent that rule is inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(h) Any directive to the Congressional Legal Counsel to bring a civil action pursuant to section 203(c)(1) of this title in the name of a committee, or subcommittee of Congress shall constitute authorization for such committee, or subcommittee to bring such action within the meaning of any statute conferring jurisdiction on any court of the United States.

PROCEDURAL PROVISIONS

SEC. 209. (a) Permission to intervene as a party or to file a brief amicus curiae under section 203(d) of this title shall be of right and may be denied by a court only upon an express finding that such intervention or filing is untimely and would significantly delay the pending action.

(b) The Congressional Legal Counsel, the Deputy Congressional Legal Counsel or any designated Assistant Congressional Legal Counsel, shall be entitled, for the purpose of performing his functions under this title, to enter an appearance in any such proceeding before any court of the United States without compliance with any requirement for admission to practice before such court, except that the authorization conferred by this paragraph shall not apply with respect to the admission of any person to practice before the United States Supreme Court.

(c) Nothing in this title shall be construed to confer standing on any party seeking to bring, or jurisdiction on any court with respect to, any civil or criminal action against Congress, either House of Congress, a Member of Congress, a committee or subcommittee of Congress, or any officer, employee, office, or agency of Congress.

(d) In any civil action brought pursuant to section 203(c) of this title, the court shall assign the case for hearing at the earliest practicable date and cause the case in every way to be expedited. Any appeal or petition for review from any order or judgment in such action shall be expedited in the same manner.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 210. (a) Section 3210 of title 39, United States Code, is amended—

(1) by striking out "and the Legislative Counsels of the House of Representatives and the Senate" in subsection (b)(1) and inserting in lieu thereof "the Legislative Counsels of the House of Representatives and the Senate, and the Congressional Legal Counsel"; and

(2) by striking out "or the Legislative Counsel of the House of Representatives or the Senate" in subsection (b)(2) and inserting in lieu thereof "the Legislative Counsel of the House of Representatives or the Senate, or the Congressional Legal Counsel"

(b) Section 3216(a)(1)(A) of such title is amended by striking out "and the Legislative Counsels of the House of Representatives and the Senate" and inserting in lieu thereof "the Legislative Counsels of the House of Representatives and the Senate, and the Congressional Legal Counsel".

(c) Section 3219 of such title is amended by striking out "or the Legislative Counsel of the House of Representatives or the Senate" and inserting in lieu thereof "the Legislative Counsel of the House of Representatives or the Senate, or the Congressional Legal Counsel".

(d) Section 8 of the Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and sixty-six, and for other purposes", approved March 3, 1875, as amended (2 U.S.C. 118), is repealed.

SEPARABILITY

SEC. 211. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 212. There are authorized to be appropriated for each fiscal year through October 30, 1981, such sums as may be necessary to carry out the provisions of this title. Amounts so appropriated shall be disbursed by the Secretary of the Senate upon vouchers signed by the Congressional Legal Counsel, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

TITLE III—GOVERNMENT PERSONNEL: FINANCIAL DISCLOSURE REQUIREMENTS

DEFINITIONS

SEC. 301. As used in this title—

(1) the term "agency" means each authority of the Government of the United States;

(2) the term "commodity future" means commodity future as defined in sections 2 and 5 of the Commodity Exchange Act, as amended (7 U.S.C. 2 and 5);

(3) the term "Comptroller General" means the Comptroller General of the United States;

(4) the term "dependent" means dependent as defined in section 152 of the Internal Revenue Code of 1954;

(5) the term "employee" includes any employee designated under section 2105 of title 5, United States Code, and any employee of the United States Postal Service or of the Postal Rate Commission;

(6) the term "immediate family" means—(A) the spouse of an individual, (B) the child, parent, grandparent, grandchild, brother, or sister of an individual or of the spouse of such individual, and (C) the spouse of any individual designated in clause (B);

(7) the term "income" means gross income as defined in section 61 of the Internal Revenue Code of 1954;

(8) the term "Member of Congress" means a Senator, a Representative, a Resident Commissioner, or a Delegate;

(9) the term "officer" includes any officer designated under section 2104 of title 5, United States Code, any elected or appointed officer of the Congress or of either House of Congress, and any officer of the United States Postal Service or of the Postal Rate Commission;

(10) the term "security" means security as defined in section 2 of the Securities Act of 1933, as amended (15 U.S.C. 77b);

(11) the term "transactions in securities and commodities" means any acquisition, transfer, or other disposition involving any security or commodity;

(12) the term "uniformed services" means any of the armed forces, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration;

(13) the term "political contribution" means a contribution as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431); and

(14) the term "expenditure" means an expenditure as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431).

INDIVIDUALS REQUIRED TO FILE REPORT

SEC. 302. (a) Any individual who is or was an officer or employee designated under subsection (b) shall file each calendar year a report containing a full and complete financial statement for the preceding calendar year if such individual has occupied the office or position for a period in excess of ninety days in such calendar year.

(b) The officers and employees referred to in subsection (a) are—

(1) the President;

(2) the Vice President;

(3) each Member of Congress;

(4) each justice or judge of the United States;

(5) each officer or employee of the United States who is compensated at a rate equal to or in excess of the minimum rate prescribed for employees holding the grade of GS-16 under section 5332(a) of title 5, United States Code; and

(6) each member of a uniformed service who is compensated at a rate equal to or in excess of the monthly rate of pay prescribed for grade O-6 as adjusted under section 1009 of title 37, United States Code.

(c) Any individual who seeks nomination for election, or election, to the Office of President, Vice President, or Member of Congress shall file in any year in which such individual has—

(1) taken the action necessary under the law of a State to qualify for nomination for election, or election, or

(2) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about such individual's nomination for election or election, to such office, a report containing a full and complete financial statement for the preceding calendar year.

CONTENTS OF REPORTS

SEC. 303. (a) Each individual shall include in each report required to be filed by him under section 302 a full and complete statement, in such manner and form as the Comptroller General may prescribe, with respect to—

(1) the amount and source of each item of income, each item of reimbursement for any expenditure, and each gift or aggregate of gifts from one source (other than gifts received from any member of his immediate family) received during the preceding calendar year which exceeds $100 in amount or value, including any fee or other honorarium received for or in connection with the preparation or delivery of any speech, attendance at any convention or other assembly of individuals, or the preparation of any article or other composition for publication;

(2) the fair market value and source of any item received in kind or aggregate of such items received from one source (other than items received in kind from any member of his immediate family), including, but not limited to, any transportation or entertainment received, during the preceding calendar year if such fair market value for such item exceeds $500;

(3) the identity and the category of value, as designated under subsection (b), of each asset known to him, held during the preceding calendar year for business or investment purposes and which has a value in excess of $1,000 as of the close of the preceding calendar year;

(4) the identity and the category of amount, as designated under subsection (b), of each liability owed which is in excess of $1,000 as of the close of the preceding calendar year;

(5) the identity, the category of amount as designated under subsection (b), and date of any transaction in securities of any business entity or any transaction in commodities futures during the preceding calendar year which is in excess of $1,000;

(6) the identity and the category of value as designated under subsection (b), or any purchase or sale of real property or any interest in any real property which was held for business or investment purposes during

the preceding calendar year if the value of property involved in such purchase or sale exceeds $1,000;

(7) any patent right or any interest in any patent right, and the nature of such patent right, held during the preceding calendar year; and

(8) a description of, the parties to, and the terms of any contract, promise, or other agreement between such individual and any person with respect to his employment after such individual ceases to occupy his office or position with the Government, including any agreement under which such individual is taking a leave of absence from an office or position outside of the Government in order to occupy an office or position of the Government, and a description of and the parties with any unfunded pension agreement between such individual and any employer other than the Government.

Each individual designated under paragraphs (5) and (6) of section 302(b) shall also include in such report the identity of any person, other than the Government, who paid such individual compensation in excess of $5,000 in any of the five years prior to the preceding calendar year and the nature and term of the services such individual performed for such person. The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(b)(1) For purposes of paragraphs (3) through (6) of subsection (a), an individual need not specify the actual amount or value of each asset, each liability, each transaction in securities of any business entity or in commodities futures, or each purchase or sale required to be reported under such paragraphs, but such individual shall indicate which of the following categories such amount or value is within—

(A) not more than $5,000,

(B) greater than $5,000 but not more than $15,000,

(C) greater than $15,000 but not more than $50,000, or

(D) greater than $50,000.

(2) Each individual shall report the actual amount or value of any other item required to be reported under this section.

(c) For purposes of paragraphs (1) through (7) of subsection (a), an individual shall include each item of income or reimbursement and each gift received, each item received in kind, each asset held, each liability owed, each transaction in commodities futures and in securities, each purchase or sale of real property or interest in any real property, and each patent right or interest in any real property, and each patent right or interest in any patent right held by him, his spouse, or any of his dependents, or by him and his spouse jointly, him and any of his dependents jointly, or his spouse and any of his dependents jointly, or by any person acting on his behalf.

FILING OF REPORTS

SEC. 304. (a)(1) Not later than May 15 of each year, reports will be filed as follows: officers and employees of the Executive Branch, other than an individual excepted under paragraph (3) of this subsection, shall file their reports with the Chairman of the Civil Service Commission; Justices, judges, officers and employees of any court of the United States shall file their reports with the Director of the Administrative Office of the United States courts; members, officers and employees of the Legislative Branch shall file their reports with the Secretary of the Senate or the Clerk of the House of Representatives, respectively. The Comptroller General shall have access to such reports for the purpose of carrying out this title.

(2) Each such individual, other than the President, Vice President, a Member of Congress, a justice or judge of the United States, any officer or employee of the Senate or the House of Representatives or any court of the United States, the head of each agency, each Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in the Executive Office, or each full-time member of a committee, board, or commission appointed by the President, shall file a copy of such report with the head of the agency in which such individual occupies any office or position at the same time as such report is filed pursuant to paragraph (1).

(3) The President may exempt any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States from the requirement to file a report with the Civil Service Commission if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report would reveal the identity of an undercover agent of the Federal Government. Each individual exempted by the President from such requirements shall file such report with the head of the agency in which he occupies an office or position.

(b)(1) Each individual who seeks nomination for election, or election, to the office of President or Vice President and is required to file a report under section 302(c) shall file such report with the Chairman of the Federal Election Commission within one month after the earliest of either action which such individual takes under section 302(c) (1) or (2).

(2) Each individual who seeks nomination for election, or election, to the Office of Member of Congress and is required to file a report under section 302(c) shall file such report with the Clerk of the House or the Secretary of the Senate within one month after the earliest of either action which such individual takes under section 302(c) (1) or (2).

(c)(1) Any individual who ceases prior to May 15 of any calendar year to occupy the office or position the occupancy of which imposes upon him the reporting requirement contained in section 302(a) shall file such report for the preceding calendar year and the period of such calendar year for which he occupies such office or position on or before May 15 of such calendar year.

(2) Any individual who ceases to occupy such office or position after May 15 of any calendar year shall file such report for the period of such calendar year which he occupies such office or position on the last day he occupies such office or position.

(d) Persons with whom reports are to be filed may grant one or more reasonable extensions of time for filing any report but the total of such extensions in any case shall not exceed ninety days.

FAILURE TO FILE OR FALSIFYING REPORTS; PROCEDURE

SEC. 305. (a)(1) Any individual who willfully fails to file a report as required under section 302, or who knowingly and willfully falsified or fails to report any information such individual is required to report under section 303, shall be fined in any amount not exceeding $10,000, or imprisoned for not more than one year, or both.

(2) The Attorney General may bring a civil action in any district court of the United States against any individual who fails to file a report which such individual is required to file under section 302 or who fails to report any information which such individual is required to report under section 303. The court in which such action is brought may assess against such individual a penalty in any amount not to exceed $5,000.

(b) The head of each agency, the Clerk of the House of Representatives with respect to any Member, officer, or employee of the House of Representatives, the Secretary of the Senate with respect to any Member, officer or employee of the Senate, and the Director of the Administrative Office of the United States Courts with respect to any justice, judge, officer, or employee of any court of the United States shall submit annually to the Comptroller General a complete list of individuals who are required to file a report under section 302 and shall submit at the close of each calendar quarter a list of individuals who have begun or have terminated employment with such agency, the House of Representatives, the Senate, or any court in such calendar quarter.

(c) The Comptroller General or the person with whom a report is required to be filed pursuant to this title shall refer to the Attorney General the name of any individual which he has reasonable cause to believe has failed to file a report or has falsified or failed to file information required to be reported. In addition, if such individual is a Member, officer, or employee of the Senate or the House of Representatives, the Comptroller General shall refer the name of such individual to the Senate Select Committee on Standards and Conduct or the Committee on Standards of Official Conduct of the House of Representatives, whichever is appropriate.

(d) The President, the Vice President, either House of Congress, the Director of the Administrative Office of the United States Courts, the head of each agency or the Civil Service Commission may take any appropriate personnel or other action against any individual failing to file a report or information or falsifying information.

CUSTODY AND AUDIT OF, AND PUBLIC ACCESS TO, REPORTS

SEC. 306. (a)(1) Except as provided in (2), the person with whom a report is required to be filed shall make such report available for public inspection within fifteen days after the receipt thereof and shall provide a copy of such report to any person upon a written request.

(2) The foregoing paragraph shall not apply to individuals in the competitive service, individuals in Schedules A and B of the excepted service, or other individuals who are determined by the Civil Service Commission to be in career positions.

(b) Any person requesting a copy of a report under subsection (a)(1) shall supply his name and address and the name of the person or organization, if any, on whose behalf he is requesting such copy and may be required to pay a reasonable fee in an amount necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing.

(c)(1) It shall be unlawful for any person to inspect or obtain a copy of any report—

(A) for any unlawful purpose;

(B) for any commercial purpose;

(C) to determine or establish the credit rating of any individual;

(D) to compile any mailing list, or

(E) for use directly or indirectly in the solicitation of money for any political, charitable or other purpose.

(2) The Attorney General may bring a civil action in any district court of the United States against any person who inspects or obtains such report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such individual a penalty in any amount not to exceed $1,000.

(d) Reports shall be held and made available to the public for a period of five years

after receipt. After such five-year period, the reports shall be destroyed.

(e)(1) The House of Representatives, the Senate, the Director of the Administrative Office of the United States Courts, the Chairman of the Civil Service Commission, and the head of each agency shall make provisions to assure that each report shall be reviewed in accordance with any law or regulation with respect to conflicts of interest or confidential financial information of officers or employees of the House of Representatives, the Senate, the United States courts or each such agency or in accordance with rules and regulations as may be prescribed.

(2) Notwithstanding any law or resolution, whenever in any criminal case pending in any competent court in which a Member, officer, or employee of the Senate is a defendant, or in any proceeding before a grand jury of any competent court in which alleged criminal conduct of a Member, officer, or employee of the Senate is under investigation, a subpena is served upon the Secretary of the Senate directing him to appear and produce any reports filed pursuant to any financial disclosure requirement, then he shall—

(i) if such report is in a sealed envelope, unseal the envelope containing such report and have an authenticated copy made of such report, replace such report in such envelope and reseal it, and note on such envelope that it was opened pursuant to this paragraph in response to a subpena, a copy of which shall be attached to such envelope, and

(ii) appear in response to such subpena and produce the authenticated copy so made. For purposes of this paragraph, the term "competent court" means a court of the United States, a State, or the District of Columbia which has general jurisdiction to hear cases involving criminal offenses against the United States, such State, or the District of Columbia, as the case may be.

(f)(1) The Comptroller General shall, under such regulations as he may prescribe, conduct on a random basis audits of not more than 5 per centum of the reports filed under section 304(a)(1).

(2) The Comptroller General shall audit during each term of an individual holding the office of President or Vice President at least one report filed by such individual under section 304(a)(1) during such term.

(3) The Comptroller General shall, during each six-year period beginning after the date of enactment of this Act, audit at least one report filed by each Member of the Senate and the House of Representatives during such six-year period.

(4)(A) In conducting an audit under paragraph (1), (2), or (3), the Comptroller General is authorized to require by subpena the production of books, papers, and other documents. All such subpenas shall be issued and signed by the Comptroller General.

(B) In case of a refusal to comply with a subpena issued under subparagraph (A)—

(i) the Comptroller General is authorized to seek an order by any district court of the United States having jurisdiction of the defendant to require the production of the documents involved; and

(ii) such district court may issue such order and enforce it by contempt proceedings.

(5) Whenever the Comptroller General finds that a report filed under Section 304(a)(1) discloses the existence of a conflict of interest or a potential conflict of interest, he shall report his finding to the person with whom such report has been filed with a copy to the individual who filed such report. In the event an issue raised by such a report is not resolved to the satisfaction of the Comptroller General, he may, after the lapse of 90 days from the date of his report, make public the report filed under Section 304(a)(1), together with his finding and all comments made or actions taken in respect of his finding.

SEPARABILITY

SEC. 307. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 308. There are authorized to be appropriated for each fiscal year through October 30, 1981, such sums as may be necessary to carry out the provisions of this title.

Mr. PERCY. Mr. President, the Senate is today considering title I of S. 495, which would establish a Division of Government Crimes within the Department of Justice to investigate and prosecute public officials accused of violating Federal law and create a triggering mechanism whereby a temporary special prosecutor could be appointed in certain limited conflict of interest situations. This title has undergone many revisions in the Government Operations Committee and it was further altered during the last several weeks during intensive discussions with officials of the Department of Justice.

On Monday, July 19, just as S. 495 was coming before the Senate for its consideration, the President sent a new proposal to the Congress and asked that it be adopted instead of S. 495. Yesterday the Senate basically accepted titles II and III of S. 495 as unanimously approved by the committee on April 9. Some changes designed to meet specific concerns raised by Attorney General Levi and other officials in the Department of Justice were incorporated in these titles, however

With respect to title I of this legislation, members of the Government Operations Committee see considerable merit in President Ford's proposal and have been working over the last 2 days to modify it so that it would have wide support in the Senate. We believe that this has been achieved in the new title I Senator RIBICOFF has referred to this morning and we strongly urge its adoption by the full Senate.

Title I as amended would provide for the establishment within the Department of Justice of an independent Office of Special Prosecutor which would be headed by a special prosecutor appointed by the President by and with the advice and consent of the Senate. The special prosecutor would be appointed for a nonrenewable term of 3 years. During the 5 years preceding his appointment he could not have held a high level position of trust and responsibility on the personal campaign staff or in the party organization working on behalf of a candidate for any elective Federal office.

The special prosecutor could only be removed by the President for extraordinary improprieties, malfeasance in office, or for any conduct constituting a felony. Title I of S. 495, as reported out of the Government Operations Committee, and title I of President Ford's proposal provided for removal of the special prosecutor by the President only for "extraordinary improprieties." The committee has lowered the standard for removal in an effort to insure that no special prosecutor would become a law unto himself. While independence from the President and the Attorney General would be absolutely necessary in the handling of the sensitive cases before him, the special prosecutor must always know that he is ultimately accountable not only to the American people but to the President for serious misconduct in office.

Under the newly drafted legislation, the special prosecutor would have jurisdiction to investigate and prosecute possible violations of the Federal criminal law by the President, the Vice President, the Attorney General, the Director of the Federal Bureau of Investigation, any individual compensated at a rate equal to level I or II of the executive schedule, any Member of Congress, or any member of the Federal judiciary. The Attorney General would also have the authority to refer any matter to the special prosecutor for investigation and, if warranted, prosecution where he determines that in the interest of the administration of justice it would be inappropriate for the Department of Justice—other than the office of special prosecutor—to conduct the investigation or prosecution.

The second major reform proposed in title I of this legislation would be the establishment within the Department of Justice of an Office of Government Crimes which would be headed by a Director appointed by the President by and with the advice and consent of the Senate. The Director would report directly to the Attorney General on a regular basis and he could report to any other person in the Department of Justice at the direction of the Attorney General. The Attorney General would also have the authority under this legislation to determine the organizational placement of the Office within the Department. I understand that Attorney General Levi feels strongly that this Office should be placed within the Criminal Division. Under this legislation he will be able to do so. Future Attorneys General may have different views on this matter and they would be able to alter the bureaucratic arrangement to better fit their style.

Except as to matters referred to the special prosecutor under title I, the Attorney General would delegate to the Office of Government Crimes jurisdiction of:

First. Criminal violations of law related directly or indirectly to the Government position or compensation of any individual who holds or who at the time of possible violations held a position as an elected or appointed Federal Government official.

Second. Criminal violations of Federal law relating to lobbying, conflicts of interest, campaigns, and election to public office to the extent that such violations do not involve discrimination or intimidation on the grounds of race, color, religion or national origin.

Third. Whatever other matters the Attorney General may deem appropriate.

The Attorney General would be required to report to the Congress on the activities and operation of the Office of Government Crimes at the beginning of each session of Congress.

Section 597 of this title directs the Attorney General to promulgate rules and regulations which would require any officer or employee of the Department of Justice to disqualify himself from participation in a particular investigation or prosecution if participation would result in a personal, financial, or partisan political conflict of interest, or appearance thereof.

Mr. President, title I of President Ford's bill would codify the Office of Professional Responsibility which was established at the direction of Attorney General Levi on December 9, 1975. The Counsel on Professional Responsibility would be appointed by the Attorney General and would be subject to his general supervision. His responsibilities would include reviewing any information or allegations presented to him concerning conduct by Department of Justice employees that may be in violation of law, of Department regulations or orders, or of applicable standards of conduct. Once he has completed his review he could refer the matter to the appropriate unit within the Department or recommend to the Attorney General whatever other action should be taken.

The committee has studied this reform by Attorney General Levi and has found that the new Office of Professional Responsibility serves an important function. We agree with the President that this Office should be established by statute and we have incorporated his proposal on this point in the title I we are presenting to the Senate this morning.

Mr. President, title I of S. 495 is basically title I of President Ford's proposal as modified over the last 2 days by the Government Operations Committee. This proposal is not perfect. There are potential problems in its operation which we have discussed at length with the Attorney General and other legal scholars around the country. But after careful analysis, we do feel that it offers the best possibility of insuring that investigations and prosecutions of high Government officials will be handled in a manner such that there will be no real or apparent partisan political conflict of interest. At the same time, I am convinced that this proposal leaves the primary responsibility for enforcing the laws of the United States where it properly belongs—in the hands of the Attorney General.

Enactment of this legislation by the Senate and House of Representatives should go a long way toward insuring the integrity of our Government as well as the fact and appearance of impartial administration of justice. I am convinced that this is a bill the President can and will sign. I therefore urge its prompt enactment by the Senate.

Mr. KENNEDY. Mr. President, as we move toward a successful conclusion on this piece of legislation here in the Senate, I again note the very special contribution that has been made by the chairman of the Government Operations Committee, Senator RIBICOFF, and his colleague from that State, Senator WEICKER, and also the distinguished Senator from Illinois (Mr. PERCY), and the Senator from New York (Mr. JAVITS), all of whom have played such a leading role in developing this substitute to Title I of S. 495.

I also wish to acknowledge the work that has been done by the Attorney General, more dramatically in very recent times, almost in the final hours, and the support which has been given now to this proposal by the President, as well.

I am happy to join the Senators in offering the substitute, and I urge my colleagues to support it.

The substitute incorporates the three main principles that the Government Operations Committee insisted upon in S. 495 and that the Judiciary Committee insisted upon in 1973 regarding a Watergate special prosecutor.

First, the substitute recognizes fully the principle that we should establish by statute a class of cases that is better handled outside the normal routine manner to guard against the reality and the appearance of improper influence or special treatment for Cabinet Members, Senators and Congressmen, and White House assistants. The amendment clearly delineates the special class of cases.

If I may, I would like to have the attention of the manager of the bill concerning the particular areas of jurisdiction in section 592(a)(1) in which it is quite clear as to what the jurisdiction would be for the special prosecutor.

The (a)(2) provision refers to the additional instances when the Attorney General may refer cases to the special prosecutor.

I would be interested in gaining further information and legislative history from the floor manager of the bill as to whether there are limitations on the types of individuals who might be so included, whether those are limited only to the Federal officials who are named in the (a)(1) section or whether there are conceived to be additional private officials who may have some special relationship with those who hold those offices in the (a)(1) section; whether it might even include State officials or local officials; and also, then, what the limitations are to try to provide at least some safeguard against abuse, perhaps, of that particular power. I know this has been a matter which has been given very careful consideration by the committee.

As I understand, this language here is meant to provide some degree of flexibility. But also included in it is the kind of protections and guarantees which, I know, the chairman of the committee is very much concerned about.

Mr. RIBICOFF. Mr. President, first, I wish to state that the Senator from Massachusetts has taken a deep and continuous interest in this entire legislation. We have consulted with the Senator from Massachusetts throughout the long history of this bill, and his contributions have been invaluable.

I would also like to pay tribute to a member of his staff, Mr. Phil Bakes, who has been working with the staff of the Government Operations Committee throughout. He has been invaluable with his input, and he has kept the Senator from Massachusetts continuously advised. I do want to take this opportunity of paying tribute to the Senator from Massachusetts and Mr. Bakes.

I respond to the questions raised in this way: We have explicitly named certain Federal officers in the (a)(1) category of the bill. The Attorney General would have to refer to the special prosecutor in the event allegations concerning those individuals came to his attention.

In addition, with respect to the other individuals or matters raised by the Senator from Massachusetts, the bill requires that they also be referred whenever the Attorney General determines that, in the interests of the administration of justice, the Department of Justice should not handle such cases. This would certainly apply to the types of cases posed by the Senator from Massachusetts.

Concerning potential abuses by the special prosecutor, to a great exent this is going to have to be the job of the Senate and the House Judiciary Committees. We have made it very clear that the jurisdiction over the special prosecutor would be that of the Judiciary Committee. We would hope, and we would expect, as has been the case in the past, that the Judiciary Committee would exercise its oversight jurisdiction with hearings to keep track of what is being done, requiring the special prosecutor to make periodic reports to the Judiciary Committee as to his actions and activities, and it would be up to the Judiciary Committee to determine if he was fulfilling his function properly, and if any changes in the law or any remedy had to be taken either administratively or statutorily.

Mr. KENNEDY. I think that is a very helpful comment, and I appreciate the references to Phil Bakes.

Mr. RIBICOFF. May I point out, too, the bill provides that the special prosecutor can be removed by the President for extraordinary improprieties, for malfeasance in office or for any conduct constituting a felony.

The Judiciary Committee has great power. We may recall that through the entire Watergate proceedings it was the insistence of the Judiciary Committee, led by its able chairman, Senator EASTLAND, that time and time again insisted on the independence of the special prosecutor. If my memory serves me right, it was during the confirmation hearings for Elliot Richardson, as Attorney General, that the charter for the Special Prosecutor, Archibald Cox, was nailed down. There is no question but that in the event of any action that came to view, if there was a feeling that there was abuse or impropriety, public opinion and public hearings by the Judiciary Committee would be the greatest sanction we could possibly have in place. I

do not know how you could write into legislation all the details of what should or should not be done, but I have complete faith in the Judiciary Committee of this body and also in the other body, because it has proven itself during the past, that it would assure that this job was being handled in the most proper and precise way.

Mr. KENNEDY. I thank the chairman, the Senator from Connecticut, for defining that, not only the authority of the Judiciary Committee, but in illustrating the parameters of the authority in section (a)(2), which I agree would be my understanding of that power and authority and how it should be utilized.

To continue, Mr. President, the substitute clearly establishes that the special prosecutor will have independence. The substitute incorporates the language of printed amendment No. 1926 which I had intended to offer. The effect is to establish by statute full power and independent authority to investigate and prosecute the special class of cases. There is no power of President or Attorney General to interfere. This is essential in regard to political considerations. Under the substitute this is accomplished by the special prosecutor appointed for a 3-year term, which will overlap administrations. He cannot succeed himself, so he will not court favor to get reappointed. He cannot be appointed if he or she served in political campaigns. He is appointed by the President with the advice and consent of the Senate—here, the Senate and especially the Judiciary Committee will have to be particularly diligent in scrutinizing the man or woman nominated.

Mr. RIBICOFF. May I state, the Senator is absolutely correct. This concept of Senator KENNEDY's which was incorporated in his amendment was folded in completely into the substitute for title I, introduced today, and the language of that amendment is verbatim in the legislation on the floor now.

Mr. KENNEDY. I thank the chairman.

The third main point is that the substitute statutorily establishes safeguards to see to it that a person performing independent power over the special cases is in fact sufficiently removed from partisan politics. Under the substitute it is the process of appointment and confirmation that must take the place of court appointment in the original version of S. 495. Two points should be made here.

First, under the original bill, a court only made the appointment in cases where the Attorney General refused to appoint a special prosecutor. So, as a practical matter, the Attorney General alone could make the appointment and the Senate would have no role. Under the substitute, the Senate has an important role to play in each appointment and can reject unsuitable appointees. This is an important safeguard.

Second, there was a constitutional question whether a court could be involved in the appointment process. It is important to stress that in accepting the substitute we are not accepting the administration's argument that court appointment is unconstitutional.

I would like to elicit the view of the chairman of the committee on this particular issue.

As he is very much aware, this was the subject matter of very extensive hearings in the Judiciary Committee. We had a host of different constitutional authorities, some of the leading legal scholars of this country, and it was a matter given great attention. I am completely satisfied, having gone through those hearings and studied the material and participated during the course of those hearings, about the constitutionality of the approach that was included in S. 495 as reported.

I want to make very sure that if we accept this substitute, we are accepting it for the reasons that the chairman of the committee and others have outlined and that I have mentioned here, and not because we have doubts about the constitutionality of a court-appointed prosecutor.

I would be interested in the point of view the Senator has on that issue.

Mr. RIBICOFF. Frankly, we paid considerable attention to the point raised by members of the Justice Department and we had come to the conclusion after considerable hearings, after great study and consultation from men like Prof. Paul Freund, Prof. Archibald Cox, and from the American Bar Association, that this was constitutional.

We changed our point of view because we felt that our original thought might be very complex to handle.

My personal feeling is the approach now adopted is clearcut. It is easier and makes more sense. That great obligation and burden will be placed on the Judiciary Committee—and I am glad that the chairman of that Judiciary Committee is in the chair.

During the consideration of this legislation, Mr. Jaworski, Mr. Ruth, and Mr. Cox had raised some concerns regarding the special prosecutor, and stressed the importance of making him accountable for his actions, in order to insure against irresponsible actions by such an officer.

These witnesses also questioned whether we could get a good man in this job because there might not be enough work for him and he might be bored. This did concern us, and we believe it is essential that, under this legislation, he be given enough to do.

My feeling is that probably, outside the Attorney General no greater obligation or responsibility would rest upon the shoulders of the chairman or members of this Judiciary Committee than in the confirmation hearings of the special prosecutor.

I think we are going to have to delve into not only his legal knowledge, but the probity of his character, his sense of fairness, the willingness to look at all sides of an issue, to be very careful before any individual is hauled into the public by an accusation which may be unfounded or which may not be based on sufficient facts to tear a reputation apart.

So here again, I am satisfied that the Judiciary Committee of this body in confirmation hearings will take the utmost care in deliberation, and in assuring that the man we get for this job is a person of character, responsibility, balance, and a complete sense of judiciousness.

Mr. KENNEDY. I think that is a helpful comment in reminding us of the kind of individual that should be appointed and the standard which ought to be used in evaluation.

I think all of us are very much aware of the different criteria which are used by the Senate in performing its advice and consent function, that perhaps there is a different standard used for Presidential appointment to a cabinet post versus a Federal judge who will remain with us far beyond the term of any particular administration, and there are varying degrees of criteria which are used and which are readily understandable.

It is helpful to have the view of the chairman of the the Government Operations Committee on that particular issue.

In addition, what I am interested in gaining from the chairman is the issue, if he has a view on this particular issue, as to the constitutionality of the original proposal. I want, if we can, in establishing the legislative history, the understanding that the reason we are going to the substitute is no fundamental question in the mind of the chairman of the Government Operations Committee as to the constitutionality of the provisions which had been included originally in S. 495, which the Judiciary Committee had included in S. 2611, because this was, of course, an issue which was very extensively examined in the Judiciary Committee.

I am completely satisfied as to the constitutionality of that particular approach and the majority of the members of the Judiciary Committee were. But it is an issue in which there are members of this body having differing views, and we respect those, obviously.

But in the fashioning of this particular substitute, as I understand it, the reasons for the fashioning of this substitute and this other means were not because of any reservations that the chairman of the Government Operations Committee has on the constitutional issue which has been discussed and debated.

Mr. RIBICOFF. May I respond and say I am in complete agreement with the conclusions of the Senator from Massachusetts.

Mr. President, I ask unanimous consent to have printed in the RECORD various opinions and materials that we have in support of the proposition that such a procedure is constitutional.

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

The material, ordered to be printed in the RECORD, is as follows:

UNIVERSITY OF CALIFORNIA, BERKELEY,
Berkeley, Calif., May 10, 1976.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR SENATOR RIBICOFF: I am pleased to give you and the Committee my opinion on Title I of S. 495, particularly as to the constitutionality and policy direction of the provisions for appointment of a temporary special prosecutor.

Almost needless to say, there can be no question concerning Congress' power to es-

tablish a Division of Government Crimes within the Justice Department and to provide for the head of that Division to be an Assistant Attorney General appointed by the President with the advice and consent of the Senate. Nor can there be any doubt about Congress' power to authorize the Attorney General alone to appoint a temporary special prosecutor. I am not aware that any question has been raised concerning this and the matter has in any event been firmly settled by relatively recent holdings of the Supreme Court and other federal courts.

The power of the Congress to authorize appointment of a temporary special prosecutor by a court is in my judgment equally well-founded Constitutionally. Its source is Article II, Section 2, clause 2:

". . . the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

This is the same provision which supports the empowering of the Attorney General to appoint. It follows that a temporary special prosecutor is an "inferior Officer" within the meaning of this provision and that this is clearly settled by those court holdings which accept such an appointment by the Attorney General alone.

The only possible distinction between appointment by a court and by an Attorney General would have to be based on the proposition that the quoted language of Article II, Section 2 should be constructively limited to vesting "in the Courts of Law" only appointments of officers whose work is somehow judicial or related to the courts—and then on the further argument that a special prosecutor does not fall within that category. That position is clearly wrong; both of its propositions have been soundly rejected as a matter of authority, history, and sound constitutional construction.

The first half—the suggestion that the constitutional authority for Congress to authorize appointments by the courts is restricted to judicially-related inferior officers—was squarely rejected by the Supreme Court in *Ex Parte Siebold*, 100 U.S. 371 (1880). The Court there held that while Congress might appropriately be guided by such considerations of role-relatedness, the Constitution itself imposed no such limitations.

Beyond that there is authority and history even more directly in point confirming that appointment of prosecutors by judges is Constitutionally valid. As is well known, there is now and has long been established provision for appointment by Federal District Courts of temporary United States attorneys. (The current statute is 28 U.S.C. § 546.) This provision has been in operation for a goodly time now and apparently is of unquestioned validity.

Indeed, the idea that judicial appointment of prosecutors is well within the Constitutional scheme goes back to the founding of the nation. A number of Framers of the Constitution (including such leaders as Ellsworth and Paterson) were members of the Senate Judiciary Committee in the First Congress which initially proposed that local United States attorneys be appointed by the District Judges and that the Attorney General be appointed by the Supreme Court. Though this proposal never became law, the fact that these men saw fit to report it to the Floor of the Senate certainly indicates that they viewed it as entirely consistent with the Constitution.

Moreover, the contemporary history of that period confirms in another way that prosecution for crime was not perceived as a function belonging exclusively to Executive appointees. The First Congress (which has been characterized as virtually a continued session of the Constitutional Convention) explicitly provided for criminal prosecutions to be instituted and maintained to conclusion by private individuals as well as public prosecutors. [One example of this, out of many, is the statute outlawing larceny in Federal territory, 1 Stat. 112 § 16 (Act of April 30, 1970).]

The foregoing, in my view, clearly support the judgment that Congress may constitutionally authorize judicial appointment of a prosecutor, even one with general prosecutorial authority. Judicial appointment of a temporary special prosecutor with the specific charge provided for in Title I of S. 495 is an a fortiori case. That legislation addresses itself to the particular situation in which there is a conflict of interest within the Executive Branch. To whatever extent concepts of separation of powers might be viewed as arguing for some limitation on judicial appointment of prosecutors, those concepts would have their least force with regard to the situation dealt with here in which the Executive Branch would otherwise be investigating and considering prosecution of its own top officials.

The basic authority for judicial appointment of a temporary special prosecutor being valid, the only remaining question relates to the additional functions given the appointing Court by the Act; these include receiving reports from the Attorney General and determining whether a conflict of interest, or the appearance thereof, exists. These functions, which are clearly related to, and concomitants of, the power of appointment are also in my judgment soundly constitutional. Though some authority can be cited for this proposition, the point may be most clearly made by analogy. Assume that Congress authorized judicial appointment of referees, masters, clerks, or other such officers up to a certain number and then provided to handle expected increases in court business as specified by statutory criteria. Would there be any doubt that the legislation would be valid not only in authorizing the courts to determine when those statutory criteria were met, but also in empowering them to receive census and other demographic material and relevant economic data from the Commerce and Treasury Departments, as well as the Justice Department and the Administrative Office of the Courts, in order to provide the factual basis for making that determination? The answer seems to me clear: Congress has the power to specify the statutory criteria and may authorize the Courts to receive relevant data in order to determine whether the criteria have been met. On this basis, I believe that the ancillary provisions contained in Title I of S. 495 are entirely valid. I might add that, in my view, the fact that these criteria and arrangements are structured so as to limit the judicial appointment of a temporary special prosecutor to the most necessary circumstances of conflict of interest reinforces that conclusion. As I have indicated, judicial appointment of a standing special prosecutor would pose no constitutional problems; there should certainly be no more where the purpose of the additional procedures is to insure that the appointment is limited to those circumstances of greatest necessity.

The policy judgments are, of course, more open to differences of views than the constitutional ones. I believe that the policy direction taken by Title I of S. 495 is a sound one. It clearly seeks to focus primary responsibility for the enforcement of federal law, even as to government officials within the Executive Branch, in the Department of Justice and subject to the immediate supervision of the Attorney General. That seems to me entirely appropriate and entirely sound. Despite the occasional lapses—which are inevitable in any human institution—the Department of Justice certainly warrants the reposing of trust and confidence in its abilities and dedication. Maintenance of *esprit*, responsibility, dedication and high competence can only be achieved by the reposing of such confidence. At the same time, in special circumstance where the conflict of interests or the potential or appearance thereof reaches to the highest levels of the Executive Branch, it is appropriate to make special arrangements. Even here, I note that the proposed legislation would give primary initiative to the Attorney General; that; too, seems to me appropriate. And the final provision for judicial appointment of a temporary special prosecutor in the extraordinary circumstances where such independence from the Executive Branch is essential is, in my judgment, a salutary improvement and learning from experience. Though I do not speak to every detail of the Bill in structuring the interface between the role of the Department of Justice and the appointing court, the general approach taken here seems to me wise and the product of a careful and thoughtful legislative process. Further consideration, and perhaps specifically consultation with the Department of Justice, may help improve some of the particulars. But I am favorably impressed with the basic contours of Title I of the Bill as it now stands and strongly support its general policy direction.

Sincerely,

PAUL J. MISHKIN,
Emanuel Heller Professor of Law.

AMERICAN BAR ASSOCIATION,
Washington, D.C., June 3, 1976.

Hon. ROMAN HRUSKA,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HRUSKA: At the hearings held before the Senate Judiciary Committee on S. 495 May 27, 1976, you asked me to comment on several issues which arose during the hearing. These included the thrust of *Ex parte Siebold*, 100 U.S. 371 (1880) with respect to the appointing power of the courts; and *United States* v. *Cox*, 342 F.2d 167 (5th Cir. 1965), cert. denied 85 Sup. Ct. 1767 (1965), and *United States* v. *Cowan*, 524 F.2d 504 (5th Cir. 1975), with respect to prosecutorial discretion. You also asked for an analysis of the meaning of the phrase "inferior officer" as contained in the Constitution and the role of the federal prosecutor as a minister of justice and quasi-judicial official. Finally, you asked for a comparison of the relevant provisions of Title I of S. 495 and the recommendations of the American Bar Association contained in the report of its Special Committee to Study Federal Law Enforcement Agencies.

THE APPOINTING POWER OF FEDERAL COURTS

The Siebold case involved a statute imposing upon federal circuit courts the duty of appointing supervisors of elections. It was alleged that these duties were entirely executive in character and that no power could be conferred upon the courts of the United States to appoint officers whose duties are not connected with the judicial branch of the government. The United States Supreme Court rejected these arguments and upheld the courts' appointment power.

The Court cited Article II, Section 2 of the U.S. Constitution which provides that "the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments." Of this provision the Court said:

"It is no doubt usual and proper to vest the appointment of inferior officers in that department of the government, executive or judicial, or in that particular executive department to which the duties of such officers appertain. But there is no absolute requirement to this effect in the Constitution; and if there were, it would be difficult in many cases to determine to which department an officer properly belonged . . . but as the Con-

stitution stands, the selection of the appointing power, as between the functionaries named, is a matter resting in the discretion of Congress and, looking at the subject in a practical light, it is perhaps better that it should rest there than that the country should be harassed by the endless controversies to which a more specific direction on this subject might have given rise."

The Court also stated that the duty to appoint inferior officers, "when required thereto by law, is a constitutional duty of the courts. . . ." The Court then posited the "incongruity" test, stating that unless there exists an incongruity between the duties to be performed and the appointing authority such "as to excuse the courts from its performance, or . . . render their acts void," the appointment will be valid.

Congress has provided for the appointment by the district court of U.S. attorneys when a vacancy occurs (28 U.S.C. 546). This power was upheld in *United States* v. *Solomon*, 216 F. Supp. 235 (S.D.N.Y. 1963). Professor Paul Freund of Harvard believes that judicial appointment of a special prosecutor may rest on even firmer footing than the appointment of a U.S. attorney to fill a vacancy. He has pointed out that, although limited in tenure, a U.S. attorney appointed by the court assumes all the power of that office, regardless of the subject matter. The special prosecutor, on the other hand, has a far more limited jurisdiction under S. 495, where the specific jurisdiction of the temporary special prosecutor is to be defined by the appointing power.

THE PROSECUTORIAL FUNCTION

During the hearing you raised a question as to whether or not the prosecutor performed a function so executive in nature as to render the appointment of a temporary special prosecutor, albeit under clearly defined circumstances and with limited jurisdiction, incongruous under *Ex parte Siebold*. In answering this question, we must consider three factors: the nature and scope of the prosecutor's function; the interrelationship between the different actors (judge, prosecutor, and defense attorney) in the criminal justice system; and the problems inherent in having individuals investigating and prosecuting crimes involving high-ranking government officials.

Former Attorney General Robert H. Jackson stated that the prosecutor has more control over life, liberty, and reputation than any other person in America, that he has tremendous discretion, and that the manner in which he conducts investigations has a profound affect on the lives of citizens.

The American Bar Association has stated that the prosecutor is not only an advocate but an administrator of justice and that his duty is to seek justice, not merely to convict. His obligation is to protect the innocent as well as to convict the guilty, to guard the rights of the accused as well as to enforce the rights of the public. The ABA concluded:

"This is one of the senses in which the prosecutor has sometimes been described as a 'minister of justice' or as occupying a quasi-judicial position. In the present context, both concepts can be embraced in more contemporary terminology by describing him as an administrator of justice." (*Standards Relating to the Prosecution Function and the Defense Function*, American Bar Association (1971), p. 44)

The function of the prosecutor in determining probable cause for arrest and for submitting a case to a grand jury has been described as quasi-judicial in several Supreme Court cases. See *Ocampo* v. *United States*, 234 U.S. 91 (1913) and *Gagnon* v. *Scarpelli*, 411 U.S. 778 (1973). In the pretrial stage of the criminal justice system, the police or other law enforcement officer makes an arrest and may cause a complaint to be filed. He then recommends to the prosecutor that a formal charge be instituted. The prosecutor carefully reviews the recommendation of the arresting officer and supporting evidence before deciding to submit the case to the grand jury for its consideration or before filing an information in open court.

The extensive responsibilities of prosecutors have given rise to their being regarded as quasi-judicial officials entitled to a type of "judicial immunity" befitting such quasi-judicial status. In *Golden v. Smith*, 324 F. Supp. 727 (D.C. Ore. 1971), the court found there was no liability on the part of a prosecutor for damages caused by an allegedly illegal arrest and detention, noting that "prosecutors, as quasi-judicial officers, have an immunity similar to that of judges for acts which constitute an integral part of the judicial process."

It is settled that a prosecutor is both an officer of the executive branch and an officer of the court. As Judge (now Chief Justice) Burger stated regarding the role of the U.S. attorney:

"An attorney for the United States, as any other attorney, however, appears in a dual role. He is at once an officer of the court and the agent and attorney for a client; in the first capacity he is responsible to the court for the manner of his conduct of a case, i.e., his demeanor, deportment and ethical conduct." *Newman* v. *United States*, 382 F.2d 479, 481 (D.C. Cir. 1967).

The American Bar Association points out that all serious criminal cases require the participation of three entities: the judge, the counsel for the prosecution, and the counsel for the accused. Absent any one of these (barring valid waiver of counsel), the court is incomplete. In short, a "court" must be viewed as a three-legged structure which cannot stand without the support of all three.

Thus, the prosecutor plays a role within the court system in the investigation and prosecution of crimes which goes far beyond purely executive or administrative functions. Appointing a temporary special prosecutor under the limited circumstances and with the limited jurisdiction set forth in S. 495 is no more incongruous than the appointment by the district court of temporary U.S. attorneys when there is a vacancy, or the appointment of defense counsel for indigent defendants. In fact, it would be far less incongruous than the appointment of a temporary U.S. attorney who would assume all the power of that office regardless of the subject matter.

S. 495 does not casually place the appointing authority in the court. The bill places upon the Attorney General the primary responsibility for appointing a temporary special prosecutor. It is only after a review of a case in which the Attorney General has held that there is no conflict of interest and has made no appointment that the proposed court division would consider appointing a temporary special prosecutor, and then only if it found a conflict. In such a circumstance, where the court has found a conflict of interest in the Executive Branch, it could well be said that incongruity would inhere in an executive appointment. But, whether that is true or not, this situation is one in which the Attorney General has decided not to make an appointment, and therefore an investigation might not occur unless another authority is given the power to make the appointment.

The American Bar Association has stated the following:

"A prosecutor should avoid the appearance or reality of a conflict of interest with respect to his official duties. In some instances, as defined in the Code of Professional Responsibility, his failure to do so will constitute unprofessional conduct." (*Standards Relating to the Prosecution Function and the Defense Function*, § 1.2)

Chief Justice Burger stated in *Newman, supra*, that an attorney for the United States is responsible to the court for his ethical conduct. In *Sherman* v. *United States*, 356 U.S. 380 (1958), the Supreme Court spoke of the general supervisory power of courts over the administration of criminal justice:

"Insofar as they are used as instrumentalities in the administration of criminal justice, the federal courts have an obligation to set their face against enforcement of law by lawless means or means that violate rationally vindicated standards of justice, and to refuse to sustain such methods by effectuating them. They do this in the exercise of a recognized jurisdiction to formulate and apply 'proper standards for the enforcement of the federal criminal law in the criminal courts.'"

To impose "ethical conduct" and enforce "rationally vindicated standards of justice," a court of law may be authorized to appoint a temporary special prosecutor under clearly defined circumstances and with limited jurisdiction.

TEMPORARY SPECIAL PROSECUTOR AS AN INFERIOR OFFICER

During the hearing you raised the question of whether the temporary special prosecutor provided for in S. 495 was an "inferior officer" under Article II, Section 2 of the Constitution. (It should be noted that the Attorney General's authority under present law to appoint a temporary special prosecutor is based on this Section, and that the "inferior officer" question applies equally to his appointments and those by a court.) Professor Paul Freund holds that an office is an inferior office if it is inferior to those that have been enumerated in the Constitution, namely ambassadors, public ministers, consuls and judges of the Supreme Court. Another authority, Professor Paul Mishkin of the Boalt Hall School of Law of the University of California, believes that the history of the development of that clause in the Constitutional Convention indicates that "inferior officer" means anybody inferior to the appointing authorities in Article II, Section 2.

The meaning of "inferior officer" has been explicitly interpreted in Collins' Case, 14 Ct. Cl. 569 (1878). In that case, the court characterized the Congressional power to establish appointing authority in this manner:

"Thus it may authorize the President or the head of the war department to appoint an army officer, because the officer to be appointed is inferior to the one thus vested with the appointing power. The word "inferior" is not here used in that vague, indefinite, and quite inaccurate sense which has been suggested—the sense of petit or unimportant; but it means subordinate or inferior to those officers in whom respectively the power of appointment may be vested—the President, the courts of law and the heads of departments."

I conclude that the historical record, the language of the Constitution and the holding of the federal courts give clear indication that a temporary special prosecutor appointed under the provisions of S. 495 would be an "inferior officer."

PROSECUTORIAL DISCRETION

During the hearings it was stated by other witnesses that S. 495 would involve an un-

constitutional interference with the discretion of the prosecutor in violation of separation of powers in the Constitution. I was asked to comment on *United States* v. *Cox* and *United States* v. *Cowan* in this respect.

At the outset it should be stated that S. 495 in no way authorizes the appointing court to interfere in the exercise of the prosecutor's discretion in handling a particular case. The court is given only two functions, both unrelated to the exercise of that discretion. First, the court may be called upon to review the relationship of the President or the Attorney General to potential defendants only insofar as it may constitute a conflict of interest as defined in S. 495. Should the court find such a conflict, it could then appoint a temporary special prosecutor.

Second, at the time of making such an appointment, the court would establish the overall jurisdiction of the temporary special prosecutor with respect to the matter to be investigated. Once having made the appointment based upon a conflict of interest standard, and after having stated the jurisdiction, the special division of the court would no longer have any authority to second-guess decisions made by the temporary special prosecutor in the course of the investigation and any subsequent judicial proceedings.

United States v. *Cox* and *United States* v. *Cowan* stand for the proposition that prior to the return of an indictment or the filing of an information, the Attorney General and subordinates have the absolute power and discretion to institute or not institute a prosecution. Nothing in S. 495 contravenes these holdings. We should not confuse the power of appointment and the authority to establish basic jurisdiction with the supervision of the prosecutor in a case as it progresses. To avoid any connotation of such supervision, S. 495 provides that the Attorney General, and only the Attorney General, may remove the temporary special prosecutor for "extraordinary improprieties." The only role which the court would play in such an instance would be to review the removal to ascertain whether or not this standard has been met.

You asked for some special commentary concerning *United States* v. *Cowan*. That case involved the appointment of a special prosecutor by a district court judge in Texas after he refused to dismiss a case under Rule 48(a) of the Federal Rules of Criminal Procedure and the local U.S. attorney then refused to proceed with the case. The Fifth Circuit Court of Appeals reviewed the history of the development of Rule 48(a) and concluded that, while a court could refuse to dismiss a case under certain circumstances, the district court in this matter had exceeded the bounds of its discretion in denying the government's motion to dismiss. Having so concluded the court stated, "We have no cause to consider the propriety of its order effectuating that denial by appointing special prosecutors." Thus, the case is not dispositive of any issues relating to the appointment of special prosecutors.

CONCLUSION

The questions you have raised focus on the scope of the powers of federal courts under the Constitution. The "separation of powers" principle inherent in the Constitution did not assume tightly compartmentalized branches of government. In commenting on this structure the Supreme Court in an opinion authored by Chief Justice Burger, stated:

"In designing the structure of our government and dividing and allocating the sovereign power among three co-equal branches, the Framers of the Constitution sought to provide a comprehensive system, but the separate powers were not intended to operate with absolute independence.

"While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity." (*United States* v. *Nixon*, 418 U.S. 683, 707 (1974)).

In discussing the conflict between the absolute discretion of the prosecutor in initiating prosecution, and Rule 48(a) of the Federal Rules of Criminal Procedure authorizing the dismissal of a case "by leave of the court," Judge Murrah in *United States* v. *Cowan* spelled out the nature of the court's power:

"We think the rule [48(a)] should and can be construed to preserve the essential judicial function of protecting the public interest in the evenhanded administration of criminal justice without encroaching on the primary duty of the Executive to take care that the laws are faithfully executed. The resulting balance of power is precisely what the Framers intended." As Judge Wisdom put it, quoting Montesquieu, "'To prevent the abuse of power, it is necessary that by the very disposition of things, power should be a check to power' . . . [thus] the Framers wove a web of checks and balances designed to prevent abuse of power" and "were too sophisticated to believe that the three branches of government were absolutely separate, airtight departments." *United States* v. *Cox*. . . . From this, it seems altogether proper to say that the phrase "by leave of court" in Rule 48(a) was intended to modify and condition the absolute power of the Executive, consistently with the Framer's concept of Separation of Powers, by erecting a check on the abuse of Executive prerogatives. . . . The rule was not promulgated to shift absolute power from the Executive to the Judicial Branch. Rather, it was intended as a power to check power.

The proposed authority in S. 495 for a division of the U.S. Court of Appeals to appoint a temporary special prosecutor is intended and acts as "a power to check power." The special prosecutor, once appointed, would exclusively exercise prosecutorial direction.

I am attaching a chart which compares the ABA recommendations on the Government Crimes Division and the temporary special prosecutor mechanism with the provisions of Title I of S. 495. As you will note, they are markedly similar.

I hope this letter is responsive to your requests. We stand ready to offer any further assistance should it be desired.

Sincerely,

HERBERT S. MILLER,
Reporter/Consultant to the Special Committee.

A COMPARISON OF THE PROVISIONS OF TITLE I OF S. 495, THE WATERGATE REORGANIZATION AND REFORM ACT OF 1976, AND THE AMERICAN BAR ASSOCIATION RECOMMENDATIONS CONTAINED IN ITS REPORT, "PREVENTING IMPROPER INFLUENCES ON FEDERAL LAW ENFORCEMENT AGENCIES"

The Special Committee to Study Federal Law Enforcement Agencies of the American Bar Association published a report in January, 1976, entitled "Preventing Improper Influences on Federal Law Enforcement Agencies." The report contained twenty specific recommendations for preventing abuses of these agencies, all twenty of which were approved by the Association's House of Delegates in February, 1976, as official policy.

Two of those recommendations ("Prosecuting Government Crimes" and "Special Prosecutor") are almost totally in accord with the provisions of Title I of S. 495, the Watergate Reorganization and Reform Act of 1976, as reported on May 12, 1976, by the U.S. Senate Committee on Government Operations. The following analysis compares the ABA recommendations to the S. 495 provisions.

DIVISION OF GOVERNMENT CRIMES

Issue	*S. 495 Approach*	*ABA Approach*
1. Establishment of division.	By statute.	By statute.
2. Jurisdiction.	Federal criminal law violations by high-level government officials; federal criminal law violations by all government employees if work-related; lobbying, campaign and election law violations.	Violations of federal laws by government officials; cases referred by the Federal Election Commission; violations of federal campaign laws.
3. Selection of Assistant Attorney General.	Presidential appointment, Senate confirmation.	Presidential appointment, Senate confirmation.
4. Qualifications of Assistant Attorney General.	Must not have held a high-level position of trust and responsibility in campaign of elected President or Vice-President within five years preceeding appointment.	No recommendation with respect to the Assistant Attorney General, although a similar restriction on nominees for Attorney General and Deputy Attorney General was recommended.
5. Term of Assistant Attorney General.	Coterminus with that of the President making the appointment.	No recommendation.
6. Requirements in Office.	(a) Shall not engage in outside business. (b) Shall report to Congress each session on Division's activities.	(a) No recommendation. (b) No specific reporting recommendation; although the ABA report contemplates close Congressional scrutiny of this statutorily-mandated division.
7. Supervision of Assistant Attorney General.	By Attorney General.	By Attorney General.

TEMPORARY SPECIAL PROSECUTOR (TSP) MECHANISM

Issue	S. 495 Approach	ABA Approach
1. Circumstances triggering	Conflict of interest or appearance thereof in which the President or the Attorney General has a direct and substantial personal or partisan political interest in the outcome of the proposed criminal investigation or prosecution (with matters involving specified government officials being automatically deemed to create a conflict).	(a) Conflicts of interest, implications of partiality or alleged misconduct as delineated in ABA *Standards Relating to the Prosecution and Defense Function;* (b) Appearance of professional impropriety under Canon 9 of ABA Code of Professional Responsibility; (c) Improper influence or obstruction of justice as defined in 18 U.S.C. 1501–1510.
2. Action to be taken by Attorney General	(a) File memorandum with Court summarizing allegations and result of preliminary investigation, including information relevant to determining existence of a conflict of interest; the Attorney General's findings; and whether the Attorney General has disqualified himself and appointed a temporary special prosecutor or not; (b) Appoint a temporary special prosecutor if he deems it appropriate.	(a) File memorandum with Court stating facts, legal conclusion and decision with respect to whether or not to appoint a temporary special prosecutor; (b) Appoint a temporary special prosecutor if he deems it appropriate. (c) Request the Court to make the appointment.
3. Alternative means of bringing conflict situation to Court's attention.	Any individual, after 30 days' notice to Attorney General of information raising a conflict issue, may petition Court to review the matter.	The Court can act on its own authority to review allegations of conflict.
4. Response by Court where no TSP appointment made by Attorney General.	Review matter and determine whether a conflict exists, and if so appoint a TSP.	Review matter and determine whether a conflict exists, and if so, either call upon the Attorney General to appoint a TSP or make such appointment itself.
5. Response by Court where Attorney General has appointed a TSP.	Review appointment to determine if TSP is himself in a conflict situation and, if so, appoint a different TSP.	Review appointment to determine if TSP is himself in a conflict situation and, if so, call upon the Attorney General to make a new appointment or appoint a different TSP.
6. Jurisdiction of TSP.	Whoever appoints the TSP shall specify in writing the matters which such prosecutor is authorized to investigate and prosecute. The statement of jurisdiction in the case of appointment by the Attorney General is subject to review by the Court to determine whether it is "sufficiently broad to enable the TSP to carry out the purposes of this chapter."	The appointing authority would delineate the jurisdiction. Where the Attorney General has made the appointment, the statement of jurisdiction in his memorandum to the Court would be reviewed by the Court and modified where necessary.
7. Removal of TSP.	(a) Upon filing with Attorney General of report stating that all investigations and prosecutions have been completed; (b) By Attorney General for "extraordinary improprieties," subject to review by Court.	(a) No specific recommendation; (b) By Attorney General for "extraordinary improprieties," subject to review by Court.
8. Powers of TSP.	Within specified jurisdiction the same power as an Assistant Attorney General for Government Crimes, except that TSP can appeal any decision in a case to which he is a party without approval of Attorney General or Solicitor General.	Within specified jurisdiction the same power as the Attorney General or a U.S. Attorney in prosecuting a case.
9. Nature of Court.	Division of three judges of the U.S. Court of Appeals for the District of Columbia; judges to be assigned for a two-year term by the chief judge, with priority given to senior retired circuit court judges and senior retired justices; prohibition against judges who participated in process of appointing TSP from deciding on matters brought thereafter by TSP's office.	Special Court of appointment composed of three retired senior federal circuit court judges appointed by the Chief Justice for a two-year term.
10. Expedited judicial review.	Detailed mechanism for expediting judicial review of actions challenging TSP's authority.	No recommendation.
11. Disqualification of Department of Justice employees.	Requires Attorney General to promulgate rules and regulations requiring officers and employees of the Department to disqualify themselves in matters where a conflict, or appearance thereof, may result.	No recommendation.

Mr. KENNEDY. Finally, Mr. President, the trouble with a temporary Special Prosecutor bill was the possibility of having a multiplicity of Special Prosecutors at any one time investigating unrelated cases. One way to cure that problem is to assign even unrelated cases to the same Special Prosecutor so there will not be a multiplicity. Then, in effect, we have created a permanent one, and we ought to call it that as we do in the substitute. There is no magic in whether we call the prosecutor temporary or permanent.

Mr. President, this bill will help get at the problem of high level corruption. It is not a panacea. As long as there are mortals serving in high places there will be breaches of public trust. But there is no reason to throw up our hands and fail to implement by statute institutional reforms for which need has been demonstrated. The bill and the amendments offered this morning are sound measures and deserve our enthusiastic support.

Mr. RIBICOFF. I thank the Senator.

UP AMENDMENT NO. 215

Mr. BENTSEN. Mr. President, I have an unprinted amendment at the desk. I ask that the amendment be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Texas (Mr. BENTSEN) proposes an unprinted amendment No. 215:

On page 10, line 11, in Sec. 594(b) after "appointed", insert: "Attorney General, Deputy Attorney General, or"

Mr. BENTSEN. Mr. President, I certainly support the substitute proposed by the chairman of the committee and the distinguished Senator from Massachusetts, but I would like to add an amendment to it that I think strengthens the purpose of the substitute and would go a long way toward helping restore the confidence of the American people in the Department of Justice in the aftermath of Watergate.

Mr. President, according to the substitute, title I, section 594, the director heading the Division of Government Crimes and the new permanent special prosecutor shall not have held, "a high level position of trust and responsibility while serving on the personal campaign staff or in an organization or political party working on behalf of the campaign of an individual who was elected to the office of President or Vice President."

Mr. President, I commend the Government Operations Committee under the able leadership of the distinguished senior Senator from Connecticut for putting in that kind of provision. I think it is a meritorious approach. It is an important limitation placed on the potential for abuse of power inherent in this office.

However, I believe that prohibition ought to be extended as well to the Attorney General and the Deputy Attorney General. In other words, the superiors of the Director for Government Crimes.

Mr. President, that is the purpose of my amendment. It is simply time to end what seems to have become the nearly standard practice of Presidents appointing as Attorney General of the principal leaders of the political campaign in which they were elected. This has been done time after time and has become ingrained in the political system. We have had some obvious examples of men who have managed a successful Presidential campaign and were immediately appointed to head the Justice Department.

Let me recapitulate briefly. John Mitchell, Robert Kennedy, and J. Howard McGrath, Attorney General under Truman, are the most obvious examples of men who managed the successful Presidential campaigns and who immediately after were appointed to head the Justice Department. Unfortunately the practice has been working its way into our political system for much longer than these relatively recent appointments; it is a practice going at least as far back as Woodrow Wilson.

Historically and by tradition, but with certain exceptions, the top Presidential appointees in the Department of Justice have been highly respected representatives of the legal profession. But where they have also been major campaign officials of the President their appointment only contributes to a growing perception of the Department of Justice as a political instrument. With all of the highly competent members of the legal profession that can be drawn from, it is simply not necessary to look just to the ranks of the President's campaign staff for top Justice Department personnel.

The conduct of some of the recent officials of the Department is too fresh in the minds of the public and too deeply etched on the members of the bar to be passed with a bromide that "the next President will not let it happen."

It is time to assure the American people that law enforcement decisions will not be determined by partisan politics, either Democratic or Republican.

I believe the Watergate reform bill, the substitute pending before us, and my amendment, will be a major step to deal effectively with the problem of politicization of legal posts within the Justice Department. It will insure the Department's capacity to administer justice evenly. It will help restore the people's reception of the impartiality of the justice that is administered.

The partisan orientation in recent years of those responsible for supervising the Nation's legal affairs seems extreme. If justice is to be impartial it must, in the beginning, be nonpartisan. It should not be run or even given the appearance of being run, by people who march to a drum beat emanating from the political advisors of any President or his party.

Decisions as to whether cases are prosecuted or dismissed, whether appeals are taken or settled, must not depend on political influence.

Mr. President, the Senate may be interested to learn that the American Bar Association and the Watergate Special Prosecution Force have endorsed the concept of my amendment, that is to say, prohibiting the Attorney General and the Deputy Attorney General from having held a high level position on the campaign staff of the President who appoints him.

I would hope the distinguished floor manager of the bill would see fit to accept my amendment which takes their efforts to restore confidence in our judicial system one step further, and I hope the Senate will support it as well.

Mr. RIBICOFF. Mr. President, I am personally sympathetic with the amendment of the Senator from Texas, but my colleague from New York has serious constitutional doubts, I would prefer that he address himself to those doubts.

Mr. BENTSEN. It seems to me that this has at least in part been addressed by calling for the director, who is an appointee of the President, to fall within these limitations. To carry it to the next step, the Attorney General and the Deputy Attorney General should be in the same category. Surely, with all the people the President has to choose from, to just preclude or negate these few is not in any way an unreasonable limitation on the President of the United States.

Mr. JAVITS. If the Senator will yield to me, the appointee for the Attorney General is a member of the Cabinet subject to Senate confirmation. I am troubled, though I do not know—this is a matter of first impression to me—whether or not there is any precedent or any decision on the subject. As for me, I certainly would not be able to accept the amendment. Because this is such a serious matter and we are facing a Presidential election and putting a restriction upon the new President, whoever he may be, in the appointment of one of the highest offices of the United States with enormous powers, my suggestion to the Senator would be that this amendment not be acted upon today; but that we allow the matter to go over until tomorrow, so that we may have a look at the situation. I cannot, standing on one foot here, tell the Senator whether his proposal is or is not constitutional.

As to its desirability, I have deep concern about that as well, in inhibiting the freedom of action of a President of the United States. We have had some wonderful Attorneys General who have been very active in politics. Indeed, we have had some wonderful Chief Justices of the United States, like Earl Warren, who have been very active in politics.

I do not know that we really ought to get into this thicket. I simply do not know. I am not in a position to say. It is true that Senators have an absolute right to introduce any amendments they wish, but I believe an amendment of this size and consequence is one I really feel I cannot deal with just on the spur of the moment.

I ask the Senator the best question that I can under the circumstances, which is on the issue of constitutionality, which he may have researched. But if all he relies on is the fact that we have included in our bill the disqualification respecting an assistant attorney general in the Criminal Division, not subject to Senate confirmation, I would hardly consider that conclusive either on the ground that we have judged the constitutionality on that point—I do not think we even considered it—or on the ground that the two cases are analogous.

So for me, on the minority side, I could not accept this amendment. I would feel it would have to be voted on, and perhaps even be subject to a motion to table, on the ground that it is simply too precipitate for us to deal with just like this.

Mr. BENTSEN. Mr. President, let me say in reply that I think the members of the committee and the proponents of the substitute have already faced up to that question when they talk about the Director having to fall within these qualifications, or be precluded, because the Director is subject to confirmation by the Senate. He will be appointed by the President and his name placed before the Senate to determine whether he should be confirmed or not. If we face up to that point, I do not see any serious difference between saying that that applies to the Deputy Attorney General and the Attorney General of the United States.

I really do not think, when we are talking about all the members of the bar, that we have put any serious limitation on the President at all. There are lots of other places if he wants to reward someone who helped in his campaign. Let him be Postmaster General; I do not think that he could do much worse than what has already happened over there. But let us not put him in the Justice Department, as has happened too frequently in the past. We saw it happen with J. Howard McGrath, under President Truman, with Robert Kennedy under President Kennedy, with John Mitchell under President Nixon—it goes all the way back to Wilson's time. Some of these have been very able men, but

nevertheless the appearance is there that someone who has played a very top role in the political campaign of someone who has become President of the United States all of a sudden is Attorney General. It becomes a punching post, and this just should not be in a system such as ours. If the President wants to reward that man, let him put him in some other Cabinet post.

Mr. WEICKER. Mr. President, I would respond to the Senator from Texas in the following way:

First, this bill is not intended to be a sweeping condemnation of politics. What it is intended to do is strengthen our governmental system.

The point of the Senator from Texas that we have, both in the case of the Director of the Office of Government Crimes and the Office of the Special Prosecutor, removed both those gentlemen, as best we can, from the area of politics, responds to the very point made by the Senator from Texas.

But here is a special situation where a conflict could arise at the highest level, and the pursuit of justice demands that there be a separation as between the judicial system and any connection with politics. That is exactly why we have put these systems into place. But I have very serious reservations not just as to its constitutionality, but as to the principle behind saying that the President, at least in the sense of partisan political activity, is restricted as to whom he may choose for his Cabinet in the case of the Attoreny General.

I realize that the proposition put forth by the Senator from Texas is seemingly a very attractive one; but I think it is not our job to spray the landscape here. There are abuses that we have to address, but I think we have to do so with precision, and I think that is exactly what the Government Operations Committee has done, without tearing apart those matters of politics and government that have served us well over the years.

I recognized the point that the distinguished Senator from Texas raises in one of my recommendations on the Watergate report. I stated that I thought the Attorney General should be elected rather than appointed. In other words, I had no fear of our political processes, but I wanted to allow a judgment to be exercised by the people of this Nation as a whole, rather than by one individual.

I think Senators will find that in most of the States of the Union where such is the case, invariably the attorney general is of a different party than the party of the Governor's office, because the people do like to have a division.

I recognize the problem, and I try to address it in my own way; but to put this kind of a limitation on it would possibly fly in the face of constitutional propriety. And I repeat, and repeat very forcefully: Politics and politicians in this country have made some mistakes, and it is up to the system to correct them, and no one has been more hard-nosed on this subject than myself; but make no mistake about the ride I have, both in the individuals and the system, and I will restate it, even though I be dragged all over the arena, time and time again.

I am a great admirer of the Senator from Texas. He is a distinguished Member of this body in every sense of the word. But for the sake of the public as a whole, of whom we have become the favorite target, for Heaven's sake, let us use some perception in how we criticize and in what we recommend.

I think that has been done, and done very well, by the Committee on Government Operations. I would hope that the recommendation of the Senator from New York would be followed.

I do not wish to condemn out of hand the entire concept that is offered by the Senator from Texas, but I suggest that we let this go over for a day. We are not going to seek for passage, I believe, today.

Mr. RIBICOFF. Mr. President, if the Senator will yield, I would hope the Senate would be able to pass this bill today. The staffs are getting together some of the authorities, and they feel that within a half hour they would be able to produce for the inspection of the Senator from New York, the Senator from Connecticut, and the Senator from Texas some of the authorities that would enable us to come to a conclusion or an opinion on the constitutional proposition.

But we are in a position, I hope, to finish this bill today.

Mr. BENTSEN. Mr. President, if I may say so, I think that would be a productive effort. I am aware of the concern over the question which the Senator has raised on constitutionality, but I know that the American Bar Association has approved this concept without raising the question of a constitutional problem.

I am willing to, and will in a moment, withdraw the amendment, subject to hearing some additional information from the staff on the constitutional question.

Mr. RIBICOFF. Mr. President, I do not think it is necessary for the Senator to withdraw his amendment. I think the Senator could temporarily put his amendment aside and be given an opportunity to call it up again as we proceed. Certainly the Senator will not be foreclosed out of discussing it further.

Mr. BENTSEN. I think we are in accord. It is simply the question of the mechanics of procedure.

Mr. President, I want the privilege of bringing the amendment up again.

I shall also point out what the Watergate Task Force Commission stated on this point. They are referring to the question of independence of the Department of Justice officials, and in that they stated:

> The President should not nominate, the Senate should not confirm as an Attorney General or as any other appointee in a high Department of Justice post a person who served as a President's campaign manager or in a similar high level campaign role.

This is so because, when a campaign manager is out there seeking support for his candidate, he is going to make certain commitments as he goes around the country. Then those people will come again before the Justice Department, at some later date, on some question of conduct or the criminal statutes, then they are going to be in a compromised position.

So I feel very strongly about the merits of the proposal. But I am willing to set aside the amendment temporarily while we try to obtain additional information on the constitutional question.

Mr. PERCY. Mr. President, will the Senator yield for a comment?

Mr. BENTSEN. Yes.

Mr. PERCY. The Senator is dealing with a subject that the Senator from Illinois has been concerned about for many years. The record is filled with statements that I have made on the noninvolvement of the Attorney General, in politics and partisan politics while he is holding office.

Certainly, the supreme test came when Attorney General Levi was appointed, although he is a longtime friend and associate, in taking that same position I was taking a position that would take one of my fine friends, and I hope always a supporter, out of any relationship with any campaign. Certainly I hold firmly to the conviction that the Attorney General should not engage in partisan politics.

I do not think the Secretary of State should. But I would hate to have a provision embodied, whether it is constitutional or not, in legislation prohibiting anyone to be appointed Secretary of State who has had anything to do with partisan politics. That would remove a candidate for President, such as the distinguished Senator from Texas, and so many people who would give advice, counsel, help, and assistance, and we would want to encourage those people to participate in a campaign.

As regards the Attorney General, many lawyers who might consider that they might be a possible appointee would then remove themselves from politics when they are the very people we want involved in politics.

So we think the objective of the amendment to keep the Attorney General out of partisan politics is a noble and worthy one.

Mr. BENTSEN. That is what I am talking about.

Mr. PERCY. I think the point has been well made. But I certainly appreciate the fact that the distinguished Senator from Texas will not press forward with the amendment because the Senator from Illinois would have to oppose it.

Mr. BENTSEN. Let me say I intend to press forward with the amendment if we can satisfy ourselves on the constitutional question because I would argue very strongly the other side as to the merits of it in regard to the Attorney General's position. I am not talking about the State Department. I am not talking about the Postmaster General. I am not talking about HEW, or the Department of Agriculture. Put all the politicians you want in those positions.

Put a politician in the Attorney General job if that is what you want but to not choose someone who has held a very major position in the political campaign of an incoming President.

That is what we are trying to preclude,

and that is what they did with the director's job. So that is all I am talking about, extending it on to the Attorney General and the Deputy Attorney General.

With the understanding that the constitutional question is being studied, I will set aside my amendment, if there is no objection, Mr. President, at this time.

Mr. President, I ask unanimous consent to set aside the amendment for the moment.

The PRESIDING OFFICER. Without objection, the amendment is temporarily laid aside.

Mr. JAVITS. Mr. President, on yesterday we had concluded our consideration of amendments to title II and we had, however, allowed for the possibility that Senator HRUSKA might present some amendment. Senator HRUSKA has rereturned and advises me he has no amendment to present to title II.

But, Mr. President, I find that there was inadvertently omitted from title II authorization for appropriations; therefore, with the approval of Senator HRUSKA's staff man, who says he would have no objection, I ask unanimous consent that this one amendment which deals strictly with the authorization for appropriations in title II may be considered.

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

UP AMENDMENT NO. 216

Mr. JAVITS. Mr. President, I send that amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) proposes unprinted amendment No. 216.

On page 76, strike lines 19 through 25 and in lieu thereof insert the following:

SEC. 216. There are authorized to be appropriated to the Office for each fiscal year through October 30, 1981, such sums as may be necessary to enable it to carry out its duties and functions. Until sums are first appropriated pursuant to the preceding sentence, but for a period not exceeding 12 months following the effective date of this subsection, the expenses of the Office shall be paid from the contingent fund of the Senate, in accordance with the paragraph relating to the contingent fund of the Senate under the heading "UNDER LEGISLATIVE" in the Act of October 1, 1888 (28 Stat. 546; 2 U.S.C. 68), and upon vouchers approved by the Director.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. 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. JAVITS. Mr. President, I ask unanimous consent to momentarily withdraw the amendment, with the privilege of resubmitting it under the unanimous-consent agreement.

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

Mr. JAVITS. 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. JAVITS. 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. JAVITS. Mr. President, I send the amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. Will the Senator inform the Chair as to whether or not the amendment has been changed.

Mr. JAVITS. It has not been changed.

The PRESIDING OFFICER. The amendment has been previously stated.

Mr. JAVITS. Mr. President, a word of explanation. The authorization for appropriations was included in the original bill but not in the form which would have provided for an interim operation of the office until an appropriation came through. All we have done is to restate the authorization, but we have provided for the interim financing until an appropriation could come through, giving that 12-month period.

I ask for a vote on the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

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

Mr. JAVITS. I yield.

Mr. ALLEN. What is the amendment about?

Mr. JAVITS. The amendment is to deal with the authorization for appropriations under title II, the congressional legal counsel, and to deal with the interim period until an appropriation comes through.

Mr. ALLEN. I think the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. JAVITS. 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.

JOINT REFERRAL OF NOMINATION

Mr. MANSFIELD. Mr. President, I ask unanimous consent, as in executive session, that when the nomination of Guy Stever, to be Director of the Office of Science and Technology Policy, is received by the Senate, it be jointly referred to the Committees on Commerce, Labor and Public Welfare, and Aeronautical and Space Sciences.

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

DESIGNATING CERTAIN LANDS AS WILDERNESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 874.

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

The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 1026) to designate certain lands in the Chassanowitzka National Wildlife Refurge, Citrus County, Florida, as wilderness.

The Senate proceeded to consider the bill which had been reported from the Committee on Interior and Insular Affairs with an amendment to strike out all after the enacting clause and insert the following:

That (a), in accordance with subsection (c) of section 3 of the Wilderness Act (78 Stat. 890, 892), the following lands are hereby designated as wilderness and, therefore, as components of the national wilderness preservation system:

(1) certain lands in the Simeonof National Wildlife Refuge, Alaska, which comprise approximately twenty-five thousand one hundred and forty acres, are depicted on a map entitled "Simeonof Wilderness—Proposed" and dated January 1971, and shall be known as the Simeonof Wilderness;

(2) certain lands in the Big Lake National Wildlife Refuge, Arkansas, which comprise approximately two thousand six hundred acres, are depicted on a map entitled "Proposed Big Lake Wilderness" and dated June 1976, and shall be known as the Big Lake Wilderness;

(3) certain lands in Chassahowitzka National Wildlife Refuge, Florida, which comprise approximately twenty-three thousand three hundred and sixty acres, are depicted on a map entitled "Proposed Chassahowitzka Wilderness" and dated June 1976, and shall be known as the Chassahowitzka Wilderness;

(4) certain lands in the J. N. "Ding" Darling National Wildlife Refuge, Florida, which comprise approximately two thousand eight hundred and twenty-five acres, are depicted on a map entitled "Proposed J. N. 'Ding' Darling Wilderness" and dated June 1976, and shall be known as the J. N. "Ding" Darling Wilderness;

(5) certain lands in the Lake Woodruff National Wildlife Refuge, Florida, which comprise approximately one thousand one hundred and forty-six acres, are depicted on a map entitled "Proposed Lake Woodruff Wilderness" and date June 1976, and shall be known as the Lake Woodruff Wilderness;

(6) certain lands in the Crab Orchard National Wildlife Refuge, Illinois, which comprise approximately four thousand and fifty acres, are depicted on a map entitled "Crab Orchard Wilderness Proposal" and dated January 1973, and shall be known as the Crab Orchard Wilderness;

(7) certain lands in the Lacassine National Wildlife Refuge, Louisiana, which comprise approximately two thousand eight hundred and fifty-four acres, are depicted on a map entitled "Lacassine Wilderness Proposal" and dated January 1974, and shall be known as the Lacassine Wilderness;

(8) certain lands in Agassiz National Wildlife Refuge, Minnesota, which comprise approximately four thousand acres, are depicted on a map entitled "Agassiz Wilderness Proposal" and dated November 1973, and shall be known as the Agassiz Wilderness;

(9) certain lands in the Tamarac National

Wildlife Refuge, Minnesota, which comprise approximately two thousand one hundred and thirty-eight acres, are depicted on a map entitled "Tamarac Wilderness Proposal" and dated January 1973, and shall be known as the Tamarac Wilderness.

(10) certain lands in the Mingo National Wildlife Refuge, Missouri, which comprise approximately seven thousand acres, are depicted on a map entitled "Proposed Mingo Wilderness" and dated June 1976, and shall be known as the Mingo Wilderness;

(1) certain lands in the Fort Niobrara National Wildlife Refuge, Nebraska, which comprise approximately four thousand six hundred and thirty-five acres, are depicted on a map entitled "Fort Niobrara Wilderness Proposal" and dated November 1973, and shall be known as the Fort Niobrara Wilderness;

(12) certain lands in the Swanquarter National Wildlife Refuge, North Carolina, which comprise approximately nine thousand acres; are depicted on a map entitled "Swanquarter Wilderness Proposal" and dated December 1973, and shall be known as the Swanquarter Wilderness;

(13) certain lands in the Medicine Lake National Wildlife Refuge, Montana, which comprise approximately eleven thousand three hundred and sixty-six acres, are depicted on a map entitled "Medicine Lake Wilderness Proposal" and dated November 1973, and shall be known as the Medicine Lake Wilderness;

(14) certain lands in the Red Rock Lakes National Wildlife Refuge, Montana, which comprise approximately thirty-two thousand three hundred and fifty acres, are depicted on a map entitled "Red Rock Lakes Wilderness Proposal" and dated January 1974, and shall be known as the Red Rock Lakes Wilderness;

(15) certain lands in the UL Bend National Wildlife Refuge, Montana, which comprise approximately twenty thousand eight hundred and ninety acres, and are depicted on a map entitled "Proposed UL Bend Wilderness" and dated June 1976, and shall be known as UL Bend Wilderness;

(16) certain lands in the Oregon Islands National Wildlife Refuge, Oregon, which comprise approximately four hundred and fifty-four acres, are depicted on a map entitled "Proposed Oregon Islands Wilderness" and dated June 1976, and shall be known as Oregon Islands Wilderness; and

(17) certain lands in the San Juan Islands National Wildlife Refuge, Washington, which comprise approximately three hundred and fifty-three acres, are depicted on a map entitled "Proposed San Juan Islands Wilderness" and dated June 1976, and shall be known as the San Juan Islands Wilderness.

(b) (1) As soon as practicable after this Act takes effect, maps of the areas designated as wilderness pursuant to subsection (a) of this section (hereinafter referred to as "wilderness areas") and legal descriptions of their boundaries shall be filed with the Committees of Interior and Insular Affairs of the United States Senate and House of Representatives, and such maps and descriptions shall have the same force and effect as if included in this Act: *Provided, however,* That corrections of clerical and typographical errors in such maps and descriptions may be made by the Secretary of the Interior.

(2) The maps and descriptions of boundaries of the wilderness areas shall be on file and available for public inspection in the offices of the United States Fish and Wildlife Service, Department of the Interior.

SEC. 2. The wilderness areas shall be administered by the Secretary of the Interior in accordance with the applicable provisions of Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act, and any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

The amendment was agreed to.

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

The title was amended so as to read:

A bill to designate certain lands as wilderness.

WATERGATE REORGANIZATION AND REFORM ACT OF 1976

The Senate continued with the consideration of the bill (S. 495) to establish certain Federal agencies, effect certain reorganizations of the Federal Government, and to implement certain reforms in the operation of the Federal Government recommended by the Senate Select Committee on Presidential Campaign Activities, and for other purposes.

Mr. HRUSKA. Mr. President, I ask unanimous consent that the following staff members be allowed the privilege of the floor during consideration and voting on the pending measure: J. C. Argetsinger of the Judiciary Committee, Eric Hultman of my staff, and Dorothy Parker of the staff of Senator FONG.

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

Mr. RIBICOFF. I ask unanimous consent that Ron Chiodo of Senator CHILES' staff have the privilege of the floor during consideration of this measure.

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

Mr. BENTSEN. I ask unanimous consent that a member of my staff, Miss Sally Shelton, have the privilege of the floor during consideration of this measure.

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

UP AMENDMENT 215—AS MODIFIED

Mr. BENTSEN. Mr. President, I send to the desk a modification of my amendment that we temporarily set aside.

The PRESIDING OFFICER. The clerk will state the modified amendment.

The legislative clerk read as follows:

The Senator from Texas (Mr. BENTSEN) proposes modified unprinted amendment No. 215 of the unprinted amendment No. 214.

On page 10 add the following new subsection:

(c) An individual shall not be appointed Attorney General or Deputy Attorney General if such individual has, during the 5 years preceding such appointment, held a high level position of trust and responsibility while serving on the national personal campaign staff or in an organization or political party working on behalf of the national campaign of an individual who was elected to the office of President or Vice President.

Mr. BENTSEN. Mr. President, I purposely narrowed the scope of the amendment to have it apply only to a position of high trust in the national campaign of the candidate, the candidate who becomes the President or the Vice President of the United States. So it is a narrower limitation than that of the Director of the Criminal Division.

The question arose as to the constitutionality of such a provision: Was this an undue limitation on the powers of the President to appoint? First, I believe that that was faced up to by the proponents of the substitute when they placed the limitations on the qualifications of the Director of the Criminal Division and of the Special Prosecutor. The limitations I have placed on the power of the person who fills the Attorney General's slot or the Deputy Attorney General's are actually even narrower. When we talk about the constitutional question, I would like to cite a publication by the Library of Congress, an analysis and interpretation prepared by the congressional research service of the Library of Congress, Lester Jayson, Supervising Editor. I quote from page 523, Article II—Executive Department:

As an incident to the establishment of an office Congress has also the power to determine the qualifications of the officer and in so doing necessarily limits the range of choice of the appointing power. First and last, it has laid down a great variety of qualifications, depending on citizenship, residence, professional attainments, occupational experience, age, race, property, sound habits, and so on. It has required that appointees be representative of a political party, of an industry, of a geographic region, or of a particular branch of the Government. It has confined the President's selection to a small number of persons to be named by others.

Those are some of the limitations we have already seen placed in effect on the President's power to appoint.

The limitation I placed is to say that the President of the United States can choose from the entire bar association to be Attorney General anyone except a man who has filled a position of high trust in the national campaign of that man who goes into office as President or goes into office as Vice President.

I think it is time we take partisanship out of the Attorney General's office and out of the Justice Department. We have seen it become engrained in the political system of this country that the Attorney General's job is used as a reward for a national campaign manager or other high campaign official. It goes all the way back to Wilson's time. We saw it done with Harry Truman with J. Howard McGrath; we saw it done with John Kennedy with his brother, Robert Kennedy; we saw it done with Richard Nixon with John Mitchell; we saw it done with General Eisenhower with Herbert Brownell.

Now, we have had some good men appointed to those positions, but we just ought to take it out of the arena of politics. If you want to reward someone who has been a national campaign manager or one of your top campaign officials who has traveled that campaign trail with you, then let us make him Postmaster General, let us make him Secretary of Agriculture, put him in as the head of HEW. You have a lot of other political payoffs you can give him. But let us not put him in a partisan role, let us not add partisanship to the Justice

Department. If you have a campaign manager who is touring this country trying to gain votes for his candidate, making political deals, making promises, and you then turn around and put him in as the head of the Justice Department, and then see some of these people coming before that Attorney General, I think that is a mistake and I think the American people think it is a mistake.

What has been done in this substitute bill is a great step forward in trying to help clean up the political processes of this country, to restore the confidence of the American people in the political system of this country. All you have to do is look at the latest public opinion polls and see how they feel about the Congress, about their own government. This is a step in the right direction, and my amendment adds to that.

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

Mr. BENTSEN. Yes, I would be glad to yield.

Mr. RIBICOFF. The question has been raised as to how the American Bar Association feels. I shall read the recommendation for the benefit of the distinguished Senator from New York and the distinguished Senator from Texas:

Recommendation—Politics and the Attorney General. Congress should enact legislation prohibiting one who has played a leading partisan role in the election of a President from being appointed Attorney General or Deputy Attorney General. Individuals holding the position of campaign manager, chairman of the finance committee, chairman of the national political party, or other high level campaign role involved in electing the President should be among those considered to have played a leading partisan role. All Presidential appointees in the Department should be prohibited from engaging in such activity while in office.

Since World War II, four of six Presidents have named as Attorney General a principal leader of a Presidential campaign in which they were elected. The close connection between partisan politics and the Office of Attorney General has seriously reduced the effectiveness of the Department of Justice, inflamed fears about the integrity of the administration of justice and created a substantial credibility gap in the minds of the public.

2) The nomination and confirmation of the Attorney General and Deputy Attorney General should receive the same emphasis as a process for appointment to the Supreme Court. The standard for appointment to these positions should be governed by the highest professional qualifications and not political reward.

I think that reflects the thinking of the Senator from Texas, and I call that to the attention of my colleague for whom I have the highest respect because he did raise the question in conversation with me as to the attitude of the American Bar Association.

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

Mr. BENTSEN. I yield.

Mr. JAVITS. I have read the amendment very carefully, and I do not think it tracks the recommendation of the American Bar Association as the Senator, I think, wishes to track it.

Mr. BENTSEN. Let me say to the distinguished Senator I would be very happy to track the recommendation of the American Bar Association.

Mr. JAVITS. I think that would at least help us when this spur-of-the-moment effort to deal with a very, very important point occurs, so I would hope very much that the amendment could be modified in that way.

Mr. BENTSEN. I will say to the distinguished Senator from New York that I will be very happy to track this language from the American Bar Association. I think it is good language, and will, I think, in a very concise way, state who would be precluded from consideration, if that would be satisfactory to the Senator from New York.

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

The PRESIDING OFFICER (Mr. LEAHY). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President. I ask unanimous consent that the order for the quorum call be rescinded.

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

UP AMENDMENT NO. 217

Mr. BENTSEN. Mr. President, I withdraw the amendment I had and send a new amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Texas (Mr. BENTSEN) proposes an unprinted amendment numbered 217 to unprinted amendment No. 214:

On page 10 of the unprinted amendment No. 214, add the following new subsection:

(c) An individual who has played a leading partisan role in the election of a President shall not be appointed Attorney General or Deputy Attorney General. Individuals holding the position of national campaign manager, national chairman of the finance committee, chairman of the national political party, or other comparable high level campaign role involved in electing the President should be those considered to have played a leading partisan role.

Mr. BENTSEN. Mr. President, we discussed this at some length, and I hope now, having discussed it with the manager of the bill and the manager for the minority, that this will be an acceptable amendment that will be approved.

Mr. RIBICOFF. Mr. President, on behalf of the managers of the bill, I find this amendment acceptable.

Mr. JAVITS. Mr. President, the manager of the bill on the part of the minority in this matter is Senator WEICKER, but he has very kindly allowed me to state my views and he will state his own.

I have no objection to taking this amendment to conference, and I have so advised Senator BENTSEN. I use that catechism for this reason: I did feel that this was a matter of major importance, especially on the threshold of a presidential campaign, and that in the time which we have available many questions are left in my mind unresolved. Therefore, for one, if I should be a conferee and I probably will, I did not want to lock myself into a situation of blanket acceptance. But I do feel that there is enough to the amendment and to the anxiety which it seeks to quiet as to justify taking it to conference rather than having a contest about it here.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The question now is on the amendment of the Senator from Connecticut, as amended.

Mr. JAVITS. 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. RIBICOFF. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

UP AMENDMENT NO. 218

Mr. RIBICOFF. Mr. President, on behalf of Senator NUNN, I send an amendment to the desk and ask that it be read.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Connecticut (Mr. RIBICOFF) on behalf of the Senator from Georgia (Mr. NUNN) proposes an unprinted amendment No. 218 to unprinted amendment No. 214:

On page 3, line 12, insert the following after "office", "for willful neglect of duty, for permanent incapacitation".

Mr. RIBICOFF. Mr. President, I have cleared this with the minority. It is a good amendment and I move its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that Jim Davidson and Bill Goodwin, of the Government Operations Committee staff, be granted the privilege of the floor during the consideration of S. 495.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UP AMENDMENT NO. 219

Mr. RIBICOFF. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Connecticut (Mr. RIBICOFF), proposes an unprinted amendment No. 219:

On page 87, after line 5, insert the following:

The Comptroller General shall promulgate such rules and regulations as are required to carry out the provisions and purposes of this Title.

Mr. MANSFIELD. Will the Senator yield?

Mr. RIBICOFF. I am pleased to yield.

UNANIMOUS-CONSENT AGREEMENT—VOTE ON S. 495 TO OCCUR AT 12:30 P.M. TODAY

Mr. MANSFIELD. Mr. President, after discussing the matter with the acting Republican leader, the manager and the ranking Republican manager of the bill, I am about to propound a unanimous consent request. That is, I ask unanimous consent that the vote on final passage of S. 495, the pending business, occur at the hour of 12:30 p.m. today.

Mr. JAVITS. Will the Senator yield for a clarification?

Mr. MANSFIELD. I yield.

Mr. JAVITS. If there are amendments pending before 12:30, will they be voted on before the final vote?

Mr. MANSFIELD. They will.

Mr. JAVITS. I thank the Senator.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Montana renew his unanimous-consent request?

Mr. MANSFIELD. Yes, I do.

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

Mr. RIBICOFF. Mr. President, I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. RIBICOFF. Mr. President, the amendment just read has been drawn after consultation with various Members of the Senate, including the minority. It becomes obvious that in order to carry out title III, the Comptroller General will be required to have rules and regulations and forms, and since all the reporting will be with the Comptroller General, we deem it proper that he be required to draw up the proper forms and regulations.

Mr. President, I ask unanimous consent that this amendment be considered in order.

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

The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The question now recurs on agreeing to unprinted amendment No. 214, as amended.

Mr. HASKELL. Mr. President, I call up my amendment No. 2031, and ask unanimous consent that it may be considered at this time.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. Mr. President, may we know what the request is?

The PRESIDING OFFICER. The question is that an amendment which would not be in order to be called up at this time be considered in order.

Mr. JAVITS. Why would it not be in order?

Mr. RIBICOFF. It is, after we close out titles II and III.

The PRESIDING OFFICER. The Senate is still considering unprinted amendment No. 214.

Mr. RIBICOFF. Mr. President, I move the adoption of amendment No. 214.

Mr. TAFT. Mr. President, will the Senator yield? What is amendment No. 214?

Mr. RIBICOFF. That is the substitute for title I.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 2031—AS MODIFIED

Mr. HASKELL. Mr. President, I call up my amendment No. 2031, and ask unanimous consent that it be considered in order at this time.

The PRESIDING OFFICER. The consideration of amendments to title IV is now in order. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Colorado (Mr. HASKELL) proposes an amendment numbered 2031, as modified.

Mr. HASKELL's amendment (No. 2031, as modified) is as follows:

At the end of the bill, add the following on page — after line —:

"TITLE IV—ENFORCEMENT OF ETHICAL STANDARDS FOR EXECUTIVE BRANCH EMPLOYEES

"DEFINITIONS

"SEC. 401. For purposes of this title, the term—

"(1) 'agency' means an agency, as defined in section 551 of title 5, United States Code; and

"(2) 'employee' means an employee of an agency.

"CIVIL SERVICE COMMISSION

"SEC. 402. The Civil Service Commission shall—

"(1) establish by rule standards of ethical conduct for all employees with respect to financial conflicts of interest;

"(2) establish by rule guidelines to assist heads of agencies in determining whether a conflict of interest exists, or appears to exist, under the standards established under paragraph (1);

"(3) develop forms (hereafter in this title referred to as 'disclosure statements') for the purpose of eliciting from all employees the information required to be disclosed in the standards established under paragraph (1);

"(4) review each disclosure statement filed by an employee as required under section 405; and

"(5) review, upon appeal by any employee, the decision of the agency which adjudicated a complaint against such employee as provided under section 407(b).

"ESTABLISHMENT OF OFFICE OF ETHICS ENFORCEMENT

"SEC. 403. There is established within the Civil Service Commission the Office of Ethics Enforcement (hereafter in this title referred to as the 'Office') which shall be headed by the Director of the Office of Ethics Enforcement (hereafter in this title referred to as the 'Director') who shall be appointed by the Civil Service Commission.

"FUNCTIONS OF THE OFFICE

"SEC. 404. The Office shall—

"(1) promulgate rules to enforce the standards of ethical conduct established by the Civil Service Commission as provided in section 402(1);

"(2) render advisory opinions as provided in section 406(a); and

"(3) conduct random audits of disclosure statements filed by employees in accordance with regulations issued by the Office.

"DISCLOSURE STATEMENTS

"SEC. 405. (a) Each employee or former employee who has held his position for a period in excess of ninety days in a calendar year shall file for such calendar year a disclosure statement in accordance with regulations promulgated by the Civil Service Commission. Such disclosure statement shall be filed—

"(1) at such time and place as the Office shall require by regulation; and

"(2)(A) in the case of an employee who is the head of an agency, a Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in the Executive Office, or a full-time member appointed by the President of a committee, board, or commission, with the Civil Service Commission, or,

"(B) in the case of any other employee, with the head of the agency to which such employee is assigned.

"(b) The Civil Service Commission and the head of each agency shall assign such full-time employees as are necessary to examine each disclosure statement filed with such Commission or agency. The Commission and the head of each agency shall be responsible for determining, on the basis of such examination, whether a conflict of interest exists, or appears to exist, under the rules of ethical conduct.

"(c) The Civil Service Commission may by rule exempt from furnishing any information required in a disclosure statement the individuals required to file the same information in a financial statement as provided in section 302 of title III of this Act. The Commission may also by rule exempt from any requirement for filing a disclosure statement special Federal Government employees, as defined in section 202 of title 18, United States Code.

"ADVISORY OPINIONS; RULEMAKING

"SEC. 406. (a)(1) Upon written request to the Office by any person, the Office shall render an advisory opinion in writing within a reasonable time with respect to whether any specific transaction or activity would constitute a violation of the standard of ethical conduct established by the Civil Service Commission under section 402(1).

"(2) Notwithstanding any other provision of law, any person who requests and relies in good faith upon an advisory opinion rendered in accordance with paragraph (1) and who furnished to the Office the full and complete facts regarding the transaction or activity in question as known by such person at the time of such request, shall not, as a result of such reliance, be subject to any disciplinary, civil, or criminal sanction under this title.

"(b) Notwithstanding any other provision of law, no rule may be issued by the Civil Service Commission or any agency to carry out the provisions of this title unless such rule is proposed and issued in accordance with the general notice and opportunity for public participation requirements in section 553 (b) and (c) of title 5, United States Code.

"ENFORCEMENT

"SEC. 407. (a)(1) Any person who believes a violation of the standards on ethical con-

duct established by the Civil Service Commission under section 402(1) has occurred may file a complaint with the Office. The Office may not take any action under this section solely on the basis of a complaint by a person whose identity is not disclosed to the Office.

"(2) The Director shall refer any complaint concerning an employee received by the Office under paragraph (1)—

"(A) in the case of an employee who is the head of an agency, a Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in the Executive Office, or a full-time member appointed by the President of a committee, board, or commission, to the Civil Service Commission; and

"(B) in the case of any other employee, to the head of the agency to which such employee is assigned.

"(b)(1) If the Commission or the head of an agency, upon receiving a complaint under subsection (a), has reason to believe that an employee has violated the standards of ethical conduct, the Commission or the head of such agency shall conduct a hearing in accordance with the provisions of sections 554 through 557 of title 5, United States Code.

"(2) Any decision by an agency may be appealed by the employee or the complainant based on the whole record.

"(3) The court of appeals of the United States shall have jurisdiction of any appeal from a final decision of the Commission without regard to the amount in controversy. Such appeal shall be brought in the same manner and subject to the same limitations as an appeal from the decision of a district court of the United States under section 1291 of title 28, United States Code.

"(c)(1)(A) Except as provided in subparagraph (B), the head of each agency shall be primarily responsible for imposing disciplinary sanctions on any employee of such agency who is found after a final adjudication to have violated the standards of ethical conduct established by the Civil Service Commission under section 402(1).

"(B) In the case of any employee described in subsection (a)(2)(A), the Civil Service Commission shall be primarily responsible for imposing disciplinary sanctions as described in subparagraph (A).

"(2) The disciplinary sanctions referred to in paragraph (1) are—

"(A) reprimand;

"(B) suspension;

"(C) disqualification from participation in a specific transaction or activity;

"(D) dismissal;

"(E) recommendation to the President to remove an employee appointed by such President; and

"(F) denial or rescission, as the Commission deems appropriate, of any application before it in which there has been a violation of a rule under section 402(1).

"(d) Following an adjudication under this section, if the Civil Service Commission or the head of an agency determines that a civil or criminal penalty is the appropriate sanction against an employee, the Commission or the head of such agency shall refer the matter to the Assistant Attorney General for Government Crimes in the Department of Justice for action in accordance with the provisions of section 408.

"CIVIL AND CRIMINAL PENALTIES

"SEC. 408. (a) Any person who—

"(1) fails to file a disclosure statement in accordance with this title or any rule or regulation promulgated under such title;

"(2) files a disclosure statement containing false information; or

"(3) violates any standard of ethical conduct established by the Civil Service Commission under section 401(1); is subject to a civil penalty which does not exceed an amount equal to the profit gained as a result of such violation and interest thereon at a rate equal to the annual rate established in section 6621 of the Internal Revenue Code of 1954.

"(b) Any person who knowingly and willfully—

"(1) fails to file a disclosure statement in accordance with this title or any rule or regulation promulgated under such title;

"(2) files a disclosure statement containing false information; or

"(3) violates any standard of ethical conduct established by the Civil Service Commission under section 402(1);

shall be fined in an amount which does not exceed the greater of $10,000 or 200 percent of the amount equal to the profit gained as a result of such violation.

"EFFECT ON OTHER LAWS

"SEC. 409. Nothing in this title shall be considered to prohibit an agency from imposing on the employees of such agency standards of ethical conduct more stringent than the standards imposed by the Civil Service Commission under section 402(1).

"SEC. 410. The Civil Service Commission is directed to deliver to the Congress an annual report detailing specific steps taken pursuant to this Act and evaluating the effectiveness of standards of conduct and procedures of enforcement regarding potential financial conflicts of interest or the appearance thereof.

"TECHNICAL AMENDMENT

"SEC. 411. (a) The Director shall be paid at a rate not to exceed the rate of basic pay in effect for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(b) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following:

"'(105) Director of the Office of Ethics Enforcement, Civil Service Commission.'"

Mr. HASKELL. Mr. President, I ask unanimous consent that Everett Engstrom and John Cevette of my staff be accorded the privilege of the floor during the consideration of this amendment.

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

Mr. HASKELL. Mr. President, last year, with the support of seven cosponsors, I introduced S. 2098. The cosponsors of that legislation were Senators BIDEN, CHILES, CRANSTON, GARN, GARY HART, HATFIELD, and LEAHY.

That bill, basically, did two things: It mandated public financial disclosure for public officials, and it created a Commission on Ethics empowered to set uniform standards of proper financial conduct as well as uniform standards for enforcing such conduct on a Government-wide basis.

Obviously, Mr. President, I was extremely pleased when the Committee on Government Operations reported S. 495, containing similar financial disclosure provisions. I wish to congratulate the distinguished members of that committee for reporting and bringing to the floor such a responsible and effective bill as S. 495, and I further compliment the members of that committee on successfully negotiating with the administration a compromise of what appeared to be an impasse which had developed over the last few days.

It is obviously important that S. 495 become law, and that we take a significant step in preventing future Watergate-type abuses of power, in aid, obviously, of restoring public confidence in our system of government.

My observation, Mr. President, is that we should take S. 495 one step further, and that is why I have brought up the amendment that is now pending.

It is my view, and I think probably it would be concurred in generally among those Members of the Senate who have looked into the problem, that there is a need for a far greater standardization of rules and regulations defining financial conflict of interest. There should also be a consistency in enforcement procedures, and there should be some method of external monitoring of the effectiveness of those procedures. In other words, it is my view that disclosure alone will not get the job done.

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

Mr. HASKELL. I am very pleased to yield to the Senator from Connecticut.

Mr. RIBICOFF. I have the very highest respect for the Senator from Colorado, and I know what he is trying to achieve. My feeling is that we have handled the upper echelons of the executive, legislative, and judicial branches. He feels that that should be extended through the entire range of the Federal Government.

Mr. HASKELL. If I may interrupt the Senator, not quite, though I think we go further than the distinguished Senator from Connecticut. I would merely add those employees who now, under the Executive order, have to file financial statements. They would continue to do so, and would be subject to the ultimate civil service jurisdiction.

I am concerned that some agencies have effective enforcement procedures, and others do not, and I would like to see some kind of uniformity of procedure to be sure there is effective enforcement.

Mr. RIBICOFF. I think it is going to be difficult to take care of those now involved, without further inundating the Civil Service Commission and the Comptroller General. The Government Operations Committee did not have hearings on the proposal of the Senator from Colorado. I wonder if the Senator would be amenable to two alternative suggestions: Either assurance from me personally that the Government Operations Committee will have hearings on this whole subject matter early in 1977, or a mandate to the Civil Service Commission to undertake a study of this problem as it affects the entire Federal Establishment subject to civil service, and report back to Congress by May 15.

I would hope that we could proceed with that assurance, without the necessity of trying to force upon them, so to speak, the wide-ranging suggestion of the Senator from Colorado.

I think the first step for restoration of public confidence is to assure that the top levels of the executive branch, the Members of Congress, and the judiciary

are subject to these rules and regulations.

Mr. HASKELL. I would concur with the distinguished chairman that that is the priority number one item.

Mr. RIBICOFF. I think that the Comptroller General is going to have to have rules and regulations and put this together, and I do not wish to drown him in putting the house in order as far as we are all concerned.

I hope the Senator from Colorado will accept either one of those suggestions.

Mr. HASKELL. I think the Senator from Connecticut has made an excellent suggestion, to be sure. I shall state to the Senator from Connecticut, so we are on the same wavelength, as to what my concern is and the thrust of my amendment. My concern, No. 1, is that there is no uniform guideline and definition as to what is enforced. My concern, No. 2, is that there is no evenhandedness or assurance of consistent enforcement. Some agencies do a reasonably good job; others do nothing. So my effort is to allow for Government-wide guidelines and centralized enforcement. I happen to pick the Civil Service Commission. Maybe it ought to be someone else.

Mr. RIBICOFF. The Civil Service Commission is fine. I think we could write that into this bill, and I am sure that it would be accepted by the minority managers, to require the Civil Service Commission to study the objectives put forward by the Senator from Colorado to report back to Congress by May 15 with its recommendations, and I assure the Senator from Colorado that immediately when those recommendations come back I shall have hearings in the Committee on Government Operations on those recommendations.

Mr. HASKELL. I think that is a very good solution.

AMENDMENT NO. 220

I shall send a modification of my amendment to the desk which, in effect, says the Civil Service Commission and the Department of Justice shall each analyze regulations and procedures presently in effect with regard to financial conflicts of interest among employees of the Federal Government and recommend to the Government Operations Committee for its consideration such legislation as may be necessary, and with the comment on the proposed amendment that I have pending, I shall make the necessary changes and send the amendment to the desk.

With that report coming in and the distinguished chairman's assurances of hearings on the subject matter, I think that pushes us forward down the road where we wish to go but we do not wish to go too hastily.

Mr. RIBICOFF. I thank the Senator.

Will the clerk state the amendment?

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Colorado (Mr. HASKELL) proposes a modification. In lieu of the other language, insert the following:

The Civil Service Commission and the Department of Justice shall each analyze regulations and procedures presently in effect with regard to financial conflicts of interest among employees of the federal government and recommend to the appropriate committees of Congress for their consideration such legislation as may be necessary. Such report shall be delivered within six months of the enactment of this Act.

Mr. HASKELL. Mr. President, I suggest the absence of a quorum for the purpose of modifying my amendment.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HASKELL. Mr. President, I ask the clerk to read the modification of my amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The language now reads as follows:

The Civil Service Commission and the Department of Justice shall each analyze regulations and procedures presently in effect with regard to financial conflicts of interest among employees of the federal government and recommend to the appropriate committees of Congress for their consideration such legislation as may be necessary including comments on S. 2098. Such reports shall be delivered within six months of the enactment of this Act.

Mr. RIBICOFF. Mr. President, as manager of the bill, this amendment is satisfactory and acceptable.

Mr. JAVITS. Yes. It is satisfactory.

Mr. PERCY. Mr. President, I certainly feel the procedure is satisfactory to the minority and we support it.

The amendment was agreed to.

Mr. HASKELL. I thank the Senator very much.

Mr. JAVITS. 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. PERCY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. PERCY. Mr. President, I think it would be helpful for our colleagues—at least for those who are not on the floor and will read the RECORD tomorrow—to have, in layman's language, a brief discussion of the financial disclosure section, which is title III of this bill.

I have divided that section into roughly six major parts, and I should like to have a reaction from some of my colleagues who have helped with it—Senator RIBICOFF and Senator JAVITS—to be certain that we all understand what is required.

Also, I have tried to make an analysis as to how much work it will be for Senators to file these reports, because I did not want to see us move into a situation such as we had in the campaign reform bill, where we never really realized how much of a paperwork load we were imposing upon every candidate for office when we passed the bill.

The first item is income. Every Member of Congress will be required to disclose his salary, his honorariums, and the dividends he receives, in the exact amount, and the source of those dividends; interest that he receives on any bonds, and the source of that income—that is, naming specifically the issuer of the bond; any capital gains; any farm income; any partnership income.

In appraising the income section, all this material is available from tax returns. It probably would not be reported in the exact form that is used on a tax return, but the exact form would be prescribed, as I understand it, by the Comptroller General. It would be my hope that the format conform as much as possible to accounting procedures necessary for the filing of the income tax return. That would lessen the paperwork burden and the accounting responsibility of the individual officeholder or public official who would be required to report under this particular provision of title III.

The complexity of the income portion of it would depend upon the complexity of the income; but, as I see it, the burden would not be very great.

Do my colleagues feel that this is a proper interpretation of that particular section?

Mr. RIBICOFF. Mr. President, I think that is the interpretation; but, frankly, I do not think it was our intent.

The feeling is that when this item and this line were put in, we were talking about income that was coming from a person's law firm, if he was an officer of a corporation, or a partnership, or gifts he received, or honorariums he might have received.

It had been our feeling that in covering in section 303(b), the assets to be listed and the requirement to list these various assets—securities, business entities, commodity futures, purchase or sale of real estate—that would cover the income that came from those particular transactions or particular assets.

It was not our intention to require the persons covered to file their income tax returns. Unfortunately, as the wording is now listed, unless we clarify it in this colloquy, it would be a distortion of what your income really was, because by listing your income without proper deduction, you do not show the true net income you are receiving.

In other words, let us say that you have a farm and your income is $20,000 and your expenses are $15,000. If you list $20,000, it is not a true report of what your net income is.

Mr. PERCY. Or even taking a lesser example, but a more direct one for, say, a Member of Congress, an honorarium might be provided up to the legal limit. Out of that honorarium, the Member of Congress might be expected to pay his expenses—hotel lodging, transportation. It is not our purpose to have the gross amount put down. It is our purpose then to put the net amount down: What is the real income which is reportable income?

You do not pay income taxes if you have expenses against income. Is that, for purposes of clarification, the intent of those who drafted the legistlation, to see that net income is reported, not just gross income?

Mr. RIBICOFF. That would be the only thing that would make sense. To report the gross income would be a distortion and would not really be the true fact. It is certainly not the intention to distort what the income really is.

Mr. PERCY. What the Senator from Illinois has discussed to date is generally—almost always—in cash form.

Second, we did provide for the reporting of items received in kind, but limited that to amounts over $500. Certainly, the suggestion of the Attorney General is that what we really mean is not that a series of gifts of $499 is not reportable but an accumulated sum total of gifts amounting to $500 is proper. We certainly appreciate the Attorney General pointing out this possible loophole to us, because it was the intention of the committee to see that an aggregate amount of $500 be reported.

That would require the reporting, then, of the fair market value of such things as transportation which is accepted by a Member of Congress or a member of the administration, or whatever top officials are covered by this, or the fair market value of entertainment or lodging.

Here, we are trying to get after the kinds of things that have been revealed publicly, where public officials have been recipients of lavish—and I state lavish in terms of $500 or more—entertainment or paid vacations which, in lieu of cash, are just as much an attempt to reach a person through some form of financial incentive as a cash payment.

What we are saying is simply that if a public official in the category covered by this section of the bill is a recipient, he should report it and be required to report it. The fair market value would be what the going rate would be, as best can be determined, subject to whatever criticism might be leveled if someone dared undervalue such an emolument that he may have received.

Mr. RIBICOFF. We have to look at this with some commonsense. Around the luncheon table yesterday, one of the Members of this body pointed out that he has, in his own State, one of his best friends, who has a house on a lake. The man has no business connections with him whatsoever; he is retired. Sometimes, when the Member goes home to his State, he visits, as he did long before he was in the U.S. Senate, and might spend a week with his friend. I told him that I thought that we have to exercise commonsense. I do not know how you put a money value on that. These are friendships that you have. When you visit a friend's home, I personally see nothing wrong, if you lived with a friend, spend a week with him, in his company in fellowship and friendship, that you would consider that that was something that was wrong. Yet, I suppose if we look at what the cost of staying at a resort with comparable facilities for a week would be, it might be over $500.

I told him I did not know what the answer would be but if it were I, I would say that I spent a week at the home of my friend and I do not think that—friendship and staying at the home of my friend should be listed at more than $500.

Mr. PERCY. It puts us into areas where judgment must be exercised.

Mr. RIBICOFF. I do not think any apology has to be made.

Mr. PERCY. I think there is a lot of difference between a situation where it is a friendship of a decade or two's standing, or where it is a person where the only relationship you have ever had with that person is a legislative relationship, where he has lobbied and where the intent and purpose is, somehow, during the course of that weekend, to discuss legislation. I would say a Member of Congress who does not report something that would be valued fairly at over $500 in that kind of relationship would take a chance if he did not report that.

Mr. RIBICOFF. I think we have had instances over the past where different corporations have had hunting lodges or resorts where there was no connection of friendship. I would put that in a different category than staying at the home of a friend who has nothing to do with the legislative activities of the individual Member.

Mr. PERCY. The third area for possible clarification might be the listing of assets over $1,000. Here we specifically have excluded personal items, personal effects, jewelry, et cetera. But we do require a list of houses. Every Member, or virtually every Member of Congress, has a residence in the Washington, D.C., area, and possibly in their own district or State. If they rent, there is no listing. If they own, there is a listing, although the specific address does not need to be disclosed. I think there would be a sensitivity to listing addresses. I do not think it is in the public interest that every public official list his specific address. We get enough mail in our offices and we do not want to be deluged and take bushel baskets back.

For the purposes of clarification, if the Senator from Illinois owns a home in Washington, D.C., he would list the house, and indicate that it is an asset in whatever category is appropriate—over $50,000, over $100,000. The specific value is not put down, and no specific address is listed. Is that the understanding of the Senator from Connecticut?

Mr. RIBICOFF. I would say the Senator would have to list the home in Washington. Again, the same Member said to me, "About 5 years ago, I bought a home in Washington for some $50,000. It is naturally, with inflation, worth more than $55,000. I am reluctant to go out and hire an appraiser."

I said, "I think we have taken care of that. We have a category, due to an amendment by the Senator from Alabama, where we list the value as between $50,000 and $100,000." I said that it seems to me that if you list a home, original cost $55,000, you put it in the category of $50,000 to $100,000 and nobody is going to say that you wilfully misled or knowingly falsified.

I think a generalization—I do not think we should burden the individuals involved with getting an appraisal every year as to what the value of that home may be because of inflationary pressure. I am satisfied that we would cover it if we said, in 1971, I bought this house for $55,000 and I estimate that it is in the category of between $50,000 and $100,000.

Would the Senator from Alabama say that that would cover a proper reporting under those circumstances if you have a home of your own?

Mr. ALLEN. Yes, I would.

Mr. RIBICOFF. If the Senator had a home of his own?

Mr. ALLEN. Yes, indeed.

Mr. PERCY. But specifically on the point of identification, the Senator from Illinois wants to be certain we are not requiring Senators, Congressmen, or anyone else to identify the specific address of a home that they own, and this includes a Cabinet official. Is it adequate, in the judgment of the floor manager of the bill, for the Senator or Congressman to simply say he has a home or residence in such and such a category, over $100,000, over $50,000, in Washington, D.C., or in a specific county of a specific State, in Cook County, Ill., without specifying a street address of that particular residence?

Mr. RIBICOFF. I am worried about that. I think we could get ourselves into a lot of trouble if we did not specify the address.

I think, as I contemplate it, we have to list the real estate we may own that may not be our home, and I contemplate we would be required to say "I have a piece of real estate at 10 Main Street," in a certain city, and I list what I consider to be the value, and I wonder if we would not get ourselves into trouble if we did not put our addresses in as to where our homes are.

I do not think those people who want to know where any of us live will have any trouble finding out that we live in Washington or Chicago, Ill., and where we actually live.

Mr. PERCY. The Senator from Illinois would differentiate between a residence——

Mr. RIBICOFF. I think we ought to list where the property is located.

Mr. ALLEN. That would be my understanding, I will say to the distinguished Senator. It ought to be identified.

Mr. PERCY. If it is not clearly understood on the record that Members of Congress and members of the Cabinet are not required to list the specific address of their home, the Senator from Illinois will offer an amendment specifically excluding that. I think it is a matter of security, a matter of privacy, not to have it a matter of public record and required as a matter of public record where top officials actually live and reside.

Mr. RIBICOFF. I will say to the Sena-

tor that under those circumstances he would be required to put an amendment in because I must confess it was not my intention when we wrote this language that we could exclude the exact address of the property we owned.

Mr. WEICKER. Mr. President, would it satisfy the Senator, in the context of this colloquy, if the residence were identified by town and State without a street address? It seems to me that would serve the purpose.

Mr. RIBICOFF. Well, for the personal residence, and I would like to get the consensus of the other members of the Government Operations Committee——

Mr. ALLEN. I think if it is identified as being a home there would be other ways of ascertaining its whereabouts. It would be sufficient in the statement if it is identified as being his home.

Mr. JAVITS. Mr. President, will the Senator yield to me to offer an amendment, as our time is going very quickly?

Mr. ALLEN. I also wish to express a different view for the legislative history to one of the lines of discussion before 12:30. There is no great rush. It will take only 2 or 3 minutes, but at some time I hope the chairman will yield to me.

Mr. RIBICOFF. I would be pleased to yield. I think Senator JAVITS had a amendment.

Mr. PERCY. Mr. President, I believe the Senator from Illinois has the floor, and unless it is on this particular point I would rather finish the colloquy.

Mr. JAVITS. It is on this particular point, but, nonetheless, I will defer to the Senator. He is a cosponsor of this amendment.

Mr. PERCY. If the Senator from New York can help clarify it, that would be fine. We are not requiring the Attorney General of the United States or others to give a specific address in Washington, D.C., to require that it be published where they live. This, I think, would be a contravention of privacy. I have seen the residence, and what happens at the residence, as I go by every night, of the publisher of the Washington Post. I would not want to have those kinds of demonstrations and every public official subjected to that kind of abuse of the privacy of that residence and home and the danger possibly to it which would result under this bill. I do not think it would serve any useful purpose whatsoever.

Mr. RIBICOFF. We should go one step further and have the same rules for any home used as a residence.

Mr. BROCK. Mr. President, will the Senator yield? I think the Senator from Illinois has a valid point. We do not want to subject any official to harassment or that sort of thing, and I think at least for this particular member of the committee it would be adequate for any personal residence, and that would be your residence in your State as well as your residence here, to simply list the city.

Mr. JAVITS. Mr. President, will the Senator yield to me on this point?

Mr. PERCY. I would be happy to yield.

Mr. JAVITS. We have given blanket authority to the Comptroller General to make rules and regulations. This is one he will make, and I have every confidence that he will make it properly and will respect the cofidentiality, when requested, because, in my judgment, the language of the statute could be complied with, to wit, the identity and category of value of each asset by saying, "I own a home and it is worth so much money," or "It is in this category of over $100,000," or whatever.

That could be done, but that question could be in doubt, and the best way to resolve it is by the rules and regulations which will be made. I hope and expect that those rules and regulations will respect the confidentiality of a residence, if requested.

Mr. BROCK. I think that is the clear intent, at least of the Senator, to have confidentiality.

Mr. PERCY. If we have the concurrence of the floor manager of the bill, then the record is very clear.

Mr. RIBICOFF. You have the concurrence because I am very sympathetic to it. But I hope the Comptroller General, in promulgating the rules and regulations, will take that into account, providing the value and city are there and what the property is used for, and that would be satisfactory, without giving the exact address.

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

Mr. PERCY. I want to thank my colleagues. I want to make the point very strongly that after the publication of the addresses of certain of our colleagues, their homes were ransacked very shortly after that. And, having had a crime committeed in my own home, I am very sensitive indeed as to publicity giving home addresses, publicity that does not serve the public interest. As long as the town and the city are identified, that serves disclosure properly.

I am happy to yield to the Senator from New York.

UP AMENDMENT NO. 221

Mr. JAVITS. Mr. President, I send an amendment to the desk and ask that it be reported.

The PRESIDING OFFICER. Does the Senator ask unanimous consent that it be considered?

Mr. JAVITS. I ask unanimous consent that it be considered.

The PRESIDING OFFICER. Without objection, the clerk will report.

Mr. ABOUREZK. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ABOUREZK. Does it require unanimous consent to offer an amendment at this time to the bill?

The PRESIDING OFFICER. Except for the Senator from Nebraska (Mr. HRUSKA) or any other who is granted that request, the other request would have to be taken up on an individual basis.

Mr. ABOUREZK. What if an amendment is offered to the amendment of the Senator from New York, would that require unanimous consent?

The PRESIDING OFFICER. The same.

Mr. JAVITS. Mr. President, I will request unanimous consent.

Mr. ABOUREZK. I want to discuss it with him, but I would ask unanimous consent that it be in order that I offer an amendment to the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. BROCK. Reserving the right to object, Mr. President, we have a terribly tight timeframe here, and I want to be sure there is adequate time for discussion.

Mr. ABOUREZK. I hope there will be. It will not take very long.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. JAVITS. Mr. President, does Senator ALLEN wish me to yield to him?

The PRESIDING OFFICER. Will the Senator allow the amendment to be stated?

Mr. ALLEN. I want to have something to say before 12:30.

Mr. JAVITS. It will not take more than 3 minutes.

The second assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) for himself, Mr. RIBICOFF, Mr. PERCY, and Mr. WEICKER proposes unprinted amendment No. 221.

The amendment is as follows:

On page 84, line 11, insert after the word "defendants" the following "within his control."

And on page 84, line 12, strike all after words inserted above and insert the following: "or by him and his spouse or defendants jointly or by any person acting on his behalf."

Mr. JAVITS. Mr. President, this amendment is the product of the joint work of Senators RIBICOFF, WEICKER, PERCY, and myself, and it is offered by all of us as sort of the activists on this bill.

What it does is the following: If Members will turn to page 84, the amendment retains everything on page 84 up to line 11 and the word "dependents." It then inserts after the word "dependents" the words "within his control."

It also preserves the words "or by him and his spouse jointly," and insert after the word "spouse" the words "or dependents jointly," and it then strikes the rest of line 12 and the rest of line 13, except that it preserves on line 14 "or by any person acting on his behalf."

The purpose of the amendment, Mr. President, is to deal with the privacy of the spouse and the dependents of an individual, and to deal with the question of trusts, either so-called blind trusts, which have been established by Members, or hereditary trusts of which Members may be the beneficiaries.

It sets the test in the word "control."

In other words, if a Member in any way controls the assets or the trusts that he is interested in, and his wife or dependents, in each case or, then he must report every detail about it.

In the case of a blind trust, he is to report whatever he knows.

In other words, he established a trust—if he did—he put over $100,000, or whatever the category, in it, he is a beneficiary, the trustee is So-and-So, here is a copy of the trust instrument, but beyond that, he knoweth not.

That is what we mean by control. We think that is a fair and rational way to deal with this question of privacy of the spouse or the dependents and the requirement to act on the part of the Member.

There is no doubt about the fact, Mr. President, that this is not absolutely airtight and foolproof. But we believe it is just about as far as we can go with any practical scheme that tries to do both things, to wit, preserve privacy, where it is legitimate, of the wife, and children and, at the same time, point to whatever the member may be doing in respect of the assets of himself and his family.

We have chosen the best word we could, which is the word "control."

That is the whole amendment, Mr. President, and I hope my colleagues will feel that we have made a fair resolution of the difficulty.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. GLENN). The Senator from South Dakota.

UP AMENDMENT NO. 222

Mr. ABOUREZK. Mr. President, I send an amendment, by way of a substitute to the Javits amendment, to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota (Mr. ABOUREZK) proposes a substitute to the amendment of Mr. JAVITS, unprinted amendment No. 222.

Mr. ABOUREZK. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the amendment of Mr. JAVITS (No. UP 221) add the following:

Provided, That no disclosure shall be required as to those items of the spouse and dependents of the reporting individual which represent their sole property and which are not in any way, directly or indirectly, past or present, derived from the income, earnings, investments, assets, dividends, property, holdings or activities of the covered official.

Mr. JAVITS. Mr. President, I make the point of order that it is not a proper substitute. My amendment is an amendment to strike and insert.

The PRESIDING OFFICER. The amendment of the Senator from South Dakota is a proper substitute. It also is a strike-and-insert amendment, the same thing.

Mr. ABOUREZK. Mr. President, the purpose of this amendment, which I might add is supported by Common Cause and myself, and I just discussed it with a couple of Senators who said they see no objection to it, is to merely tighten up the wording of the Javits amendment, to accomplish the same thing.

What it would do is make certain that any property of dependents, of wives or children, that is acquired on their own and not in connection with the officeholder who might be the spouse, is prevented from being disclosed. But the principal purpose would be to make certain, unlike the Javits language, that no one is allowed to transfer any property out of his or her name into their spouse's or child's name to avoid disclosure.

It would accomplish the same thing, but I think it tightens it up.

Mr. JAVITS. Will the Senator yield to me?

Mr. ABOUREZK. Yes.

Mr. JAVITS. The only reason I made the point of order is this. I read the Senator's amendment carefully. We are trying to do the same thing. But I think jumping at it so quickly and suddenly, that the Senator ought to substitute what he has for mine. I think he ought to add it, then we can work it out in conference.

What I am concerned about, for example, are transfers of assets which may not be covered by the rather blanket statement which the Senator makes which intends to cover it, but which may not.

Because we deliberated and worked so hard and satisfied so many people with this word "control," I would be more than glad to accept and incorporate exactly what the Senator has.

If it is redundant, it is redundant. But let us not just dismantle everything we have been working on here for hours and, indeed, days.

That is my only point.

Mr. RIBICOFF. If the Senator will yield, if the Senator would comply with the request of the Senator from New York and go to conference, the Senator has our assurance that his ideas and Senator JAVITS' ideas would be studied most carefully, in consultation with the Senator from South Dakota, to try to get the intent established, because time is running out.

Mr. ABOUREZK. I would be willing to do that if—and I would like the Senator to state it—it is his intent to prevent an officeholder from transferring assets to a spouse or a child?

Mr. JAVITS. Absolutely.

Mr. RIBICOFF. That is my intention.

Mr. ABOUREZK. Then shall we ask unanimous consent this be added?

Mr. JAVITS. That is fine and I accept it as an addition and modify my amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ALLEN. Mr. President, I wish to express a difference of opinion on the meaning of a certain phrase here in the bill from that expressed in colloquy between the distinguished manager of the bill (Mr. RIBICOFF) and Mr. PERCY.

On page 80, section 303, where each covered individual is required to file a full and complete statement in the manner and form as the Comptroller General may prescribe with respect to the amount and source of each item of income.

It was stated in colloquy that this would mean each item of net income. I submit, that is not the reasonable interpretation of these words, because the bill would call for a statement of the amount and source of each item of income.

In other words, everything that comes in has got to be stated. Then, of course, if the officer or official who filed the statement wanted to say, "Now, I will charge against that so much item of expense, leaving a net of so much," that would be in order and that would be within the contemplations of this language.

Let us assume a case of this sort, a public official, an officeholder, could possibly be a slum lord who might possibly have $100,000 of rental income, but he would say, "Well, I spent a whole $100,000 and, therefore, I had no net income," and report no income.

I think it should be incumbent——

Mr. RIBICOFF. Will the Senator yield?

Mr. ALLEN. Yes.

Mr. RIBICOFF. I agree with that position. I do not think we do not have to report it. We report it on the net basis. I hope the Comptroller General in promulgating rules and regulations would indicate all charges against the income source we have.

Mr. ALLEN. Yes, but does the Senator concede that the gross figure must first be stated?

Mr. RIBICOFF. I do not think, the way we have it, there is any question.

Mr. ALLEN. That is all I want to establish.

Then the gross figure, like when we file an income tax, we establish our gross income and then deductions off that?

Mr. RIBICOFF. We are not in disagreement.

Mr. ALLEN. I thank the Senator.

Mr. PERCY. If the Senator will yield for a comment, the interpretation of the Senator from Illinois is exactly the same, certainly, that the gross income is offset by whatever expenses are incurred and the net income figure is reported——

Mr. ALLEN. That is not what the Senator from Connecticut said. The Senator from Connecticut said that the gross figure would be reported and then the expenses against that, ending up with the other figure. But the gross figure must be stated. The Senator from Illinois does not seem to understand it.

Mr. PERCY. That is exactly what the Senator from Illinois said.

Mr. ALLEN. The gross figure must be on.

Mr. PERCY. The net figure is the income of the individual. They must then list the gross figure and expenses against that to arrive at the net figure, all of which is available on ordinary income tax returns.

Mr. ALLEN. But the gross figure must be stated.

Mr. PERCY. Of the incumbent officeholder making the report.

Mr. ALLEN. But the gross figure must be stated.

Mr. RIBICOFF. Mr. President, I send to the desk——

Several Senators addressed the Chair.

The PRESIDING OFFICER. All time for debate has expired. The question is on agreeing to the Javits amendment, as modified by the amendment of the Senator from South Dakota.

The amendment, as modified, was agreed to.

Mr. RIBICOFF. Mr. President, I ask unanimous consent to extend the time for 5 minutes. I do not want to foreclose the Senator from South Dakota.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

UP AMENDMENT NO. 223

Mr. RIBICOFF. Mr. President, I send an unprinted amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Connecticut (Mr. RIBICOFF) proposes an unprinted amendment numbered 223:

On page 91, line 6, strike the word "subpena" and insert in lieu therefore the following:

"Discovery order of a competent court".

Mr. RIBICOFF. Mr. President, this amendment has been submitted at the request of Senator GRIFFIN, who points out that any attorney could issue a subpena. We want to make sure that it is a discovery order of a competent court which prevails.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

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

Mr. President, I ask unanimous consent that Senator HASKELL and Senator MUSKIE be listed as cosponsors of S. 495.

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

Mr. RIBICOFF. Mr. President, I ask unanimous consent that technical and clerical changes be made in S. 495 after final passage.

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

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the Senator from Alabama (Mr. ALLEN) be listed as a cosponsor.

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

ADDITIONAL STATEMENTS SUBMITTED

Mr. ROTH. Mr. President, the Watergate Reform Act is an effort to establish permanent institutions and procedures to fight corruption in Government and strengthen the ability of Congress and the executive branch to investigate and prosecute any abuses that do occur. The Government Operations Committee has spent a great deal of time and effort working on this bill, and I believe that it has been vastly improved over the original drafts. In particular, I want to congratulate our chairman, Senator ABRAHAM RIBICOFF, and my Republican colleagues on the committee, especially Senators CHARLES PERCY, JACOB JAVITS, and LOWELL WEICKER, who have been so instrumental in putting the bill into its present form and getting it to the floor.

The Watergate Reform Act has been in every sense a bipartisan effort by Republicans and Democrats who want to prevent the kinds of abuses of public trust that we have experienced in recent years. The Watergate affair under a Republican administration and the Bobby Baker scandal under a Democratic administration have shown the need to enhance the accountability of public officials and establish procedures to insure that an independent or special prosecutor will be appointed whenever the President or Attorney General has a conflict of interest in any case under investigation or prosecution.

I am pleased that title III of the bill relating to financial disclosure includes several amendments I offered in committee to insure that the information disclosed is accurate and that the Department of Justice, courts, and ethics committees of Congress have access to any financial information that may be needed to enforce the laws and punish violators.

In committee, I authored the provisions requiring the Comptroller General to make spotcheck audits of the financial disclosure forms. I have long held that financial disclosure without auditing is a paper tiger. The kind of person who would accept bribes or extort payments is not going to hesitate to falsify the financial information he is required under the bill to disclose. Without any audit, there would be little to deter him from falsifying, and it would be almost impossible to catch him. My amendment will put some teeth into the law. Just as spotcheck IRS audits help prevent falsification of tax returns, audits by the Comptroller General of financial disclosure information will help insure that the information provided is accurate, complete, and honest. All high ranking public officials, including the President, Vice President, and Members of Congress, the Cabinet, and the Supreme Court, would know that their statements might be checked.

Without an audit procedure, public financial disclosure would only give the appearance of a check on corruption, not a real check. Whatever sense of confidence it gives the public and press would be a false sense of confidence. In a period of widespread disillusionment with government, it is essential to insure that the reforms we adopt are real and effective reforms.

Mr. CHURCH. Mr. President, I am pleased that the Senate Government Operations Committee has reported S. 495, the Watergate Reorganization and Reform Act, to the Senate for consideration. This bill contains three titles, each of which has significance far beyond the circumstances of the Watergate affair.

Title I would create a Division of Government Crimes in the Department of Justice, and provide for the possible appointment of independent special prosecutors for alleged criminal wrongdoing by high-level Government officials.

Title II would establish a Congressional Legal Counsel to represent Congress in three major types of litigation: First, civil actions in which congressional individuals or entities are a party defendant and in which an official congressional action is placed in issue; second, legal actions in which the constitutionality of a law of the United States is challenged, the United States is a party, and the constitutionality of the law is not adequately defended by counsel for the United States; and, third, civil actions to enforce a subpena or other order issued by Congress.

Title III would require annual financial disclosures by high level officials in all three branches of the Federal Government.

TITLE I

As chairman of the Select Committee on Intelligence, I called earlier this year for a temporary special prosecutor on intelligence abuses. I ask unanimous consent that a copy of that statement appear at the conclusion of my remarks today.

It was my view then, and it remains my view today, that a temporary special prosecutor is required to examine the question of intelligence abuses. The official relationship between the FBI and the Department of Justice quite simply places the Attorney General in an untenable position. He has been asked to investigate the very house over which he must preside. This is an unreasonable and unfair burden to place upon any person, regardless of his integrity.

The Select Committee on Intelligence uncovered a long list of unlawful violations by the intelligence agencies, including the Federal Bureau of Investigation. Our findings were made available to the Attorney General and we were given repeated assurances that investigations for possible prosecution were going forward. Yet, in all these months, I have heard nothing concerning the results of the Justice Department inquiries.

If a single prosecution is contemplated, it is the best kept secret since the White House tapes.

However, if a special prosecutor had been named, a number of court cases would most likely have been brought by now. That they have not is evidence enough of the need for special prosecutor appointments, as envisaged under title I of S. 495.

Title I would have worked well in the cases uncovered by the Intelligence Committee. The definition of conflict of interest for the Department of Justice provides the trigger for a special prosecutor appointment. When the conflict is considerable, title I requires the Attorney General to file a memorandum with the U.S. court of appeals. If in that memorandum the Attorney General acknowledges the conflict, he must also name a special prosecutor and describe the matters to be investigated.

If the Attorney General does not believe that a conflict of interest exists and fails to appoint a special prosecu-

tor, the court of appeals is authorized to review that determination and to appoint a special prosecutor if it disagrees with the finding of the Attorney General.

The court may also review the appointment of the prosecutor as well as his jurisdiction, changing both as it deems appropriate under title I guidelines.

In the investigation conducted by the Intelligence Committee, I am sure a special prosecutor would have been appointed through these procedures if title I of S. 495 had already been law.

These procedures for investigating government misdeeds lie at the heart of this Watergate Reform Act. They do not call into question the integrity of the Attorney General, now or in the future. Instead, they provide a process for assisting the Department of Justice fulfill its mission to uphold the law in cases where the Department faces a real or potential conflict of interest dilemma. It is important to remember that the appearance of impartiality is just as vital as being impartial. Title I would help the Justice Department maintain the sanctity of both.

To resort to the use of a temporary special prosecutor, when necessary, is entirely proper. Leon Jaworski, himself a former Special Prosecutor, and others in the legal community have endorsed this concept on numerous occasions. Title I of the Watergate Reorganization and Reform Act can close this conspicuous gap in our system of justice.

TITLE II

The aspect of title II which I find particularly laudatory is the provision allowing a Congressional Legal Counsel to bring civil actions in order to enforce subpenas or other orders issued by Congress. This provision would reverse, of course, the existing procedure of criminal contempt action, but we are all aware how difficult it is to apply such an extreme recourse to obtain information from recalcitrant individuals or corporations. My own experiences lead me to the conclusion that the ability to pursue information through less draconian means is absolutely imperative to the expedition of congressional business. I strongly endorse this provision of title II.

TITLE III

Title III of this legislation, Mr. President, would require high-level officials in all three branches of the Government to make public financial disclosures. I was one of the first Senators to voluntarily make such a disclosure, and I have made it my practice to do so periodically ever since. The Government Operations Committee is to be commended for its endorsement of disclosure, and for including the requirement in this bill.

I want to compliment the Government Operations Committee for reporting the Watergate Reform Act, S. 495, to the Senate for consideration. This bill represents a culmination of many hours of hard work in the wake of the Watergate affair. The committee had done a superlative job. The Watergate Reorganization and Reform Act deserves to be passed by the Senate.

Mr. HATHAWAY. Mr. President, I would like to ask the distinguished floor manager a few questions regarding title III of this bill which concerns financial disclosure by Government personnel. My questions are concerned particularly with the provisions of section 304(a)(4), which grants to the President the authority to "exempt any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged exclusively in intelligence activities in any agency of the United States from the requirement to file a report with the Comptroller General if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report would reveal the identity of an undercover agent of the Federal Government." Each such individual so exempted must still file a report with the head of his agency, or if head of the agency, with the Chairman of the Civil Service Commission.

I would like to ask the distinguished floor manager whether this subsection is intended in any way to lessen the responsibility and duty of the individuals so exempted to avoid situations of financial conflict of interest in the conduct of their public and private lives?

Mr. RIBICOFF. This subsection is not intended in any way to lessen the responsibility and duty of these individuals under any existing law to comply with conflict of interest requirements.

Mr. HATHAWAY. Is it not correct to interpret this subsection as being necessary to prevent public disclosure of the identities of undercover agents by the Comptroller General under the public access provisions contained in section 306 of that title? In other words the exemption in section 304(a)(4) is intended solely to avoid the public disclosure of information and identity under section 306(a) and is not to be interpreted to allow secret operatives to engage in activities which lead to situations of conflict of interest?

Mr. RIBICOFF. The Senator is correct.

Mr. HATHAWAY. The head of each agency would still be required to make determinations regarding possible conflicts of interest consistent with the framework set up in title III of this bill, is that not correct?

Mr. RIBICOFF. This does not change existing requirements, the Senator is correct.

Mr. HATHAWAY. I have a couple of remaining questions regarding the relationship between section 304(a)(4) of this legislation and the provisions of Senate Resolution 400 which set up the Select Committee on Intelligence and was agreed to by this body on May 19. I am pleased to be able to address these questions to the floor manager of this bill who was significantly involved in the consideration of that measure.

Section 11(b) of the resolution as adopted expresses "the sense of the Senate that the head of any department or agency of the United States involved in any intelligence activities should furnish any information or document in the possession, custody, or control of the department or agency, or person paid by such department or agency, whenever requested by the select committee with respect to any matter within such committee's jurisdiction."

Am I correct in assuming that it is not the intention of section 304(a)(4) of this bill to in any way modify, mitigate, or vitiate the select committee's authority to gather information as contained in section 11(b) of Senate Resolution 400?

Mr. RIBICOFF. Yes, the Senator is correct.

Mr. HATHAWAY. Similarly, section 11(c) of Senate Resolution 400 states:

> It is the sense of the Senate that each department and agency of the United States should report immediately upon discovery to the select committee any and all intelligence activities which constitute violations of the constitutional rights of any person, violations of law, or violations of Executive orders, Presidential directives, or departmental or agency rules or regulations; each department and agency should further report to such committee what actions have been taken or are expected to be taken by the departments or agencies with respect to such violations.

Am I correct in assuming that it is not the intention of section 304(a)(4) of this bill to in any way modify, mitigate, or vitiate the duty of departments and agencies of the United States to report immediately any such activities to the select committee under the provisions of that section 11(c) of Senate Resolution 400?

Mr. RIBICOFF. Yes, the Senator is correct.

Mr. HATHAWAY. I thank the distinguished floor manager for clarifying this matter for me. As a member of the Select Committee on Intelligence, I am particularly pleased that its authority is not intended to be diminished by the legislation under consideration today of which I am a cosponsor. Further, I think it is particularly important that the responsibility of undercover agents to scrupulously avoid situations of financial conflict of interest is acknowledged in this legislation. The business or so-called proprietary activities of the intelligence community will be an area of close study for the committee in upcoming months and it is important that the principles contained in title III of this bill be seen by this body to apply to all employees of the intelligence community.

Mr. BAYH. Mr. President, I would like to take just a few moments to explain my vote on final passage of S. 495, the Watergate Reorganization and Reform Act. I have voted for passage of S. 495 because I heartily support titles II and III which require full financial disclosure by high level officials and employees of the Federal Government and establish the Office of Congressional Legal Counsel. However, I am deeply concerned with title I which has been amended to provide for the establishment of a permanent special prosecutor.

Events of the last few years have demonstrated the need for legislation establishing a mechanism to insure vigorous and independent investigations and prosecution of high officials of the Federal Government. We have learned through painful experience that our

present Federal prosecutorial system is inadequate when required to pursue allegations of criminal wrongdoing against those who have direct control or a substantial influence over that system. I do not believe this inadequacy is corrected by S. 495.

By institutionalizing the office of special prosecutor within the Department of Justice, we have undercut the independence envisioned when the establishment of a special prosecutor was first considered in 1973.

It stretches one's credulity to imagine that a so-called "special prosecutor" who is appointed by the President in his discretion, who is totally incorporated within the standard operations of the Department of Justice, and who is required to report specific decisions and the reasons for those decisions to the Attorney General, would enjoy the independence essential to the fulfillment of his difficult responsibilities. Indeed, it is a misnomer to refer to such an appointee as a special prosecutor; a more apt title might be "permanent prosecutor for high Federal officials."

Having witnessed in recent years the pressures that can be brought to bear on our system of criminal justice, it is a serious error to institutionalize a would-be remedy for existing institutional weakness that itself is inherently flawed. Indeed, it is not impossible to imagine that circumstances could arise in the future under the structure incorporated in the compromise title I that would leave us with a situation precisely like that which necessitated the appointment of a truly independent special prosecutor 3 years ago.

As reported from the Committee of Government Operations, title I of S. 495 provided for the appointment of a temporary special prosecutor when it was evident or likely that a conflict of interest, either material or political, would prevent the Department of Justice from undertaking a full, vigorous investigation and prosecution of criminal wrongdoing. Title I was clearly drafted to insure that a special prosecutor would be appointed when needed and that once appointed he or she would be immune from political influence. Instead, we have chosen a mechanism which will enable a circumvention of the prosecution of high Government officials should the President simply fail to nominate an individual for the position of special prosecutor. More significantly, we have put the special prosecutor within the same criminal justice system, the failure of which was the driving force behind the adoption of S. 495.

Mr. President, I hope that the future of this great country will bring a time of honest and open government and will obviate the need for legislation such as the Watergate Reorganization and Reform Act. That time will not come unless the Members of this body take hard stands against corruption in government. By adopting the amended version of title I of S. 495, we have missed another opportunity to take that hard stand.

Mr. DOLE. Mr. President, though I am not entirely satisfied that this bill represents truly desirable reorganization and reform—or even that it poses the best means of assuring integrity and accountability among high-level Government officials—I am going to support it as the closest we can come to something reasonably acceptable.

I will continue to have reservations, however, about the constitutionality of a Special Prosecutor under title I; the advisability of a congressional legal counsel under title II; and the necessity and utility of the massive, and perhaps unmanageable, disclosure requirements—covering in excess of some 15,000 bureaucrats—under title III. Hopefully, some of these doubts, which other Senators share, can be further addressed as hearings on the matter begin in the House of Representatives next week.

One aspect of the final version of this legislation which does have my particular approval, Mr. President, is that dealing with the jurisdiction of the Special Prosecutor. Since I indicated yesterday my intention of offering an amendment to include allegations of criminal wrongdoing against Members of Congress as part of the so-called triggering mechanism, I was pleased to have that change incorporated into the committee's substitute just adopted.

As Senators are, of course, aware, the legislative branch was excluded from the jurisdictional authority of the Special Prosecutor under the originally reported text of S. 495. It seems to me, however, that an inherent conflict of interest is going to exist any time the Attorney General has to make a decision as to whether he should prosecute another political officeholder.

Certainly, as an appointee of the President, no matter how hard he strives for objectivity relative to Senators or Representatives, he will always be subject to charges of partiality. Accordingly, any such judgments would be most appropriate for an independent prosecutor who—if such a position is to be created—could make them without the pressures that might otherwise exist.

The Criminal Division of the Justice Department—which now has authority and responsibility for investigating and prosecuting matters concerning Members of Congress is, I think, carrying out this duty very commendably. In fact, it is currently pursuing several cases involving possible misuse of public funds and unauthorized release of classified information within the House of Representatives.

As the committee noted in its report, however, these types of extraordinary situations demand an unusually high profile to assure the public that they are not being treated as mere routine inquiries. Top priority—and the appearance of complete impartiality—are essential if we are to demonstrate that such misconduct is being dealt with effectively.

Again, Mr. President, I believe the substitute for title I—which was basically the President's proposal—was a great improvement to this legislation and corrected many of the problems I had with that part of the bill. Unfortunately, it did not clear up everything that might be questionable about S. 495, but it has made it a package which, on balance, can be regarded as a significant effort to restore confidence in our American Government.

Mr. CLARK. Mr. President, I am very pleased to be a cosponsor of S. 495, the Watergate Reorganization and Reform Act of 1976. This vital legislation was approved unanimously by the Government Operations Committee after hearing testimony from 20 distinguished witnesses and receiving written comments from numerous Government agencies and legal scholars. Further evidence of the bill's merit is demonstrated by the strong endorsements it has received from the American Bar Association and three former Watergate special prosecutors: Archibald Cox, Leon Jaworski, and Henry Ruth.

By creating a new Division of Government Crimes within the Department of Justice, S. 495 will significantly improve Government efforts to enforce Federal election laws and investigate cases of misconduct by those in positions of public authority. At the same time, it contains appropriate provisions for appointment of an independent special prosecutor to handle cases where the Justice Department might be involved in a possible conflict-of-interest situation. Surely this Nation must never again be made to endure a repetition of the Watergate scandals, where the Attorney General conducted nearly a year of desultory and superficial investigation before press revelations and outraged public opinion forced the appointment of Archibald Cox.

The public financial disclosure provisions of S. 495 will prove to be of equal significance in restoring public trust in our institutions of Government. Two years ago, Congress passed the Federal Elections Campaign Act, requiring full accounting of contributions to and spending by Presidential and congressional candidates. Last month, the Senate approved the lobbying reform bill, which will mandate the disclosure of all contributions made to lobbyists and a listing of all gifts, loans, and honorariums made by lobbyists to Members and employees of Congress. It is no less essential that officeholders in the legislative, executive, and judicial branches of Government subject their own financial affairs to the same kind of rigorous scrutiny by the public. The uniform disclosure requirements of S. 495, I believe, will deter future conflicts-of-interest from arising and contribute to public awareness of the high level of integrity maintained by the vast majority of Government officials.

Mr. President, it has now been over 4 years since the collection of horrors known as Watergate came to the attention of the American people. Memories of these scandals may have faded, but not the need for implementing the reforms necessary to prevent such threats to democracy from arising ever again. The passage of S. 495, I believe, will be a major step in restoring the confidence of the people in their public officeholders, and I urge its adoption.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed

for a third reading and was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill pass? The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Michigan (Mr. PHILIP A. HART) and the Senator from North Carolina (Mr. MORGAN) are necessarily absent.

I also announce that the Senator from Florida (Mr. STONE) is absent because of illness.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) would vote "yea".

Mr. GRIFFIN. I announce that the Senator from Pennsylvania (Mr. HUGH SCOTT) is absent on official business.

The result was announced—yeas 91, nays 5, as follows:

[Rollcall Vote No. 398 Leg.]

YEAS—91

Abourezk	Garn	Mondale
Allen	Glenn	Montoya
Baker	Goldwater	Moss
Bartlett	Gravel	Muskie
Bayh	Griffin	Nelson
Beall	Hansen	Nunn
Bellmon	Hart, Gary	Packwood
Bentsen	Hartke	Pastore
Biden	Haskell	Pearson
Brock	Hatfield	Pell
Brooke	Hathaway	Percy
Buckley	Helms	Proxmire
Bumpers	Hollings	Randolph
Burdick	Huddleston	Ribicoff
Byrd, Harry F., Jr.	Humphrey	Roth
	Inouye	Schweiker
Byrd, Robert C.	Jackson	Sparkman
Cannon	Javits	Stafford
Case	Johnston	Stennis
Chiles	Kennedy	Stevens
Church	Leahy	Stevenson
Clark	Long	Symington
Cranston	Magnuson	Taft
Culver	Mansfield	Talmadge
Dole	Mathias	Thurmond
Domenici	McClellan	Tower
Durkin	McClure	Tunney
Eagleton	McGee	Weicker
Eastland	McGovern	Williams
Fong	McIntyre	Young
Ford	Metcalf	

NAYS—5

Curtis	Hruska	Scott, William L.
Fannin	Laxalt	

NOT VOTING—4

Hart, Philip A.	Scott, Hugh	Stone
Morgan		

So the bill (S. 495), as amended, was passed, as follows:

S. 495

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 "Watergate Reorganization and Reform Act of 1976".

TITLE I—AMENDMENTS TO TITLE 28, UNITED STATES CODE

REORGANIZATION OF THE DEPARTMENT OF JUSTICE

SEC. 101 (a) Title 28, United States Code, is amended by adding after chapter 37 the following new chapter:

"Chapter 39—OFFICE OF SPECIAL PROSECUTOR AND OFFICE OF GOVERNMENT CRIMES AND OFFICE OF PROFESSIONAL RESPONSIBILITY

"Sec.
"591. Special Prosecutor: Appointment and Removal.
"592. Jurisdiction.
"593. Authority.
"594. Office of Government Crimes.
"595. Jurisdiction.
"596. Reporting.
"597. Disqualification of Officers and Employees of the Department of Justice.
"598. Office of Professional Responsibility.

"§ 591. Special Prosecutor: Appointment and Removal

"(a) There is established within the Department of Justice an independent Office of Special Prosecutor whcich shall be headed by a Special Prosecutor appointed by the President, by and with the advice and consent of the Senate.

"(b) The Special Prosecutor shall be appointed for a term of three years and shall be compensated pursuant to level II of the Executive Schedule, section 5313 of title 5, United States Code. No person shall serve as Special Prosecutor for more than a single term.

"(c) A person shall not be appointed Special Prosecutor if he has at any time during the five years preceding such appointment held a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of, a candidate for any elective Federal office. The confirmation by the Senate of a Presidential nomination of a Special Prosecutor shall constitute a final determination that such officer meets the requirements of this subsection.

"(d) A Special Prosecutor shall only be removed by the President for extraordinary improprieties, for malfeasance in office, for willful neglect of duty, for permanent incapacitation, or for any conduct constituting a felony. An action may be brought in the United States District Court for the District of Columbia to challenge the action of the President under this subsection by seeking reinstatement or other appropriate relief. In the event of any removal, the President shall promptly submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report describing with particularity the grounds for such action. The committees shall make available to the public such report, except that each committee may, if necessary to avoid prejudicing the legal rights of any individual, delete or postpone publishing such portions of the report, or the whole report, or any name or other identifying details.

"(e) The Special Prosecutor shall report no less than annually to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives and shall include in such reports information concerning his relationship with the Attorney General, United States Attorneys, other agencies of Government, the degree of independence exercised under section 593, the types and numbers of matters of which he has declined jurisdiction under section 592(b) and such other matters as he deems appropriate. However, the report shall not include any information which might impair or compromise an ongoing matter, or which the Special Prosecutor determines would constitute an improper invasion of personal privacy or other improper disclosure.

"§ 592. Jurisdiction

"(a)(1) The Special Prosecutor shall have jurisdiction to investigate and prosecute possible violations of Federal criminal law by a person who holds or who at the time of such possible violation held any of the following positions in the Federal Government: (i) President, Vice President, Attorney General, or Director of the Federal Bureau of Investigation; (ii) any position compensated at a rate equal to or greater than level I or level II of the Executive Schedule under sections 5312 or 5313 of title 5, United States Code, (iii) Member of Congress, or (iv) any member of the Federal judiciary.

"(2) The Attorney General shall promptly refer to the Special Prosecutor for investigation and, if warranted, prosecution any information, allegations or complaints relating to any violation specified in paragraph (1). In addition, the Attorney General shall promptly refer to the Special Prosecutor for investigation and if warranted prosecution any matter where the Attorney General determines that in the interest of the administration of justice it would be inappropriate for the Department of Justice (other than the Office of Special Prosecutor) to conduct such investigation or prosecution.

"(b) The Special Prosecutor may in his discretion decline to accept referrals under subsection (a)(2) of this section. The Special Prosecutor may decline to assert jurisdiction under subsection (a)(1) of this section when the matter over which he has jurisdiction is a peripheral or incidental part of an investigation or prosecution already being conducted elsewhere in the Department of Justice, or when for some other reason he determines it would be in the interest of the administration of justice to permit the matter to be handled elsewhere in the department: *Provided, however,* That any such declination shall be accompanied by the establishment of such procedures as the Special Prosecutor considers necessary and appropriate to keep him informed of the progress of the investigation or prosecution as it relates to such matter: *And provided further,* That the Special Prosecutor may at any time assume responsibility for investigation and prosecution of such matter. If the Special Prosecutor declines to accept a referral under subsection (a)(2) or declines to assert jurisdiction under subsection (a)(1) he shall submit his reasons for taking such action in writing to the Attorney General.

"§ 593 Authority

"(a) The temporary Special Prosecutor shall have, within the jurisdiction specified by section 592 over matters which he has assumed responsibility, full power and independent authority, subject only to the power of the President under section 591(d) to—

"(1) conduct proceedings before grand juries and other investigations;

"(2) participate in court proceedings and engage in any litigation, including civil and criminal matters, as he deems necessary;

"(3) appeal any decision of a court in which he is a party;

"(4) review all documentary evidence available from any source;

"(5) determine whether or not to contest the assertion of any testimonial privilege;

"(6) receive appropriate national security clearances and, if necessary contest in court, including where appropriate participation in in camera proceedings, any claim of privilege or attempt to withhold evidence on grounds of national security;

"(7) make applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpenas, or other court orders, and for purposes of sections 6003, 6004, and 6005, of title 18, United States Code, as amended, the Special Prosecutor may exercise the authority vested in a United States Attorney, or the Attorney General;

"(8) inspect, obtain, or use the original or copy of any tax return, in accordance with the applicable statutes and regulations, and for purposes of section 6103, of title 26, United States Code, as amended, and the regulations thereunder, a Special Prosecutor may exercise the powers vested in a United States Attorney or the Attorney General;

"(9) initiate and conduct prosecutions in any court of competent jurisdiction, frame and sign indictments, file information, and handle all aspects of any case in the name of the United States;

"(10) communicate with, and appear be-

fore, and provide information to, appropriate Congressional committees;

"(11) exercise all other powers as to the conduct of criminal investigations and prosecutions which would otherwise be vested in the Attorney General or the United States Attorneys under the provisions of chapters 31 and 35 of title 28 of the United States Code, as amended, and the regulations thereunder, coordinate and direct the activities of all Department of Justice personnel, including United States Attorneys, and act as attorney for the Government in such investigations and prosecutions except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18, United States Code.

"(b) The Special Prosecutor shall have power to appoint, fix the compensation, and assign the duties of such employees as he deems necessary, including but not limited to investigators, attorneys, and part-time consultants, without regard to the provisions of title 5, United States Code, governing appointments in the competitive civil service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title. The Department of Justice shall provide assistance to the Special Prosecutor which shall include but not be limited to, affording to the Special Prosecutor full access to any records, files, or other materials relevant to matters within his jurisdiction, providing to the Special Prosecutor the resources and personnel required to perform his duties, and use by the special prosecutor of the investigative and other services of the Federal Bureau of Investigation.

"(c) The Special Prosecutor may from time to time make public such statements or reports as he deems appropriate. The Special Prosecutor may present reports, statements, or recommendations to the Congress, the President or the Attorney General.

"(d) Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making presentations to any court as to issues of law raised by any case or appeal.

"§ 594. Office of Government Crimes

"(a) There is established within the Department of Justice an Office of Government Crimes, which shall be headed by a Director appointed by the President, by and with the advice and consent of the Senate. The Director shall report directly to the Attorney General on a regular basis and when he deems it necessary and shall report to any other person the Attorney General directs. The Attorney General shall determine the organizational placement of the office within the department.

"(b) A person shall not be appointed director of the Office of Government Crimes if he has at any time during the five years preceding such appointment held a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of, a candidate for any elective Federal office. The confirmation by the Senate of a Presidential nomination of a director shall constitute a final determination that such officer meets the requirements of this subsection.

"(c) An individual who has played a leading partisan role in the election of a President shall not be appointed Attorney General or Deputy Attorney General. Individuals holding the position of national campaign manager, national chairman of the finance committee, chairman of the national political party, or other comparable high level campaign role involved in electing the President should be among those considered to have played a leading partisan role.

"§ 595. Jurisdiction

"(a) The Attorney General shall, except as to matters referred to the Special Prosecutor pursuant to section 592 of this chapter, delegate to the Office on Government Crimes jurisdiction of (1) criminal violations of Federal law related directly or indirectly to his Government position, employment, or compensation, by any individual who holds or who at the time of such possible violation held a position as an elected or appointed Federal Government officer, employee or special employee; (2) criminal violations of Federal laws relating to lobbying, conflicts of interest, campaigns, and election to public office committed by any person except insofar as such violations relate to matters involving discrimination or intimidation on the grounds of race, color, religion or national origin; (3) the supervision of investigations and prosecutions of criminal violations of Federal law involving State or local government officials or employees; and (4) such other matters as the Attorney General may deem appropriate.

"(b) Jurisdiction delegated to the Office of Government Crimes pursuant to subsection (a) of this subsection may be concurrently delegated by the Attorney General to, or concurrently reside in, the United States attorneys or other units of the Department of Justice. In the event of such concurrent delegation, the Director shall supervise the United States attorneys or other units in the performance of such duties. This section shall not limit any authority conferred upon the Attorney General, the Federal Bureau of Investigation, or any other department or agency of government to investigate any matter.

"§ 596. Reporting

"(a) At the beginning of each regular session of the Congress, the Attorney General shall report to the Congress on the activities and operation of the Office of Government Crimes for the preceding fiscal year.

"(b) such report shall specify the number and type of investigations and prosecutions subject to the jurisdiction of such unit and the disposition thereof but shall not include any information which would impair an ongoing investigation, prosecution, or proceeding, or which the Attorney General determines would constitute an improper invasion of personal privacy.

"§ 597. Disqualification of officers and employees of the Department of Justice

"The Attorney General shall promulgate rules and regulations which require any officer or employee of the Department of Justice, including a United States attorney or a member of his staff, to disqualify himself from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or partisan political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

"§ 598. Office of Professional Responsibility

"(a) There is established within the Department of Justice an Office of Professional Responsibility, which shall be headed by a Counsel on Special Responsibility appointed by the Attorney General. The counsel shall be subject to the general supervision and direction of the Attorney General, and shall report directly to the Attorney General or, in appropriate cases, to the Deputy Attorney General or the Solicitor General.

"(b) Except as to matters which are to be referred to the Special Prosecutor under section 592 of this chapter, the Counsel on Professional Responsibility shall be responsible for reviewing any information or allegation presented to him concerning conduct by an employee of the Department of Justice that may be in violation of law, of department regulations or orders, or of applicable standards of conduct, and shall undertake a preliminary investigation to determine what further steps should be taken. On the basis of such investigation the counsel shall refer the matter to the appropriate unit within the department or shall recommend to the Attorney General or, in appropriate cases, to the Deputy Attorney General or Solicitor General, what other action, if any should be taken. The counsel shall undertake such other responsibilities as the Attorney General may direct.

"(c) Nothing in this section shall derogate from the authority of internal inspection units of the Department of Justice and the heads of other units to receive, investigate and act upon information or allegations concerning unlawful or improper conduct.".

(b) The analysis of part II of title 28, United States Code, is amended by adding after the item following chapter 37 the following new item:

"39. Office of Special Prosecutor, Office of Government Crimes, and Office of Professional Responsibility ---------- 591".

(c)(1) Section 5315 of title 5, United States Code, is amended by adding "(105 Director of Office of Government Crimes.".

(2) Section 5313 of title 5, United States Code, is amended by adding "Special Prosecutor".

SEPARABILITY

SEC. 102. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 103. There are authorized to be appropriated for each fiscal year through September 30, 1981, such sums as may be necessary to carry out the provisions of this title.

TITLE II—CONGRESSIONAL LEGAL COUNSEL

ESTABLISHMENT OF OFFICE OF CONGRESSIONAL LEGAL COUNSEL

SEC. 201. (a)(1) There is established, as an office of the Congress, the Office of Congressional Legal Counsel (hereinafter referred to as the "Office"), which shall be headed by a Congressional Legal Counsel; and there shall be a Deputy Congressional Legal Counsel who shall perform such duties as may be assigned to him by the Congressional Legal Counsel and, during any absence, disability, or vacancy in the office of the Congressional Legal Counsel, the Deputy Congressional Legal Counsel shall serve as Acting Congressional Legal Counsel.

(2) The Congressional Legal Counsel and the Deputy Congressional Legal Counsel each shall be appointed by the President pro tempore of the Senate and the Speaker of the House of Representatives from among recommendations submitted by the majority and minority leaders of the Senate and the House of Representatives. Any appointment made under this subsection shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the Office. Any person appointed as Congressional Legal Counsel or Deputy Congressional Legal Counsel shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during the term of such appointment.

(3)(A) Any appointment made under this subsection shall become effective upon ap-

proval, by concurrent resolution, of the Senate and the House of Representatives. The Congressional Legal Counsel and the Deputy Congressional Legal Counsel shall each be appointed for a term which shall expire at the end of the Congress following the Congress during which the Congressional Legal Counsel is appointed except that the Congress may, by concurrent resolution, remove either the Congressional Legal Counsel or the Deputy Congressional Legal Counsel prior to the termination of his term of office. The Congressional Legal Counsel and the Deputy Congressional Legal Counsel may be reappointed at the termination of any term of office.

(B) The first Congressional Legal Counsel and the first Deputy Congressional Legal Counsel shall be appointed and take office within ninety days after the enactment of this title, and thereafter the Counsel shall be appointed and take office within thirty days after the beginning of the session of Congress immediately following the termination of the Congressional Legal Counsel's term of office.

(4) The Congressional Legal Counsel shall receive compensation at a per annum gross rate equal to the rate of basic pay for level III of the Executive Schedule under section 5314 of title 5, United States Code. The Deputy Congressional Legal Counsel shall receive compensation at a per annum gross rate equal to the rate of basic pay for level IV of the Executive Schedule under section 5316 of title 5, United States Code.

(b)(1) The Congressional Legal Counsel shall appoint and fix the compensation of such Assistant Congressional Legal Counsels and of such other personnel as may be necessary to carry out the provisions of this title and may prescribe the duties and responsibilities of such personnel. Any appointment made under this subsection shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the Office. Any person appointed as Assistant Congressional Legal Counsel shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during the term of such appointment. All such employees shall serve at the pleasure of the Congressional Legal Counsel.

(2) For purpose of pay (other than pay of the Congressional Legal Counsel and Deputy Congressional Legal Counsel) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as if they were employees of the Senate.

(c) In carrying out the functions of the Office, the Congressional Legal Counsel may procure the temporary (not to exceed one year) or intermittent services of individual consultants (including outside counsel), or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72(a)(1)).

(d) The Congressional Legal Counsel may establish such procedures as may be necessary to carry out the provisions of this title.

(e) The Congressional Legal Counsel may delegate authority for the performance of any function imposed by this Act except any function imposed upon the Congressional Legal Counsel under section 205(b) of this title.

DUTIES AND FUNCTIONS

SEC. 202. (a) Whenever the Joint Committee on Congressional Operations (hereinafter referred to in this title as the "Joint Committee") is performing any of the responsibilities set forth in subsection (b), the Speaker of the House of Representatives, the majority and minority leaders of the House of Representatives, the President pro tempore of the Senate and the majority and minority leaders of the Senate shall be ex officio members of the Joint Committee.

(b) The Joint Committee shall—

(1) oversee the activities of the Office of Congressional Legal Counsel, including but not limited to, consulting with the Congressional Legal Counsel with respect to the conduct of litigation in which the Congressional Legal Counsel is involved;

(2) pursuant to section 203(a), make a recommendation with respect to representation of a Member, officer, or employee in a civil action;

(3) pursuant to section 309 of this title, recommend the appropriate action to be taken in resolution of a conflict or inconsistency;

(4) pursuant to section 205(b), cause the publication in the Congressional Record of the notification required of the Congressional Legal Counsel under that section.

(c)(1) Whenever the Congress is not in session, the Joint Committee may, in accordance with the provisions in section 203(b)(2), authorize the Congressional Legal Counsel to undertake its responsibilities under section 203(a) in the absence of an appropriate resolution for a period not to exceed ten days after the Congress or the appropriate House of Congress reconvenes.

(2) The Joint Committee may poll its members by telephone in order to conduct a vote under this subsection.

DEFENDING A HOUSE, COMMITTEE, MEMBER, OFFICER, AGENCY, OR EMPLOYEE OF CONGRESS

SEC. 203. (a) Except as otherwise provided in subsection (b), the Congressional Legal Counsel, at the direction of Congress or the appropriate House of Congress shall—

(1) defend Congress, a House of Congress, an office or agency of Congress, a committee or subcommittee, or any Member, officer, or employee of a House of Congress in any civil action pending in any court of the United States or of a State or political subdivision thereof in which Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency is made a party defendant and in which there is placed in issue the validity of any proceeding of, or action, including issuance of any subpena or order, taken by Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency in its or his official or representative capacity; or

(2) defend Congress, a House of Congress, an office or agency of Congress, a committee or subcommittee, or a Member, officer, or employee of a House of Congress in any civil action pending in any court of the United States or of a State or political subdivision thereof with respect to any subpena or order directed to Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency in its or his official or representative capacity.

(b)(1) Representation of a Member, officer, or employee under section 203(a) shall be undertaken by the Congressional Legal Counsel only upon the consent of such Member, officer, or employee. The resolution directing the Congressional Legal Counsel to represent a Member, officer, or employee may limit such representation to constitutional issues relating to the powers and responsibilities of Congress.

(2) The Congressional Legal Counsel may undertake its responsibilities under subsection (a) in the absence of an appropriate resolution by the Congress or by one House of the Congress if—

(A) Congress or the appropriate House of Congress is not in session;

(B) the interest to be represented would be prejudiced by a delay in representation; and

(C) the Joint Committee authorizes the Congressional Legal Counsel to proceed in its representation as provided under section 202.

INSTITUTING A CIVIL ACTION TO ENFORCE A SUBPENA OR ORDER

SEC. 204. (a) The Congressional Legal Counsel, at the direction of Congress or the appropriate House of Congress, shall bring a civil action under any statute conferring jurisdiction on any court of the United States to enforce, or issue a declaratory judgment concerning the validity of any subpena or order issued by Congress, or a House of Congress, a committee, or a subcommittee of a committee authorized to issue a subpena or order.

(b) Nothing in subsection (a) shall limit the discretion of—

(1) the President pro tempore of the Senate or the Speaker of the House of Representatives in certifying to the United States Attorney for the District of Columbia any matter pursuant to section 104 of the Revised Statutes (2 U.S.C. 194); or

(2) either House of Congress to hold any individual or entity in contempt of such House of Congress.

INTERVENTION OR APPEARANCE

SEC. 205. (a) The Congressional Legal Counsel, at the direction of Congress, shall intervene or appear as amicus curiae in any legal action pending in any court of the United States or of a State or political subdivision thereof in which—

(1) the constitutionality of any law of the United States is challenged, the United States is a party, and the constitutionality of such law is not adequately defended by counsel for the United States; or

(2) the powers and responsibilities of Congress under article I of the Constitution of the United States are placed in issue.

(b) The Congressional Legal Counsel shall notify the Joint Committee of any legal action in which the Congressional Legal Counsel is of the opinion that intervention or appearance as amicus curiae by Congress is necessary to carry out the purposes of subsection (a). Such notification shall contain a description of the legal proceeding together with the reasons that the Congressional Legal Counsel is of the opinion that Congress should intervene or appear as amicus curiae. The Joint Committee shall cause said notification to be published in the Congressional Record for the Senate and House of Representatives.

(c) The Congressional Legal Counsel shall limit any intervention or appearance as amicus curiae in an action involving a Member, officer, or employee of Congress to constitutional issues relating to the powers and responsibilities of Congress.

IMMUNITY PROCEEDINGS

SEC. 206. The Congressional Legal Counsel, at the direction of the appropriate House of Congress or any committee of Congress shall serve as the duly authorized representative of such House or committee in requesting a United States district court to issue an order granting immunity pursuant to section 201(a) of the Organized Crime Control Act of 1970 (18 U.S.C. 6005).

ADVISORY AND OTHER FUNCTIONS

SEC. 207. (a) The Congressional Legal Counsel shall advise, consult, and cooperate—

(1) with the United States Attorney for the District of Columbia with respect to any criminal proceeding for contempt of Congress certified pursuant to section 104 of the Revised Statutes (2 U.S.C. 194);

(2) with the Joint Committee on Congressional Operations in identifying any court proceeding or action which is of vital interest to Congress or to either House of Congress under section 402(a)(2) of the Legislative Reorganization Act of 1970 (2 U.S.C. 412(a)(2));

(3) with the Comptroller General, General Accounting Office, the Office of Legislative Counsel of the Senate, the Office of the Leg-

islative Counsel of the House of Representatives, and the Congressional Research Service, except that none of the responsibilities and authority granted by this title to the Congressional Legal Counsel shall be construed to affect or infringe upon any functions, powers, or duties of the Comptroller General of the United States;

(4) with any Member, officer, or employee of Congress not represented under section 203 with regard to obtaining private legal counsel for such Member, officer, or employee;

(5) with the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Parliamentarians of the Senate and House of Representatives regarding any subpena, order, or request for withdrawal of papers presented to the Senate and House of Representatives or which raises a question of the privileges of the Senate or House of Representatives; and

(6) with any committee or subcommittee in promulgating and revising their rules and procedures for the use of congressional investigative powers and questions which may arise in the course of any investigation.

(b) The Congressional Legal Counsel shall compile and maintain legal research files of materials from court proceedings which have involved Congress, a House of Congress, an office or agency of Congress, or any committee, subcommittee, Member, officer, or employee of Congress. Public court papers and other research memoranda which do not contain information of a confidential or privileged nature shall be made available to the public consistent with any applicable procedures set forth in such rules of the Senate and House of Representatives as may apply and the interests of Congress.

(c) The Congressional Legal Counsel shall perform such other duties consistent with the purposes and limitations of this title as the Congress may direct.

DEFENSE OF CERTAIN CONSTITUTIONAL POWERS

SEC. 208. In performing any function under section 203, 204, or 205, the Congressional Legal Counsel shall defend vigorously when placed in issue—

(1) the constitutional privilege from arrest or from being questioned in any other place for any speech or debate under section 6 of article I of the Constitution of the United States;

(2) the constitutional power of each House of Congress to be judge of the elections, returns, and qualifications of its own Members and to punish or expel a Member under section 5 of article I of the Constitution of the United States;

(3) the constitutional power of each House of Congress to except from publication such parts of its journal as in its judgment may require secrecy;

(4) the constitutional power of each House of Congress to determine the rules of its proceedings;

(5) the constitutional power of Congress to make all laws as shall be necessary and proper for carrying into execution the constitutional powers of Congress and all other powers vested by the Constitution in the Government of the United States, or in any department or office thereof;

(6) all other constitutional powers and responsibilities of Congress; and

(7) the constitutionality of statutes enacted by Congress.

CONFLICT OR INCONSISTENCY

SEC. 209. (a) In the carrying out of the provisions of this title, the Congressional Legal Counsel shall notify the Joint Committee and any party represented or entitled to representation under his title, of the existence and nature of any conflict or inconsistency between the representation of such party and the carrying out of any other provisions of this title, or compliance with professional standards and responsibilities.

(b) Upon receipt of such notification, the Joint Committee shall recommend the action to be taken to avoid or resolve the conflict or inconsistency. The Joint Committee shall cause the notification of conflict or inconsistency and the Joint Committee's recommendation with respect to resolution thereof to be published in the Congressional Record of the appropriate House or Houses of Congress. If Congress or the appropriate House of Congress does not direct the Joint Committee within fifteen days from the date of publication in the Record to resolve the conflict in another manner, the Congressional Legal Counsel shall take such action as may be necessary to resolve the conflict or inconsistency as recommended by the Joint Committee. Any instruction or determination made pursuant to this subsection shall not be reviewable in any court of law.

(c) The appropriate House of Congress may by resolution authorize the reimbursement of any Member, officer, or employee who is not represented by the Congressional Legal Counsel as a result of the operation of subsection (b) or who declines to be represented pursuant to section 203(b) for costs reasonably incurred in obtaining representation. Such reimbursement shall be from funds appropriated to the contingent fund of the appropriate House.

PROCEDURE FOR DIRECTION OF CONGRESSIONAL LEGAL COUNSEL

SEC. 210. (a) Directives made pursuant to sections 203(a), 204(a), 205(a), and 206, of this title shall be made as follows:

(1) Directives made by Congress pursuant to sections 203(a), 204(a), and 205(a) of this title shall be authorized by a concurrent resolution of Congress.

(2) Directives made by either House of Congress pursuant to sections 203(a), 204(a), and 206 of this title shall be authorized by passage of a resolution of such House.

(3) Directives made by a committee of Congress pursuant to section 206 of this title shall be in writing and approved by an affirmative vote of two-thirds of the members of the full committee.

(b)(1) A resolution or concurrent resolution introduced pursuant to subsection (a) shall not be referred to a committee, except as otherwise required under subsection (c)(1). Upon introduction or when reported as required under subsection (c)(2), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution or concurrent resolution. A motion to proceed to the consideration of a resolution or concurrent resolution shall be highly privileged and not debatable. An amendment to such motion shall not be in order, and it shall not be in order to move to reconsider the vote by which such motion is agreed to or disagreed to.

(2) If the motion to proceed to the consideration of the resolution or concurrent resolution is agreed to, debate thereon shall be limited to not more than five hours, which shall be divided equally between, and controlled by, those favoring and those opposing the resolution or concurrent resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution or concurrent resolution shall be in order, except an amendment pursuant to section 203(b) to limit representation by the Congressional Legal Counsel to constitutional issues relating to the powers and responsibilities of Congress. No notion to recommit the resolution or concurrent resolution shall be in order, and it shall not be in order to reconsider the vote by which the resolution or concurrent resolution is agreed to or disagreed to.

(3) Motions to postpone, made with respect to the consideration of the resolution or concurrent resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to the resolution or concurrent resolution shall be decided without debate.

(c) It shall not be in order in the Senate or House of Representatives to consider a resolution to direct the Congressional Legal Counsel to bring a civil action pursuant to section 204(a) to enforce or secure a declaratory judgment concerning the validity of a subpena or order issued by a committee or subcommittee unless (1) such resolution is reported by a majority vote of the members of such committee or committee of which such subcommittee is a subcommittee, and (2) the report filed by such committee or committee of which such subcommittee is a subcommittee contains a statement of—

(A) the procedure followed in issuing such subpena;

(B) the extent to which the party subpenaed has complied with such subpena;

(C) any objections or privileges raised by the subpenaed party; and

(D) the comparative effectiveness of bringing a civil action to enforce the subpena, certification of a criminal action for contempt of Congress, and initiating a contempt proceeding before a House of Congress.

(d) The extent to which a report filed pursuant to subsection (c)(2) is in compliance with such subsection shall not be reviewable in any court of law.

(e) For purposes of the computation of time in sections 202(c)(1) and 209(b)—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period.

(f) For purposes of this title, when referred to herein, the term "committee" shall include standing, select, special, or joint committees established by law or resolution and the Technology Assessment Board.

(g) The provisions of this section are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and, as such, they shall be considered as part of the rules of each House, respectively, and such rules shall supersede any other rule of each House only to the extent that rule is inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(h) Any directive to the Congressional Legal Counsel to bring a civil action pursuant to section 204(a) of this title in the name of a committee, or subcommittee of Congress shall constitute authorization for such committee, or subcommittee to bring such action within the meaning of any statute conferring jurisdiction on any court of the United States.

ATTORNEY GENERAL RELIEVED OF RESPONSIBILITY

SEC. 211. (a) Upon receipt of written notice that the Congressional Legal Counsel has undertaken, pursuant to section 203(a) of this title, to perform any representational service with respect to any designated action or proceeding pending or to be instituted, the Attorney General shall—

(1) be relieved of any responsibility with respect to such representational service;

(2) have no authority to perform such

service in such action or proceeding except at the request or with the approval of the Congressional Legal Counsel or either House of Congress; and

(3) transfer all materials relevant to the representation authorized under section 203 (a) to the Congressional Legal Counsel.

Provided, however, That nothing in this subsection shall limit any right of the Attorney General under existing law to intervene or appear as amicus curiae in such action or proceeding.

(b) The Attorney General shall notify the Congressional Legal Counsel with respect to any proceeding in which the United States is a party of any determination by the Attorney General or Solicitor General not to appeal any court decision affecting the constitutionality of a statute enacted by Congress within such time as will enable the Congressional Legal Counsel to intervene in such proceeding pursuant to section 205.

PROCEDURAL PROVISIONS

SEC. 212. (a) Permission to intervene as a party or to file a brief amicus curiae under section 205 of this title shall be of right and may be denied by a court only upon an express finding that such intervention or filing is untimely and would significantly delay the pending action.

(b) The Congressional Legal Counsel, the Deputy Congressional Legal Counsel or any designated Assistant Congressional Legal Counsel, shall be entitled, for the purpose of performing his functions under this title, to enter an appearance in any such proceeding before any court of the United States without compliance with any requirement for admission to practice before such court, except that the authorization conferred by this paragraph shall not apply with respect to the admission of any person to practice before the United States Supreme Court.

(c) Nothing in this title shall be construed to confer standing on any party seeking to bring, or jurisdiction on any court with respect to, any civil or criminal action against Congress, either House of Congress, a Member of Congress, a committee or subcommittee of Congress, or any officer, employee, office, or agency of Congress.

(d) In any civil action brought pursuant to section 204 of this title, the court shall assign the case for hearing at the earliest practicable date and cause the case in every way to be expedited. Any appeal or petition for review from any order or judgment in such action shall be expedited in the same manner.

JURISDICTION OF CONGRESSIONAL ACTIONS

SEC. 213. (a) Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1364. Congressional actions

"(a) The District Court for the District of Columbia shall have original jurisdiction, without regard to the sum or value of the matter in controversy, over any civil action brought by Congress, a House of Congress, or any authorized committee or joint committee of Congress, or any subcommittee thereof, to enforce, or secure a declaration concerning the validity of, any subpena or order issued by Congress, or such House, committee, subcommittee, or joint committee to any entity acting or purporting to act under color or authority of State law or to any natural person to secure the production of documents or other materials of any kind or the answering of any deposition or interrogatory or to secure testimony or any combination thereof. This section shall not apply to an action to enforce, or secure a declaration concerning the validity of, any subpena or order issued to an officer or employee of the Federal Government acting within his official capacity.

"(b) The Congress, or either House of Congress, any committee, subcommittee, or joint committee of Congress commencing and prosecuting a civil action under this section may be represented in such action by such attorneys as it may designate.

"(c) A civil action commenced or prosecuted under this section may not be authorized pursuant to the Standing Order of the Senate 'authorizing suits by Senate Committees' (S. Jour. 572, 70–1, May 28, 1928.".

(b) The analysis of such chapter 85 is amended by adding at the end thereof the following new item:

"1364. Congressional actions.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 214. (a) Section 3210 of title 39, United States Code, is amended—

(1) by striking out "and the Legislative Counsels of the House of Representatives and the Senate" in subsection (b)(1) and inserting in lieu thereof "the Legislative Counsels of the House of Representatives and the Senate, and the Congressional Legal Counsel"; and

(2) by striking out "or the Legislative Counsel of the House of Representatives or the Senate" in subsection (b)(2) and inserting in lieu thereof "the Legislative Counsel of the House of Representatives of the Senate, or the Congressional Legal Counsel".

(b) Section 3216(a)(1)(A) of such title is amended by striking out "and the Legislative Counsels of the House of Representatives and the Senate" and inserting in lieu thereof "the Legislative Counsels of the House of Representatives and the Senate, and the Congressional Legal Counsel".

(c) Section 3219 of such title is amended by striking out "or the Legislative Counsel of the House of Representatives or the Senate" and inserting in lieu thereof "the Legislative Counsel of the House of Representatives or the Senate, or the Congressional Legal Counsel".

(d) Section 8 of the Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and seventy-six, and for other purposes", approved March 3, 1875, as amended (2 U.S.C. 118), is repealed.

SEPARABILITY

SEC. 215. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 216. There are authorized to be appropriated to the office for each fiscal year through October 30, 1981, such sums as may be necessary to enable it to carry out its duties and functions. Until sums are first appropriated pursuant to the preceding sentence, but for a period not exceeding twelve months following the effective date of this subsection, the expenses of the office shall be paid from the contingent fund of the Senate, in accordance with the paragraph relating to the contingent fund of the Senate under the heading, "UNDER LEGISLATIVE" in the Act of October 1, 1888 (28 Stat. 546; 2 U.S.C. 68), and upon vouchers approved by the director

TITLE III—GOVERNMENT PERSONNEL; FINANCIAL DISCLOSURE REQUIREMENTS

DEFINITIONS

SEC. 301. As used in this title—

(1) the term "agency" means each authority of the Government of the United States;

(2) the term "commodity future" means commodity future as defined in sections 2 and 5 of the Commodity Exchange Act, as amended (7 U.S.C. 2 and 5);

(3) the term "Comptroller General" means the Comptroller General of the United States;

(4) the term "dependent" means dependent as defined in section 152 of the Internal Revenue Code of 1954;

(5) the term "employee" includes any employee designated under section 2105 of title 5, United States Code, and any employee of the United States Postal Service or of the Postal Rate Commission;

(6) the term "immediate family" means—(A) the spouse of an individual, (B) the child, parent, grandparent, grandchild, brother, or sister of an individual or of the spouse of such individual, and (C) the spouse of any individual designated in clause (B);

(7) the term "income" means gross income as defined in section 61 of the Internal Revenue Code of 1954;

(8) the term "Member of Congress" means a Senator, a Representative, a Resident Commissioner, or a Delegate;

(9) the term "officer" includes any officer designated under section 2104 of title 5, United States Code, and any officer of the United States Postal Service or of the Postal Rate Commission;

(10) the term "security" means security as defined in section 2 of the Securities Act of 1933, as amended (15 U.S.C. 77b);

(11) the term "transactions in securities and commodities" means any acquisition, transfer, or other disposition involving any security or commodity;

(12) the term "uniformed services" means any of the armed forces, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration;

(13) the term "political contribution" means a contribution as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431); and

(14) the term "expenditure" means an expenditure as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431).

INDIVIDUALS REQUIRED TO FILE REPORT

SEC. 302. (a) Any individual who is or was an officer or employee designated under subsection (b) shall file each calendar year a report containing a full and complete financial statement for the preceding calendar year if such individual has occupied the office or position for a period in excess of ninety days in such calendar year.

(b) The officers and employees referred to in subsection (a) are—

(1) the President;

(2) the Vice President;

(3) each Member of Congress;

(4) each justice or judge of the United States;

(5) each officer or employee of the United States who is compensated at a rate equal to or in excess of the minimum rate prescribed for employees holding the grade of GS–16 under section 5332(a) of title 5, United States Code; and

(6) each member of a uniformed service who is compensated at a rate equal to or in excess of the monthly rate of pay prescribed for grade O–7, as adjusted under section 1009 of title 37, United States Code.

(c) Any individual who seeks nomination for election, or election, to the office of President, Vice President, or Member of Congress shall file in any year in which such individual has—

(1) taken the action necessary under the law of a State to qualify for nomination for election, or election, or

(2) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about such individual's nomination for election or election, to such office,

a report containing a full and complete financial statement for the preceding calendar year.

CONTENTS OF REPORTS

SEC. 303. (a) Each individual shall include in each report required to be filed by him under section 302 a full and complete statement, in such manner and form as the Comptroller General may prescribe, with respect to—

(1) the amount and source of each item of income, each item of reimbursement for any expenditure, and each gift or aggregate of gifts from one source (other than gifts received from any member of his immediate family) received during the preceding calendar year which exceeds $100 in amount or value, including any fee or other honorarium received for or in connection with the preparation or delivery of any speech, attendance at any convention or other assembly of individuals, or the preparation of any article or other composition for publication;

(2) the fair market value and source of any item received in kind or aggregate of such items received from one source (other than items received in kind from any member of his immediate family), including, but not limited to, any transportation or entertainment received, during the preceding calendar year if such fair market value for such item exceeds $500;

(3) the identity and the category of value, as designated under subsection (b), of each asset, other than household furnishings or goods, jewelry, clothing, or any vehicle owned solely for the personal use of the individual, his spouse, or any of his dependents, held during the preceding calendar year which has a value in excess of $1,000 as of the close of the preceding calendar year;

(4) the identity and the category of amount, as designated under subsection (b), of each liability owed which is in excess of $1,000 as of the close of the preceding calendar year;

(5) the identity, the category of amount, as designated under subsection (b), and date of any transaction in securities of any business entity or any transaction in commodities futures during the preceding calendar year which is in excess of $1,000;

(6) the identity and the category of value, as designated under subsection (b), of any purchase or sale of real property or any interest in any real property during the preceding calendar year if the value of property involved in such purchase or sale exceeds $1,000;

(7) any patent right or any interest in any patent right, and the nature of such patent right, held during the preceding calendar year; and

(8) a description of, the parties to, and the terms of any contract, promise, or other agreement between such individual and any person with respect to his employment after such individual ceases to occupy his office or position with the Government, including any agreement under which such individual is taking a leave of absence from an office or position outside of the Government in order to occupy an office or position of the Government, and a description of and the parties with any unfunded pension agreement between such individual and any employer other than the Government.

Each individual designated under paragraphs (5) and (6) of section 302(b) shall also include in such report the identity of any person, other than the Government, who paid such individual compensation in excess of $5,000 in any of the five years prior to the preceding calendar year and the nature and term of the services such individual performed for such person. The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(b)(1) For purposes of paragraphs (3) through (6) of subsection (a), an individual need not specify the actual amount or value of each asset, each liability, each transaction in securities of any business entity or in commodities futures, or each purchase or sale required to be reported under such paragraphs, but such individual shall indicate which of the following categories such amount or value is within—

(A) not more than $5,000,

(B) greater than $5,000 but not more than $15,000,

(C) greater than $15,000 but not more than $50,000,

(D) greater than $50,000, but not more than $100,000, or

(E) greater than $100,000.

(2) Each individual shall report the actual amount or value of any other item required to be reported under this section.

(c) For purposes of paragraphs (1) through (7) of subsection (a), an individual shall include each item of income or reimbursement and each gift received, each item received in kind, each asset held, each liability owed, each transaction in commodities futures and in securities, each purchase or sale of real property or interest in any real property, and each patient right or interest in any patent right held by him, his spouse, or any of his dependents within his control, or by him and his spouse or dependents jointly, or by any person acting on his behalf: *Provided,* That no disclosure shall be required as to those items of the spouse and dependents of the reporting individual which represent their sole property and which are not in any way, directly or indirectly, past or present, derived from the income, earnings, investments, assets, dividends, property, holdings or activities of the covered official.

FILING OF REPORTS

SEC. 304. (a)(1) Each individual required to file a report under section 302(a), other than an individual excepted under paragraph (3) of this subsection, shall file such report with the Comptroller General not later than May 15 of each year. Each such individual, other than the President, Vice President, a Member of Congress, a justice or judge of the United States, any officer or employee of the Senate or the House of Representatives or any court of the United States, the head of each agency, each Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in the Executive Office, or each full-time member of a committee, board, or commission appointed by the President, shall file a copy of such report with the head of the agency in which such individual occupies any office or position at the same time as such report is filed with the Comptroller General.

(2) Each Member, officer, and employee of the House of Representatives and the Senate required to file a report under section 302 (a) shall file a copy of such report with the Clerk of the House of Representatives and the Secretary of the Senate, respectively, and each justice, judge, officer, and employee of any court of the United States shall file a copy of such report with the Director of the Administrative Office of the United States Courts at the same time as such report is filed with the Comptroller General.

(3) The head of each agency, each Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in the Executive Office, and each full-time member of a committee, board, or commission appointed by the President, shall file a copy of such report with the Chairman of the Civil Service Commission at the same time such report is filed with the Comptroller General.

(4) The President may exempt any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged exclusively in intelligence activities in any agency of the United States from the requirement to file a report with the Comptroller General if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report would reveal the identity of an undercover agent of the Federal Government. Each individual exempted by the President from such requirements shall file such report with the head of the agency in which he occupies an office or position or, if an individual described in subsection (a)(3), with the Chairman of the Civil Service Commission.

(b) Each individual required to file a report under section 302(c) shall file such report with the Comptroller General within one month after the earliest of either action which such individual takes under section 302(c)(1) or (2).

(c)(1) Any individual who ceases prior to May 15 of any calendar year to occupy the office or position the occupancy of which imposes upon him the reporting requirement contained in section 302(a) shall file such report for the preceding calendar year and the period of such calendar year for which he occupies such office or position on or before May 15 of such calendar year.

(2) Any individual who ceases to occupy such office or position after May 15 of any calendar year shall file such report for the period of such calendar year which he occupies such office or position on the last day he occupies such office or position.

(d) The Comptroller General may grant one or more reasonable extensions of time for filing any report but the total of such extensions shall not exceed ninety days.

(e) The Comptroller General shall promulgate such rules and regulations as are required to carry out the provisions and purposes of this title.

FAILURE TO FILE OR FALSIFYING REPORT; PROCEDURE

SEC. 305. (a)(1) Any individual who knowingly and willfully falsifies or fails to report any information such individual is required to report under section 303, shall be fined in any amount not exceeding $10,000, or imprisoned for not more than one year, or both.

(2) The Attorney General may bring a civil action in any district court of the United States against any individual who fails to file a report which such individual is required to file under section 302 or who fails to report any information which such individual is required to report under section 303. The court in which such action is brought may assess against such individual a penalty in any amount not to exceed $5,000

(b) The head of each agency, the Clerk of the House of Representatives with respect to any Member, officer, or employee of the House of Representatives, the Secretary of the Senate with respect to any Member, officer or employee of the Senate, and the Director of the Administrative Office of the United States Courts with respect to any justice, judge, officer, or employee of any court of the United States shall submit annually to the Comptroller General a complete list of individuals who are required to file a report under section 302 and shall submit at the close of each calendar quarter a list of individuals who have begun or have terminated employment with such agency, the House of Representatives, the Senate, or any court in such calendar quarter.

(c) The Comptroller General shall refer to the Attorney General the name of any individual the Comptroller General has reasonable cause to believe has failed to file a report or has falsified or failed to file information required to be reported. In addition, if such individual is a Member, officer, or employee of the Senate or the House of Representatives, the Comptroller General shall refer the name of such individual to the Senate Select Committee on Standards and Conduct or the Committee on Standards of Official Conduct of the House of Representatives, whichever is appropriate.

(d) The President, the Vice President, either House of Congress, the Director of the Administrative Office of the United States Courts, the head of each agency or the Civil Service Commission may take any appropriate personnel or other action against any individual failing to file a report or information or falsifying information.

CUSTODY AND AUDIT OF, AND PUBLIC ACCESS TO, REPORTS

SEC. 306. (a) The Comptroller General shall make each report filed with him under section 305 available to the public within fifteen days after the receipt of such report from any individual and provide a copy of such report to any person upon a written or oral request.

(b) The Comptroller General may require any person receiving a copy of such report under subsection (a) to supply his name and address and the name of the person or organization, if any, on whose behalf he is requesting such copy and to pay a reasonable fee in any amount which the Comptroller General finds necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. The Comptroller General may furnish any copy of such report without charge or at a reduced charge if he determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the public.

(c) (1) It shall be unlawful for any person to inspect or obtain a copy of any report—

(A) for any unlawful purpose;

(B) for any commercial purpose;

(C) to determine or establish the credit rating of any individual; or

(D) for use directly or indirectly in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action in any district court of the United States against any person who inspects or obtains such report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such individual a penalty in any amount not to exceed $1,000.

(d) Any report received by the Comptroller General shall be held in his custody and made available to the public for a period of five years after receipt by the Comptroller General of such report. After such five-year period, the Comptroller General shall destroy any such report.

(e) (1) The House of Representatives, the Senate, the Director of the Administrative Office of the United States Courts, the Chairman of the Civil Service Commission, and the head of each agency shall make provisions to assure that each report shall be viewed in accordance with any law or regulation with respect to conflicts of interest or confidential financial information of officers or employees of the House of Representatives, the Senate, the United States courts or each such agency or in accordance with rules and regulations as may be prescribed.

(2) Notwithstanding any law or resolution, whenever in any criminal case pending in any competent court in which a Member, officer, or employee of the Senate is a defendant, or in any proceeding before a grand jury of any competent court in which alleged criminal conduct of a Member, officer, or employee of the Senate is under investigation, a discovery order of a competent court is served upon the Comptroller General of the United States directing him to appear and produce any reports filed pursuant to any financial disclosure requirement, then the Comptroller General shall—

(A) if such report is in a sealed envelope, unseal the envelope containing such report and have an authenticated copy made of such report, replace such report in such envelope and reseal it, and note on such envelope that it was opened pursuant to this paragraph in response to a subpena, a copy of which shall be attached to such envelope, and

(B) appear in response to such subpena and produce the authenticated copy so made. For purposes of this paragraph, the term "competent court" means a court of the United States, a State, or the District of Columbia which has general jurisdiction to hear cases involving criminal offenses against the United States, such State, or the District of Columbia, as the case may be.

(f) (1) The Comptroller General shall, under such regulations as he may prescribe, conduct on a random basis audits of not more than 5 per centum of the reports filed with him under section 304(a)(1).

(2) The Comptroller General shall audit during each term of an individual holding the office of President or Vice President at least one report filed by such individual under section 304(a)(1) during such term.

(3) The Comptroller General shall, during each six-year period beginning after the date of enactment of this Act, audit at least one report filed by each Member of the Senate and the House of Representatives during such six-year period.

(4) (A) In conducting an audit under paragraph (1), (2), or (3), the Comptroller General is authorized to require by subpena the production of books, papers, and other documents. All such subpenas shall be issued and signed by the Comptroller General.

(B) In case of a refusal to comply with a subpena issued under subparagraph (A)—

(i) the Comptroller General is authorized to seek an order by any district court of the United States having jurisdiction of the defendant to require the production of the documents involved; and

(ii) such district court may issue such order and enforce it by contempt proceedings.

SEC. 307. The Civil Service Commission and the Department of Justice shall each analyze regulations and procedures presently in effect with regard to financial conflicts of interest among employees of the Federal Government and recommend to the appropriate committees of Congress for their consideration such legislation as may be necessary including comments on amendment numbered 2031 as submitted. Such reports shall be delivered within six months of the enactment of this Act.

SEPARABILITY

SEC. 308. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any of this title, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 309. There are authorized to be appropriated for each fiscal year through September 30, 1981, such sums as may be necessary to carry out the provisions of this title.

EFFECTIVE DATE

SEC. 310. The provisions of this title shall take effect on January 1, 1977, except that (1) no individual shall be required to file a report under section 304(a) prior to May 15, 1978, and (2) any individual who is required to file a report during calendar year 1977 under section 304 (b) or (c) shall only be required to include information with respect to calendar year 1977.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WEICKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the name of the Senator from Maine (Mr. MUSKIE) be added as a cosponsor.

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

Mr. RIBICOFF. I ask unanimous consent that the text of the bill as passed be printed in the RECORD following the vote.

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

TECHNICAL AND CLERICAL CORRECTIONS IN ENGROSSMENT OF CERTAIN MEASURES

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 972 and the Senate amendment to H.R. 9460.

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

THE WASHINGTON POST: YELLOW JOURNALISM

Mr. McGOVERN. Mr. President, today's Washington Post carries the crudest example of yellow journalism that I have witnessed in many years. It is a page 2 story by Eugene L. Meyer implying that my public position on the State of Israel is influenced by the fact that a piece of property I own has been rented to the Syrian Ambassador. The article can only be the product of a mean-spirited, vindictive editorial judgment that sacrifices decency and fairness to sensationalism.

The article also carries a quote by Hyman Bookbinder, executive director of the American Jewish Committee, saying that my voting record and statements on Israel are "generally good."

The PRESIDING OFFICER. Will the Senator suspend for a moment, please?

Senators will please clear the well. Senators wishing to converse please retire to the cloakroom. Senators will take their seats.

Will Senators clear the well, please? The Senator from South Dakota has a right to be heard. Please clear the well and the aisles.

The Senate will be in order.

The Senator from South Dakota.

Mr. McGOVERN. Continuing the quote from Mr. Bookbinder, it says that:

> McGovern, more often than others, has indicated some less than total support for the current Israeli position. It adds up to a feeling he is soft on the issue. There's a lot of easy Arab money around,

Bookbinder said:

After awhile it does develop a potentially general softness and attitude about your clients. I'm more concerned about a general quid pro quo than an explicit crude one.

When I telephoned Mr. Bookbinder early this morning after reading the Post story, he said that his remarks were taken out of context. Judging from the general tenor of the Post story and my confidence in Mr. Bookbinder's integrity, I believe that his remarks were twisted out of context.

Mr. Bookbinder has today sent the following statement to the Washington Post and has also authorized me to release it to the Senate:

I am distressed over Mr. Meyer's reckless stringing together of unrelated comments to give the impression that I believe Senator McGovern's position on the Middle East may have been the result of the rental of his home. In the brief telephone interview with the reporter, I steadfastly refused to be drawn into such an intimation.

Whatever difference I may have with Senator McGovern on any given issue, I have always considered him totally honorable and fair. I still do. It is unthinkable to me that George McGovern would permit any financial consideration to determine his position on any issue affecting the welfare of this country or the peace of the world.

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

Mr. McGOVERN. Yes, I yield to the Senator.

Mr. RIBICOFF. I read the article this morning in the Washington Post, and I reject it completely.

I have known the Senator from South Dakota for many years. The Senator from South Dakota cannot be bought by anyone on any issue. The Senator from South Dakota is a man of integrity and high principles. He speaks his mind, and he speaks his mind on the basic issues facing this country. To say that the Senator from South Dakota would be selling out his deep views and feelings because he rented a house to the Syrian Ambassador is an absolute outrage and a canard.

The Senator from South Dakota has always approached the problems of all people looking forward to a peaceful world. There is no question about his integrity. His record on the State of Israel and the Middle East is there for anyone to read, and in many votes in the Chamber and many statements that he has made throughout this country and throughout the world.

The Senator from South Dakota owes no apology to anyone. The Senator from South Dakota is admired by every person in the Senate, and the Senator has millions of friends, people of all races, colors, and creeds, and that includes the people of the Jewish faith.

I consider the Senator from South Dakota one of my closest friends. He always has had my highest admiration and always will have my highest admiration and respect.

Mr. McGOVERN. I thank the Senator from Connecticut for those words. I am deeply grateful to him.

Mr. HUMPHREY. Mr. President, will the Senator yield to me?

Mr. McGOVERN. Yes, I yield to the Senator from Minnesota.

Mr. HUMPHREY. I rise to join with the Senator from Connecticut in his observations on the public record and indeed the private concerns of the Senator from South Dakota, not only on the issue of the problems in the Middle East but on all public matters.

We in this body from time to time have votes of disagreement. Those votes are based upon serious concern and a hard look at the problems as we see them. People do not always agree. But that does not mean that we are at liberty to contest the other fellow's motives.

The Senator from South Dakota is known in his State, in my State, and in this Senate as a person of absolute personal integrity. And it goes without saying that this has been one of the reasons for his political strength, for the high admiration in which he is held by literally hundreds of thousands of our fellow citizens.

The Senator from South Dakota has interested himself as a member of the Committee on Foreign Relations in all matters of our foreign policy and particularly the critical issue of the Middle East. He has traveled in the Middle East. He has had the courage to speak with people of different persuasions in the Middle East. That does not in any way mean that he is the captive of any one group or that he has an allegiance or alliance with any group that would in any way violate his own sense of what is right for the national interest of the United States.

I say to the Senator, I would not worry about such a story if I were you. It does not impress anyone. I can assure you that those of us who know you only can say this, that we are proud to call you our friend.

Mr. McGOVERN. I thank the Senator from Minnesota very much, and I am deeply grateful to him.

I quite agree that the story itself has little or no merit, but this happens to be the fourth time that the Washington Post has carried stories about this piece of property. I was puzzled by the first three, which were largely repetitious stories. They have now carried three photographs of the house. I would have had less publicity if I had bought a massage parlor out in Fairfax.

I think that what needs to be put on the record are the total facts about this whole issue. I did not think it was worth replying to either when the first three stories appeared. That has happened over the last 16 months. But for some inexplicable reason this newspaper is fascinated with this transaction and is trying to blow it up into a major national and now an international issue. So while I appreciate the Senator's kind and generous advice not to be concerned about it, I have answered in detail.

What are the further facts?

Prior to my 1972 Presidential campaign, I took all of my current savings and placed them in a blind trust administered by Mr. Myer Feldman, a Washington attorney, and Mr. Henry Kimelman.

At the end of that 5-year trust, December 31, 1974, there was approximately $60,000 in the fund. It was this money that I used to make the down payment on a $250,000 house on Kalorama Road. The house carries a $150,000 mortgage and a $50,000 second loan.

I had originally thought that the property could be used as a center for the storage and historical study of the papers from my 1972 campaign. This idea was opposed by citizens of the Kalorama Association and so I simply turned the property over to my lawyer and asked him to look into the possibility of renting it. The history project and all of my public papers are now to be housed at Princeton University at the request of Princeton.

My lawyer decided that the property was best suitable for use as an embassy rental. Indeed, he learned that the previous owner of the house had already been approached by the Syrian Ambassador who was looking for a house to rent for his family. The house was rented at the going rate for such a property—a rate which has not yet covered my payments and upkeep on the property. There is no gain to me beyond what I would receive from any other tenant who was

For reasons that have never been clear to me, the Washington Post has been fascinated by my purchase of this house. The Post has now carried four newsstories in the last 16 months about my ownership of this house. In three of these stories, they have carried prominent photographs of the house.

The previous stories simply puzzled me. Today's story is a vicious smear that demands an answer.

It is a smear, first of all, because it implies that the rental of my house to an Arab envoy has led me to less than a 100-percent commitment to all aspects of Israel foreign policy. I resent this shabby implication with every fiber of my being. I have tried to the very best of my ability to be fair and impartial about Middle East issues—especially since I became chairman of the Foreign Relations Subcommittee on the Near East. I am willing to submit my entire record on the Middle East to the closest scrutiny by my colleagues in the Senate or by anyone else.

I do not say that I have agreed down to the last detail with every single position the Israel Government has taken. But there is nothing "soft" or biased or unfair in my record as chairman of the Subcommittee on the Near East.

I think it would be catastrophic if Israel's independence, freedom, or survival were destroyed. I am determined to do all in my power to prevent that. But a U.S. Senator must evaluate these and other issues according to his own best judgment—not on the basis of what some lobbying group feels is the most slavish, singleminded position.

To argue that it is improper for a Senator to rent a piece of property to an Arab envoy is to suggest that the Arab boycott against firms doing business with Israel be applied in reserve against Arabs. I deplore the Arab boycott. I would equally deplore a boycott against firms doing business with the Arabs. We have to begin dealing with each other as human beings—not as stereotyped enemies or supporters.

In an effort to prove that I have been subverted by the Syrian Ambassador, the Post article mentioned that I supported the sale of a limited number of Hawk missiles to Jordan. That just happens to be the position of the U.S. Government. Are Secretary Kissinger and President Ford also renting houses to the Arabs? Is it not possible that all of us came to a conclusion without the help of the Syrian Ambassador that it is better for Jordan to be dependent on the United States for its defense than to be dependent upon Moscow?

The Post also says that while I signed a letter with 75 other Senators in May 1975, urging continued support of Israel that I qualified it with a statement making clear that this was not an endorsement of Israel's permanent occupation of Arab lands seized in the 1967 war. That is also the position of the U.S. Government. Some of my Senate colleagues, who are longtime champions of Israel, refused even to sign the May 1975, letter on the grounds that it was an excessively biased pro-Israel position that would jeopardize a peaceful settlement of the Middle East conflict.

Because of what I regard as a nasty slur on my character and my judgment by the Washington Post, I hereby ask Senator CANNON, the chairman of the Ethics Committee, to submit this entire matter to his committee for evaluation. If there is the slightest belief by the committee that I have done anything unethical or improper in renting my house to an Arab Ambassador, I want to be so advised. On the other hand, if the committee concludes that my handling of this matter is proper, I want that to be known to the public. I will be guided by the committee's judgment.

I am going to request that that committee look into the allegations made in the Washington Post story, that they consult with me, with my lawyer, or with anyone else with whom they want to talk. If there is the slightest hint of anything unethical or improper or unwise, about this investment on my part, I want the Senate Ethics Committee to put that on the public record. If, on the other hand, after looking at it, they find what I believe to be the case, that it is a perfectly proper, open transaction and one that any Senator can stand on, I want that to be a part of the public record.

I ask unanimous consent that the Washington Post story and Mr. Bookbinder's statement of today be printed at this point in the RECORD.

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

SYRIAN ENVOY RENTS MCGOVERN HOME

(By Eugene L. Meyer)

Since March 1975, Sen. George S. McGovern (D-S.D.), chairman of the Senate foreign relations subcommittee on Near Eastern affairs, has received rental income from Syria on a property he owns in Washington.

The property, a large brick house at 2447 Kalorama Rd. NW, was purchased for $250,000 in January, 1965, and is rented as a residence for Syrian ambassador Sabaah Kabbani and his family.

According to Bardyl Tirana, McGovern's attorney, the rental property has so far failed to produce a net profit for the 1972 Democratic presidential nominee. The balance sheet of first-year expenses over income resulted in a $3,446.76 loss—in effect a tax deduction from McGovern's gross income.

McGovern declined direct comment Monday and denied, through press aide Robert McKeithen, that the arrangement created any conflict of interest for him. "He views the Syrian ambassador as strictly a tenant," McKeithen said.

Since his outspoken public support of Israel during the 1972 campaign, McGovern has come under increasing criticism from pro-Israel groups here for what they consider stands generally more sympathetic to the Arab cause and critical of Israeli policies.

In May, 1975, McGovern joined 75 other senators in signing a letter urging continued U.S. support for Israel and then issued a qualifying statement criticizing Israeli occupation of Arab lands since 1967.

Last August, according to congressional sources, McGovern fought unsuccessfully in closed sessions of the Senate Foreign Relations Committee to have the U.S. sell Hawk missiles to Jordan.

Hyman Bookbinder, executive director of the American Jewish Committee, said McGovern's voting record on aid to Israel and his statement on Israeli independence are "generally good."

"But McGovern, more often than others, has indicated some less than total support for the current Israeli position," he said. "It adds up to a feeling he is soft on the issue."

"There's a lot of easy Arab money around," Bookbinder said. "After a while, it does develop a potentially general softness and attitude about your clients. I'm more concerned about a general quid pro quo than an explicit crude one."

McGovern bought the large house with a $50,000 down payment, a $150,000 mortgage and a $50,000 personal bank loan as an investment. His original intentions he said at the time, was to house in it 1972 presidential campaign memorabilia. The collection is being stored instead at Prnceton University.

The neighhorhood civic association raised zoning objections, lawyer Tirana said yesterday, and "we knew we'd be looking for a tenant." The Syrian ambassador has already contacted the former owners about renting the property but they wanted to sell it rather than lease it," Tirana said.

Ambassador Kabbani called McGovern aide Owen Donley, who called Tirana, who said he has handled the property for the senator since.

The house was best suited for embassy use, Tirana said, thus narrowing the rental market. "The alternative would have been selling the house," Tirana said. "The senator didn't want to sell the house. He still doesn't."

From March 1975 to March 1976, the Syrians paid $23,750 in rent, while McGovern paid $6,384 in maintenance and insurance, $3,702 in taxes, and $17,129 in mortgage and loan payments, for a net deficit of $3,466, according to Tirana. Under a new lease in effect since March, the monthly rent has risen from $2,500 to $3,000, and Tirana estimates McGovern will "probably come close to breaking even for the year."

STATEMENT BY MR. HYMAN BOOKBINDER

I am distressed over Mr. Meyer's reckless stringing together of unrelated comments to give the impression that I believe Senator McGovern's position on the Middle East may have been the result of the rental of his house. In the brief telephone interview with the reporter, I steadfastly refused to be drawn into such an intimation.

Whatever difference I may have with Senator McGovern on any given issue, I have always considered him totally honorable and fair. I still do. It is unthinkable to me that George McGovern would permit any financial consideration to determine his position on any issue affecting the welfare of this country or the peace of the world.

KIDNAPING OF SCHOOLCHILDREN IN CHOWCHILLA, CALIF.

Mr. TUNNEY. Mr. President, I send to the desk a resolution and ask unanimous consent for its immediate consideration.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 489) relating to the kidnaping of schoolchildren in Chowchilla, Calif.

The PRESIDING OFFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. TUNNEY. Mr. President, I am sure that all my colleagues in the Senate followed with the same concern I did the chilling events of the kidnaping of 27 persons in a schoolbus in Chowchilla, Calif. I know we all shared the same sense of relief and gratitude when the children and their driver were found safe and well.

The resolution I have submitted expresses the Senate's esteem and high regard for the bravery and levelheadedness shown by those kidnapped during their horrible ordeal.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution, with its preamble, was agreed to, as follows:

S. RES. 489

Whereas on July 15, twenty-six children and one adult from the community of Chowchilla, California, were kidnaped from their school bus;

Whereas the kidnaping was a matter of the most intense concern throughout the State of California and the United States;

Whereas, the courage and resolve of the members of the group enabled them to escape from the underground cell into which they were herded;

Whereas their safe return to their homes and families was greeted with joy and thanksgiving by their fellow residents of Chowchilla, the citizens of the State of California, and the people of the United States; Now, therefore, be it

Resolved, That

The Senate of the United States join the people of the United States in expressing immense relief and joy at the safe return to Chowchilla of all the kidnap victims; and,

Be it further resolved, that:

The Senate convey to those kidnapped: Frank Edward Ray, Jennifer Louise Brown, Jeffrey Brown, Cynthia Lynette Van Hoff, Jody Matheny, Darle Daniels, Angela Robison, Michelle Robison, Jody Heffington, Julia Carrejo, Irene Carrejo, Linda Carrejo, Stella Carrejo, Lisa Barietta, Larry Parks, Anora Parks, Sheryl Lynn Hinsley, John Easterbrook, Barbara Parker, Lisa Ardery, Monica Ardery, Judy Reynolds, Rebecca Reynolds,

Mike Marshall, Robert Gonzales, Andres Gonzales, Laura Yazzie its expressions of esteem and regard in recognition of their exemplary fortitude and courage.

PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1965, AMENDMENTS—VETO

The PRESIDING OFFICER. Under the previous order, the hour of 1 p.m. having arrived, the Senate will now proceed to the consideration of the President's veto message on S. 3201, which will be stated by title.

The assistant legislative clerk read as follows:

Veto message on S. 3201, a bill to amend the Public Works and Economic Development Act of 1965, to increase the anti-recessionary effectiveness of the program, and for other purposes.

The Senate proceeded to reconsider the bill.

The PRESIDING OFFICER. The question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding?

The time is to be equally divided between and controlled by the distinguished Senator from West Virginia (Mr. RANDOLPH) and the distinguished Senator from New York (Mr. BUCKLEY), the vote on reconsideration of the bill to occur at 2 p.m.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that during consideration of and voting on the veto override on S. 3201, the following staff members be granted the privilege of the floor: M. Barry Meyer, John W. Yago, Philip T. Cummings, Richard Harris, Richard Greer, Judy Parente, Bailey Guard, Alvin From, Stevens Swain, Mike Hathaway, and Lee Lockwood.

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

Mr. RANDOLPH. Mr. President, today the Senate is being asked for the second time this year to reject a Presidential veto of an urgently needed public works bill. The Committee on Public Works began developing legislation in this area more than a year ago. We were prompted by concern for the American economy and the challenge to create new job opportunities for millions of unemployed citizens.

The measure on which we will vote today is our second effort to infuse new strength into the national economy through a broadly based public works program. The first measure was vetoed by the President in what I believe to be an ill-advised and unwarranted action. The veto of the pending Public Works Employment Act was equally unjustified.

I am confident that Members of the Senate will express their concern for continuing weak spots in the economy by voting today to override the veto of S. 3201.

Earlier this year, the Senate failed by the narrow margin of three votes to override the first veto. At that time, the President expressed his objections to the measure that had been passed by Congress. In writing a second bill, the Committee on Public Works made a sincere attempt to accommodate the viewpoint of the President and his administration. I believed we were successful in that objective while preparing a program that will help to remove the lingering effects of recessions.

Mr. President, the Public Works Employment Act of 1976 authorizes a total of $3.95 billion. These funds would be committed to activities in three broad fields. The first is $2 billion for the construction of local public works facilities. This is a tried and proven approach in alleviating economic sluggishness. Public works programs provide jobs for skilled workers in the construction industry, where unemployment remains at approximately double the national average. These programs, in addition, resulted in the creation of public facilities whose usefulness extends many years beyond the life of the immediate program.

Mr. President, construction is our largest single industry. More than 5 million Americans earn their livings in this field. The impact of construction, therefore, is widespread. With more than 600,000 construction workers out of jobs, a strain is created elsewhere in the economy. Conversely, when construction workers are employed, business is helped elsewhere.

In hearings earlier this year, the Committee on Public Works received testimony indicating the seriousness of the situation. I stress that unemployment in construction is considerably higher than the national average, but the numbers are extraordinarily high in given communities and trades. In some cities, approximately half of all construction workers are without jobs.

This unsatisfactory situation is given extra emphasis by the fact that the spring construction season this year was not as vigorous as historically expected. Construction in the private sector has been down for several years, and expenditures in the public sector have not increased substantially to take up the slack.

It is obvious that the Federal Government must take the lead to stimulate new building of public facilities at a time when they are needed to improve communities and to provide jobs.

The legislation also authorizes the maximum of $1.25 billion in countercyclical revenue-sharing assistance to States and communities. This money will be of enormous value to public bodies whose local revenues continue to be depleted by economic conditions.

The bill authorizes $700 million for the construction of sewage treatment facilities under the Water Pollution Control Act. These funds will enable communities to move forward in the elimination of water pollution while providing needed employment.

The funds authorized by this bill will be spent by State and local governments. Several Federal agencies will participate in distributing these funds to those State and local governments. Title I will be administered by the Secretary of Commerce, I think it is important to say for the record, acting through the Economic Development Administration. The countercyclical assistance of title II will be allocated by the Secretary of the Treasury. Grants of water pollution control funds under title III will be made by the Environmental Protection Agency. And the Secretary of Labor plays a role throughout the act in supplying unemployment determinations and implementing the Davis-Bacon Act.

The total authorization of $3.95 billion is $2.25 billion less than the bill vetoed last winter. It is a realistic amount which can bring positive results to our whole economic development plan.

Expenditures of this level will not damage the Federal budget. The successful execution of this program, in fact, could have favorable fiscal benefit by generating new tax revenues.

Mr. President, on June 16 the Senate adopted the conference report on this legislation by a vote of 70 to 25. We know that in the past year there has been progress in recovery from the recession in our country. This recovery, however, is incomplete. With 7½ percent of our labor force without jobs, we cannot consider our national economy to be healthy. The uncertainty surrounding the situation is further compounded by the most recent report of the Department of Labor which showed that unemployment actually increased between May and June. This information should convince doubters that the Public Works Employment Act should become law.

Mr. President, I reemphasize that the President's reasoning in vetoing this bill is faulty. I know that Members of the Senate, regardless of their membership within the parties, are committed to alleviating unemployment and I hope and it is a genuine hope, not a partisan hope, that they will join together in voting to override the veto of the President.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BAKER. Mr. President, I yield myself 10 minutes.

Mr. President, I will vote to sustain the veto by the President of the United States of S. 3201—the Public Works Employment Act of 1976—and I urge my colleagues to support the veto.

My colleagues may recall that I voted against final passage of the bill as amended by the Senate, and while I served as a conferee I did not sign the statement of managers and voted against the conference report. I did so not because all the measures in the bill are bad, for they are not; nor because all the objectives are bad, for they are not. The important consideration to me is that the large provisions added to this legislation by Senate amendment increased the total authorization of this measure to an aggregate sum that should not be undertaken at this time. The addition of these extraneous provisions together with the conference committee's action to eliminate the "trigger" mechanism from the Senate bill altered, I believe, the very nature and character of the bill from a necessary "jobs bill" to a "Christmas tree" bill and just another public works program.

As I have stated before, while I am sympathetic to several aspects of the legislation, I believe stable growth of the economy through responsible fiscal management, confidence of the people that

we do not just throw programs together and the people's money about, and recognition that responses must be timely and respect an order of priorities, may be of greater influence and equal benefit to our Nation's health and welfare.

Mr. President, it is with especial disappointment that I find myself in disagreement with the distinguished Senator from West Virginia who is chairman of the Public Works Committee. I had the distinct honor and privilege to serve as ranking Republican of that committee for some time, and even though I relinquished that position in order to accept a similar position on another newly formed committee, I still maintain my keen interest in the work of the important Public Works Committee. I know and still appreciate the dedicated effort and attention to legislation that our distinguished colleague from West Virginia has given over many years he has served with such distinction in that position.

Our chairman and other members of the Public Works Committee have worked diligently and with flexibility to provide jobs for the country's unemployed. The chairman of the full committee (Mr. RANDOLPH), the chairman of the Subcommittee for Economic Development (Mr. MONTOYA), and the ranking minority member of the subcommittee (Mr. MCCLURE) acted in a very responsible and careful manner in bringing to the Senate floor an excellent bill that I enthusiastically supported and wholeheartedly recommended to my colleagues.

The committee bill was a real attempt to meet the need to create jobs while facing our budgetary responsibilities in order to continue growth and recovery, unhampered by inflation. It would have created approximately 125,000 jobs and would have authorized a maximum of $2.5 billion, or in effect about $1.5 billion at current unemployment levels. I think that bill, as reported from the Senate Public Works Committee to the Senate of the United States, was a realistic measure designed to respond effectively to the problem of unemployment in our Nation. When reported from the committee the bill received the vote of every single minority member of the Public Works Committee as well as every majority member of that committee, and thus become truly a bipartisan and unanimous presentation of the Senate Public Works Committee to this body for its deliberations.

However, Mr. President, the vetoed bill—the bill before us now—is distinctly different from the measure reported from the Public Works Committee and, I believe, in substantial variance with the original intent enunciated unanimously by all of the Members on both sides of the aisle in that committee. If we had enacted the Public Works Committee bill I speculate we would not have this veto on our hands now.

As my colleagues will recall, the Senate, by the amendment offered by my friend and colleague from Maine (Mr. MUSKIE), added $1.375 billion for countercyclical revenue sharing and $1.4 billion for wastewater treatment facilities. Thus the total authorization was increased from the $2.5 billion level reported from the full committee, to the $5.3 billion as it was finally enacted by the Senate.

Mr. President, I have no great quarrel with countercyclical revenue-sharing. I applaud the Senator from Maine and the junior Senator from Tennessee for their leadership role in formulating and stating this new concept of great value to local government. But, I submit, Mr. President, that this bill, a job bill, in this format was not the place to put it, and I voted against that amendment and I will vote to sustain this veto, in part, because of that expensive addition at this time.

The same is true of the so-called Talmadge-Nunn amendment. Nobody quarrels, certainly I do not quarrel, with the need for additional funding for wastewater treatment facilities for our hard-pressed municipalities and local units of government around the country.

As we put pressure on them from the Federal level to improve the quality of the Nation's receiving water, surely we should help them to provide the funds to build those facilities. If we improve the quality of the receiving water, that is what we should do. But this is not a water bill. This is a jobs bill, and that industry is at full employment, and that is a very expensive way to try to create new jobs. I resisted that amendment at the time it was offered in the Senate, even though it would have meant money under the proposed formula for my State, because it was not an appropriate jobs measure in that format.

While the conferees reduced the waste water treatment facilities authorization to $700 million, the countercyclical revenue sharing proposal was decreased only marginally—from $1.375 billion to $1.250 billion. The major change in conference, I believe, was to remove the "trigger" mechanism from the Senate bill. When the conferees did that, in my view, they changed the very nature of this measure from a jobs bill intended to respond quickly appropriately and adequately to the need for jobs in a time of high unemployment to a straight, traditional, public works bill.

The trigger mechanism—which would release funds as unemployment increases and cut back funds as the jobless rate falls—provided an assurance that as economic activity quickens and the unemployment rate continues to drop, the program will phase out in proportion to the need for it. An objection often raised against temporary Government job creation programs, is that, while intended to be immediate and short term, they may be allowed to continue after the need for them has passed. We must take care how to avoid future overstimulation of the economy that could lead to inflation, undermine consumer confidence, and threaten the recovery now so well underway. For this reason I believe the trigger mechanism is an integral and essential part of the bill. In addition, the trigger mechanism distinguished the bill as a countercyclical measure and not just another public works program, and I consider its removal from the Senate bill to be a substantive change that altered the character and nature of the legislation.

Mr. President, in conclusion I believe the aggregate bill without the safeguard of the trigger mechanism to be an expenditure in the wrong amount at the wrong time. Between May 1975, and May 1976, the rate of inflation declined 35 percent over the same period in the preceding year. However, frankly, Mr. President, I am not sanguine that we have totally defeated inflation. Strong inflationary forces remain. We must take care to avoid another inflationary spiral in the future when the economy approaches full recovery. An outbreak of price increases—such as we experienced in 1973 and 1974—would undermine the recovery and would be devastating to all Americans.

Secondly, Mr. President, while I am frankly sympathetic to the purpose and philosophy of the programs added to the Senate bill, I believe they should stand on their own merit and should not overburden the committee bill designed to alleviate the problem of unemployment.

Mr. President, I will vote to sustain the President's veto, and I urge my colleagues to do the same.

OVERRIDE OF PRESIDENT'S VETO IS ESSENTIAL TO ECONOMIC RECOVERY

Mr. HUMPHREY. Mr. President, I rise to urge all of my colleagues to vote to override the President's veto of the conference report on S. 3201, the Local Public Works Employment Act of 1976. This important jobs bill is the cornerstone of our congressional program to insure a vigorous and sustained economic recovery. It will provide jobs to many of our Nation's unemployed, it will put some life back into the construction industry and it will provide emergency assistance to States, counties and cities that have been devastated by the recession.

Mr. President, yesterday's newspapers and this morning newspapers carried the news item that the recovery is slowing down; in other words, that the anticipated speed of the recovery had not developed.

In vetoing this conference report, the President has raised four major objections. I would like to take the time to answer those objections for my colleagues, because I believe the President has misunderstood important features of the legislation.

First, the President tells us that few new jobs will be created by this conference report. Let us set the record straight. This measure, according to congressional estimates, will create 325,000 new jobs, enough to reduce the national unemployment rate by more than three-tenths of 1 percentage point. Moreover, the jobs will be created in precisely those regions, cities and sectors of the economy that are experiencing the most severe unemployment problems.

The Joint Economic Committee of Congress has conducted extensive hearings into the unemployment picture of this country. We have travelled from city to city. What the Senator from West Virginia has said in his opening statement today is buttressed by facts in State

after State and city after city as to the high rates of unemployment, particularly amongst the building trades, in many of our large metropolitan areas.

I wish this program could be more ambitious—that more people could be put back to work. But the President should recognize that Congress passed a more extensive jobs program last winter and he vetoed that too.

This bill has been reduced so that it conformed to the President's objections to the earlier bill that he vetoed.

Second, the President tells us that some of the jobs created by this bill would come too late in late 1977 when the economy is far into recovery. I would like to differ with the President on that issue.

Mr. President, no job is too late if there is unemployment. Second, by the estimates of the administration's Council of Economic Advisers, they say that we will have over 6 percent unemployment by 1980. So surely, this modest bill that is designed to provide a few jobs to Americans who want to work, who want to get off the welfare rolls, who want to get off of unemployment compensation, does not provide jobs that come in too late.

Both title I and title II of this conference report contain provisions which require that appropriations for these programs be expanded within a specific period of time. There is no time lag. Moreover, forecasts prepared by the President's own Council of Economic Advisers, indicate that the unemployment rate will be above 6 percent until 1980. That is hardly what I would call full employment. No job is too late if it is created when the national unemployment rate still exceeds 6 percent.

Third, the President tells us that each job in this bill will cost $25,000—that the bill is far too expensive. I have to disagree with the President's arithmetic. If the bill creates 325,000 jobs and costs $4 billion, the cost per job is approximately $12,000, not $25,000. You just need to have basic arithmetic to know that.

In other words, if there are 325,000 jobs for $4 billion, it means about $12,000 a job.

Finally, the President tells us that this bill is inflationary. Nothing could be further from the truth. This conference report increases expenditures in precisely those areas and sectors that have the greatest underutilized capacity. At present, 15 percent of our Nation's construction workers are unemployed. In many of our cities, the overall unemployment rate is still above 10 percent.

At present, today, Mr. President, 23 percent of our plant capacity is idle. As we reduce unemployment, we have been reducing inflation. When is the administration going to learn from their own statistics? When we had unemployment at 9.5 percent, we had inflation at 14 percent. Now that unemployment is 7.5 percent, inflation is at 7 percent. If we get unemployment down to 6 percent, inflation will come down to at least 5 percent. I cannot, for the life of me, understand how, on the one hand, the President can proclaim that recovery is on the way, that inflation is subsiding, that unemployment is diminishing, and when we present a bill that will further reduce unemployment, that will further use our plant capacity, that will put people to work, they again respond, as if it were a phonograph record, that it will be inflationary. With so large a share of the work force idle, this bill certainly will not create inflationary pressures.

Mr. President, our Nation's economy has been recovering for each of the last six quarters. The gross national product has been rising, the unemployment rate has been dropping, and many other indicators of economic performance have been improving. There is much with which the Congress can be pleased.

However, now is not the time for us to rest on our laurels. The national unemployment rate is still 7.5 percent and almost 7 million American citizens remain unemployed. In some sectors of our economy, such as the construction industry, unemployment remains above 15 percent. There is much that remains to be done if we are to achieve full employment through a sustained and vigorous recovery.

This conference report bill will make a major contribution to a sustained and vigorous economic recovery. It will permit the construction of essential public facilities, it will allow State and local governments to hold the line against regressive tax increases. It will help State and local governments to keep policemen, firemen and other essential workers on their payrolls. Most of all, it will mean jobs for unemployed American workers.

Mr. President, it is time that we lay the issue squarely before the American people. The question is not, as the President argues, whether we should have public jobs or private jobs. The question is whether we have jobs or the waste of unemployment.

That is the issue about which the American people are concerned. The American people want to go back to work and it's time that we give them an opportunity. I urge all of my colleagues to vote to override the President's veto.

Mr. President, this veto must be overridden. I appeal to the people on this side of the aisle, the Democrats, at least, to remember that they made pledges as a party on reducing unemployment. This will be the acid test. If the American people find out that this party cannot keep its word, we do not deserve to win elections.

The PRESIDING OFFICER. Who yields time?

Mr. RANDOLPH. I inquire of the Presiding Officer the time which has been consumed.

The PRESIDING OFFICER. The Senator from West Virginia has utilized 19 minutes. He has 11 minutes remaining on his time. The Senator from Tennessee has used 10 minutes and has 20 minutes remaining on his time.

Mr. RANDOLPH. I thank the Presiding Officer. I yield 4 minutes to the able Senator from Maine (Mr. MUSKIE).

Mr. MUSKIE. I thank my good friend from West Virginia, the chairman of the Public Works Committee. I am not sure that there is anything left to be said about this measure, considering the number of times we debated it on the floor, either in legislative form from the committee or in conference report, but I would like to make just a few points, if I may.

Mr. President, the vote this afternoon to override the veto of S. 3201 marks the sixth time that the Senate has been asked to consider essentially the same antirecession package.

On four of the previous votes, this package has passed the Senate by a healthy majority. On the fifth occasion, the bill was passed by a voice vote.

Aside from these specific votes the Senate has given its tacit approval to this antirecession package by approving its inclusion in the second concurrent budget resolution for fiscal year 1976 and in the first resolution for fiscal year 1977.

Now, I suggest to my colleagues that this record demonstrates a solid and continuing commitment by this body to this legislative concept.

But, the President is doing his best to frustrate this congressional commitment. He vetoed one bill—H.R. 5247—because it was too expensive. We took that bill and cut its cost substantially, in a gesture of compromise and in recognition of the fact that the economy has improved, even though we still have a long way to go.

Unfortunately, the President did not respond in the same vein.

During the year and a half debate on this legislation, there have been a number of arguments raised against it that I would like to respond to briefly here this afternoon.

The first argument is that it is too expensive.

I say that that argument is utter nonsense.

The total cost of this legislation is about $3.9 billion. That is a drop in the bucket compared to what unemployment is already costing us. The experts say that it costs the U.S. Treasury about $17 billion for every increase of one percentage point in unemployment above the full employment level. That means that the current unemployment level of 7.5 percent is costing us a cool $50 billion a year in lost revenues and increased recession related costs.

Those who argue against this bill because they want a balanced budget are talking through their hats. As long as unemployment remains so high, there will be no balanced budget, and they know it.

Another argument raised against this bill is that it will only create make-work jobs that we are better off without.

I say that that argument too is nonsense.

Title I of this bill will provide Federal funds for local capital construction projects on which all preliminary work has been done and where construction can be begun within 90 days. Throughout my State of Maine—and I suspect throughout the Nation—cities and towns are ready to go on projects which they deemed important enough to start work on but which they have had to defer because of pressures the recession has

placed on their budgets. A shot in the arm for the construction industry—the industry most hurt by this recession—is hardly my idea of a make-work program.

Title II of this bill would provide emergency budget assistance to State and local governments where unemployment is the highest and where the pressures of recession have been most severe. Enabling the city of Detroit to retain its police force at full strength or the city of Philadelphia to keep its public hospital open is hardly my idea of a make-work program.

The same people who say this kind of legislation will only create make-work jobs are also the first to attack putting able-bodied people on the public dole. Well, I ask them, which way do they want it? They cannot have it both ways.

This bill will take a great many people off the unemployment rolls and put them back to work. From virtually every aspect of public policy consideration, that is a goal we ought to be working for, not against. I can only conclude that those people who argue against this bill on these grounds would rather continue paying unemployed Americans for doing nothing rather than for doing a useful day's work.

Finally, Mr. President, there is the argument that this bill will contribute to a rekindling of inflation—something we all want to avoid.

My response to this argument is that inflation results when we have an overheated economy or shortages in certain critical segments of the economy.

Clearly, we do not have the former. The latest figures on GNP growth released just yesterday indicate a significant slowdown in the rate of GNP growth, and thus a significant slowdown in the rate of economic recovery from this recession.

And in the construction industry, the only shortages I am aware of is a shortage of jobs.

Furthermore, Mr. President, this bill is a modest short-term remedy. Title II is authorized for five quarters only, and will last an even shorter period of time should national unemployment drop below 6 percent. Funds provided under title II will go directly into State and local government general budget accounts—"not a part of the economy likely to generate bottleneck inflation," in the words of economist Charles Schultze. And to the extent that this budget assistance eases the pressure for higher State and local excise taxes, title II money could actually alleviate some inflationary pressures.

Title I will provide money for local construction projects which are ready to go within 90 days, so that its impact on the construction industry can begin almost immediately.

Mr. President, this bill will help speed our economic recovery. It has but one simple purpose—to create jobs. And create jobs it will—300,000 of them—according to the Congressional Budget Office's analysis of antirecession measures.

Unemployment today is not just high—it is very high. And the jump in unemployment last month is just another indication that we have long passed the time we can sit back and wait for recovery to come around the corner.

Let us get on with the business of putting America back to work.

Mr. President, I ask unanimous consent to have printed in the RECORD some editorials on the vetoed bill.

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

[From the New York Times]

UNWISE VETO

Though urged by Republican mayors around the country to sign it, President Ford has vetoed the $3.95 billion public works employment bill and denounced it as an effort by the Democratic majority in Congress to enact "empty promises and giveaway programs." The bill would lead, Mr. Ford asserts, to "larger deficits, higher taxes, higher inflation and, ultimately, higher unemployment."

This is a heavy load of denunciation to be laid on this legislation aimed at creating more jobs, when the unemployment rate has gone back up to 7.5 percent, with more than seven million Americans out of work. The bill is not a massive boondoggle; it represents less than 1 percent of the total Federal budget and less than one-fourth of one percent of anticipated gross national product in 1977.

Mr. Ford says the bill's scaled-down size from the $6 billion public works job bill he vetoed in February is irrelevant, contending that "bad policy is bad whether the inflation price tag is $4 billion or $6 billion."

Obviously—indeed, simplistically—any appropriation can be denounced as inflationary, including the $101 billion defense outlay (an $8 billion increase over fiscal 1976) that the President has proposed for the current fiscal year. The real question, however, is whether the budget as a whole, in terms of outlays, taxes and deficit, is inflationary—or insufficiently stimulative—and whether particular outlays represent a constructive use of the public's money.

Congress has not acted irresponsibly on the budget as a whole or on this particular public works employment bill. The proposed $4 billion public works bill falls within the Congressional budget resolution of $413 billion for fiscal 1977. That spending, total, given anticipated revenues of $363 billion, would result in a $50 billion budget deficit. This is a more realistic budget than President Ford has proposed and would bring down unemployment sooner without worsening inflation.

The President wants to limit outlays to $394 billion—a figure that would involve real slashes in virtually every social program, while only defense and energy outlays would rise. Such a budget ceiling, would in fact be deflationary or depressive; Mr. Ford has sought to ward off that danger by proposing a further $10 billion tax cut. He still recommends a $43 billion budget deficit, with higher Social Security and unemployment taxes making up some of the difference.

The President has thus sought to further his right-wing philosophy—and his campaign not only against the Democrats but against Governor Reagan—by this unwise veto.

The $4 billion public works bill would help the hard-pressed cities. It would create jobs for the unemployed; even if the President were right and Congress wrong in predicting that the bill would create only 160,000 rather than 300,000 jobs, these would help absorb many laid-off construction workers, and the counter-cyclical revenue-sharing to cities and states would save the threatened jobs of many policemen, firemen and other municipal workers. The bill would also provide needed funds for facilities to prevent water pollution.

The targeting of public expenditures to help the cities, the construction industry and the unemployed makes sense during this period of slow recovery from the serious 1973–75 recession. Congress ought to pass the public works jobs bill over the President's veto.

[From the Washington Post]

THE JOBS BILL

President Ford is a nice man, but he's got a terrible sense of timing. Last week he vetoed the jobs bill, an effort by the Democrats to create jobs by pouring $3.95 billion into good works, mainly construction. Just four days earlier the Labor Department had announced that the unemployment rate had risen from 7.3 per cent in May to 7.5 per cent in June, a disquieting reversal of a slow but steady decline. Two days before that, the fiscal year had ended with both federal spending and the budget deficit substantially lower than the administration had expected.

Why did Mr. Ford veto the bill? As he explained it, he was trying to save the country from another great surge of reckless congressional spending and inflation. ". . . Congress is moving full speed down the road to bigger and bigger give-away programs," he said in the fervent statement published by the White House. The interesting thing is, of course, that nothing remotely like that is going on.

The Democratic majority in Congress has been proceeding with extreme caution on every matter that involves money. The new congressional budget procedure has turned out so far to be an unexpectedly powerful deterrent to the occasional spendthrift impulses of the committees. Last fall Congress voted not to let the deficit exceed $74 billion, and until recently both Congress and the administration expected it to come out just under that number. But for reasons that no one has yet quite explained, spending in the final weeks of the fiscal year was a good deal lower than anticipated. It now appears that, when all the accounts are totalled, the actual deficit may turn out to be as low as $68 billion. No wild rush of congressional spending is building up. Quite the contrary.

There is a faintly comic paradox here. The present consensus on federal fiscal policy—which means taxing and spending—is a good deal closer than either the President or Congress really likes to admit. The President understands perfectly well that the present huge deficit is mainly the effect of the recession, and any premature attempt to cut that deficit threatens to pitch the national economy back into even deeper stagnation. Nobody wants to be responsible for that. On the other hand, most of the Democrats in Congress have perceived that a great wave of new spending will lead to inflation, which in turn will lead to higher unemployment. Circumstance has pressed the debaters embarrassingly close together. The surprising thing is not that they are arguing about spending, but rather that the amounts in this argument are—in comparison with the federal budget—remarkably small.

A jobs bill authorizing $3.95 billion is just about the right size to keep the quarrel precolating through the coming election campaign season. The amount is large enough to command attention, but it is not big enough to make a serious difference in a federal budget that will be, after all, at least 100 times bigger. That $3.95 billion is less, as it turns out, than the margin of error in the forecasts of this year's deficit.

The bill would devote most of this money to public works. It is quite true that public works appropriations are on the whole a rather inefficient way to pull down the unemployment rate. But it is better than nothing and, at a time when the unemployment rate in the construction industry is 17 per cent, it is absurd to call this modest program inflationary. Some of this money would go

into waste water treatment plants; they can easily be justified on their own terms, quite aside from any contribution that their construction might make to the jobs market. The most valuable part of this bill would provide a modest increase in federal aid to state and local governments, in response to the recession. It is recognition that high unemployment brings greater demands on local public services, at a time when receipts from sales taxes decline. The veto has brought down on Mr. Ford the anger of a long list of mayors and governors, not all of them Democrats. To them, the veto is further evidence of Mr. Ford's failure to comprehend the fierce pressures on the big cities.

This bill hardly constitutes a sweeping solution to the present confusion of American economic policy, or a fundamental remedy to the prospect of continued high unemployment. At even the most generous estimate—which is to say, the Democrats'—it will reduce the unemployment rate by perhaps three-tenths of one percentage point. But if Congress can create two or three hundred thousand jobs quickly, with little penalty in inflation, the opportunity is not one to be missed. There appear to be enough votes, in both houses of Congress, to override the veto. When Congress reconvenes next week, that piece of business deserves to have the first priority.

[From the Chicago Sun-Times]

CITIES NEED MORE FEDERAL HELP

Mayor Daley and the resolutions committee of the U.S. Conference of Mayors hit the bull's-eye over the weekend when they called on President Ford to get his priorities in order—to pay more attention to the crisis of the nation's cities and less to defense spending.

"If we're not going to be strong at home, how can we be strong abroad?" the mayor asked in a speech at the meeting in Milwaukee of some 350 American mayors who are considering a resolution that would call for a federal spending shift away from defense and into an attack on city problems.

That shift is long overdue. There was a time when the cities produced excess wealth. Federal tax policies were set then that drained some of that excess away, channeling it to the poorer rural areas of the country. But those policies have long since been in need of re-examination. Neal R. Peirce, a specialist on state and local government, reported in The Sunday Sun-Times that federal spending and tax policies each year drain $30 billion from the Midwest and Northeast states that are highly urbanized and give the money to the South, Southwest, Rocky Mountain and Pacific Coast states. The Great Lakes states, where cities such as Chicago, Detroit and Cleveland have monumental problems resulting in large part from declining tax bases, pay to the federal government $18.6 billion more each year than they get back. California, though, receives from the federal government $7 billion more than it pays.

If there were no inner city unemployment problem, no deterioration of housing, no excessive crime, no urban poverty creating huge welfare rolls, no mass transit shortage, no public education deterioration, no need for large urban health care programs, no racial turmoil, that policy might make sense.

But Chicago and all the other older American cities have all of those problems and each year the financial wherewithal to combat them grows smaller as residents, business and industry, despairing of fighting, flee to suburban communities or those areas of the country benefiting from federal largesse.

It is time for the federal government to change its policies. The mayors called on Ford not to veto a $4 billion public works bill that would help the cities. He should listen to them. Unemployment among youth in Chicago is officially estimated at 38.5 per cent. Unofficial estimates go as high as 50 per cent. The situation is not improving as the national economy improves. Chicago's share of federal manpower training funds is actually decreasing when it should be increasing.

Even if Ford were to sign the public works bill, however, that would be only a short-term fix. Continuing sources of new funds would still be necessary, perhaps through a revision of the general revenue-sharing formula to channel more federal money to cities.

The mayors said the cities face "financial trauma." They're right. Cities such as Chicago, New York, Detroit and Cleveland cannot be allowed to rot away much longer without the entire nation suffering dangerously.

Mr. BAKER. Mr. President, I yield to the distinguished Senator from Idaho such time as he may utilize.

Mr. McCLURE. Mr. President, I thank the Senator from Tennessee for yielding the time.

I want to state at the outset that I have been closely involved with this legislation for over a year, since May of 1975, when the Public Works Committee first began hearings on an antirecessionary public works jobs bill.

I think I would be remiss if I did not acknowledge at this time, as pointedly and generously as I can, the diligent effort and the fine job of all members of the committee, particularly the chairman, Senator RANDOLPH, and Senator BAKER, during these very many months we have been working on this question.

Although I supported S. 3201 as reported by the committee and have worked toward a reasonable, focused approach to the problem of unemployment, I was unable to support the expanded measure which ultimately emerged and which has been vetoed by the President. I will vote to sustain the President's veto.

I am concerned about the total cost of the measure—nearly $4 billion—and its timing. I do not believe the added costs of the Senate amendments will be effective in creating jobs quickly.

The timing of this legislation is crucial. The justification for this bill has been that it is needed to provide temporary assistance to counter the economic recession of the past few years. It is not a replacement or merely an add-on to regular Federal public works programs. As an antirecessionary program, it should reflect the changing economic conditions, phasing out as recovery proceeds.

During the 12 months which have passed since the Senate first considered this legislation the economic situation facing this country has greatly changed. When we began, unemployment was nearly 9 percent and rising, employment opportunities were declining, inflation was rampant, reaching 12 percent and almost every economic indicator showed the scope of our economic problems. Fortunately the situation has turned around.

Indicators have steadily improved. GNP and employment have climbed. Inflation and unemployment have gone down. As the economic picture has changed so has our approach to the large emergency programs we were considering during the period of economic distress. As recovery continues to take hold, it is imperative that our efforts to meet specific problems be carefully balanced against maintaining the stable, balanced growth which has marked the recovery.

The public works portion of this bill as it emerged from conference does not include the triggering mechanism in the Senate measure designed to gear the amount of expenditures to the extent of unemployment. The trigger mechanism characterized this legislation as an antirecessionary proposal not just another large spending program. Without some mechanism to reduce outlays as the economy improves, the program will result in large expenditures at the wrong time. The trigger is made more crucial, I believe, by the fact that there is a long leadtime and phaseout time for public works programs. Our efforts to remove the last vestiges of the recession should not throw us back into the boom and bust cycle that created the turmoil of the last few years.

Total employment has been rising, reaching over 87 million workers, 3 million more jobs since March of last year. The economy has improved and gains have been real and impressive. A recovery built on sound, sustainable growth will produce the expanded economy necessary to provide the permanent jobs for the increasing number of people entering the job market.

No one is complacent about existing unemployment levels and we all share the goal of generating needed employment opportunities. But I believe this bill is less effective in creating jobs quickly now when they are needed—for the substantial increase in expenditures. In one month the private sector generated 707,000 jobs—more jobs than would be created over a year with the expenditure of nearly $4 billion under this bill.

I agree with the President that there are other ways to generate productive permanent employment more effectively and without the inflation tendencies inherent in this bill.

It is my judgment that the composite of the bill, without the triggering device that associates spending under title I with the employment levels, is a bad composite piece of legislation and, therefore, should not be enacted.

Throughout the discussion of this legislation there have been some references to the number of jobs and the cost of the jobs which will be created by expenditures under the public works portion of the bill. Of course, the cost per job and the number of jobs depends on the type of project selected. Large public works which utilize highly skilled manpower and costly materials will have a high per job cost, more funds used for materials and other expenses, and, therefore, a fewer number of jobs created for the expenditure than smaller projects using less skilled labor and materials.

Smaller, labor intensive projects, such as beautification, repair and maintenance activities, generally have a lower job cost. Also more funds are used for wages than materials so more jobs may be created. Figures on the cost per job in this bill have ranged from around $10,000, the estimated cost under the

jobs opportunities program, to $25,000, the figure the President uses in his veto message, the cost associated with regular public works programs and the experience under the public works impact program—an accelerated public works program enacted in 1971.

New construction employment can be high, $30,000 to $40,000 per man-year. Repair, renovation and maintenance involve a lower expenditure, about $10,000 to $12,000 per worker per year. But what of some of our experience? What has our experience indicated under some of the other programs we have tried?

The estimated cost per job under title X—the jobs opportunities program—has averaged around $10,875 per job, $7,000 of that being Federal cost. I emphasize that these figures are based on information supplied by the applicants and are very preliminary estimates. By law, title X projects must be labor-intensive and small enough to be substantially completed in 12 months.

Many of the programs funded under title X were public service type activities. According to EDA, title X projects have a labor-intensity factor of 72 percent and 83.4 percent in the two rounds of the program. That is precisely the reason that the construction trades have opposed title X—because there was not enough new construction allowed under the program. They have advocated the approach in this public works bill over the approach in title X. But the lack of construction and the numerous public service jobs funded under the jobs opportunities program is precisely the reason the estimated cost per job is relatively low.

According to the study of the PWIP program, which is perhaps the most extensive review of our experience with an accelerated public works program, the cost per man month, not man-year by man month, of employment under that accelerated public works program averaged $3,788, and ranged from an average of $3,238 per man month for airport buildings to $7,426 per man month of employment on jails and police stations.

The same study indicated that the average job lasted less than 1 month. Fifty-eight percent of the workers held jobs that lasted 80 hours or less. And yet we talk about this being a sure cure or a sure shot in the arm for these men who have suffered long-term unemployment problems.

The average labor intensity of the 202 projects in the survey was 21.2 percent. Labor intensity is the percentage of the total project cost represented by wage payments. This means that for every dollar in wage payments generated by the projects, roughly four additional dollars were spent on nonwage items such as materials, overhead, profit and so forth.

It seems to me that we do need to look at what we are doing and when we are talking about a stimulatory measure that is designed to deal with unemployment during a period of recession the bill should be carefully focused and narrowly focused to generate the largest possible number of jobs during the period of time and in the areas where those jobs are needed. I think this bill fails on both scores.

Mr. BAKER. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from West Virginia has 6 minutes remaining, and the Senator from Tennessee has 9 minutes.

Mr. BAKER. Mr. President, I have only one other request for time. The Senator who asked for that is not presently in the Chamber. I would like to reserve the remainder of my time.

Mr. RANDOLPH. Mr. President, no member of our committee and no Member of the Senate has given more substantial leadership to the development of this program than the able Senator from New Mexico. He chairs our Subcommittee on Economic Development and has been instrumental in creating the innovative programs in this area that are helping provide a better life for many Americans.

I yield 4½ minutes to the Senator from New Mexico.

Mr. MONTOYA. I thank the Senator from West Virginia (Mr. RANDOLPH), the distinguished chairman of the Public Works Committee.

Mr. President, the vote today will decide whether the Congress, in the face of lingering and alarmingly high unemployment, is going to enact a public works jobs bill over the President's veto. The Congress has, for the better part of 2 years, labored with this legislation—first in an earlier and larger public works jobs bill that the President successfully vetoed and now the present bill.

The President says in his veto message on July 6—be patient, the economy if left alone will provide the necessary jobs for the unemployed. These words came to us in Congress exactly 4 days after—let me repeat, after—the Bureau of Labor Statistics announced on July 2 that unemployment had gone up from 7.3 percent to 7.5 percent for the month of June.

Mr. President, this bill is more than $2 billion smaller than the earlier bill vetoed by the President and sustained narrowly in the Senate. We proposed this smaller bill because we hoped the President would sign it. There were some indications he would sign it. When he vetoed it, I was tempted to believe those who said he was playing delegate politics in his struggle with Governor Reagan.

I want to say this by way of preliminary remarks:

The Economic Development Subcommittee and the full Public Works Committee devoted much time in trying to prepare a bill we thought might meet with the President's approval. On the floor of this Senate there were some amendments added which increased the authorizations beyond what we considered proper and acceptable to the President. In conference we reduced the authorizations so that we thought the product of the conference, as subsequently adopted by the Senate and the House, would be acceptable to the President.

Yet in his veto message, he called the bill election year politics. He said:

> The bill sends a clear signal to the American people that four months before a national election, the Congress is enacting empty promises and giveaway programs.

By saying Congress, I assume he means to include those Republicans who have supported this legislation. We have been working on public works jobs legislation all through 1975 and 1976. And we have had a great deal of congressional Republican support. We are going to need that support today to enact this jobs bill over Mr. Ford's objections.

Mr. President, the Congress has said in its votes on the earlier H.R. 5247 and now in S. 3201 that it wants to do something now to put unemployed people on useful jobs. The Nation's Governors favor the bill. The Nation's mayors favor the bill. The Association of Counties favors the bill. Organized labor favors the bill. Nearly if not all public interest groups favor the bill. The Democratic candidate for President favors the bill.

In the face of overwhelming national sentiment for this jobs bill, the President says "No" and accuses the Congress of bad faith in passing it. So we have government by veto; this was his 52d veto.

Mr. President, the American people are getting tired of government by veto, for it is premised on the dubious principle that the "least government is the best government." "No programs are better than some programs, and few programs are better than more programs." "Let the sacred economy untrammeled by artificial stimulus work its will; it will provide for all." I think this is erroneous.

It is a wonder to me that we have survived, in the 1970's, the anointment in the Presidency of 19th century economics.

What about the unemployed? Some students of the problem believe close to 10 million Americans are without jobs that would like to work. We know that the unemployed figure in the construction industry runs between 15 to 17 percent. We know that in some cities construction worker unemployment runs in figures in the 30- and 40-percent range.

Unemployment in the big cities runs to 12, 13, and 14 percent. What are we going to do about it?

We, the Members of Congress, represent the people. We must consider the plight of the unemployed. We must not be satisfied with an unemployment level of 7.5 percent, at this time, or accept the President's contention that nothing is needed by way of public works or other direct assistance.

Towns and cities across America have not recovered from this recession. Too little revenue is available to meet rising service costs. The problem is whether to cut back on services, which means laying off people, or to raise taxes. Raising taxes in cities with a diminishing tax base because of the outmigration of industry in recent years is unthinkable. To listen to some mayors, crisis is on the doorstep.

So busy has the White House been in this election year, that it appears to have merely dusted off the President's earlier February veto to make it do double duty with this bill. The rhetoric is the same. The message is back again with the same old nonsense.

The veto message says the bill will not create as many jobs as Congress says. We have been around this horn before. Our capacity to estimate the jobs to be

created is as good as the executive branch. Fortunately, Congress has greater expertise than ever. We know the executive opposes the bill and will downplay the number of jobs to be created.

The veto message says it will be inflationary. Every unwanted spending measure in the past 7 years has been called inflationary. How can stimulation of the sick construction industry, operating far below capacity cause inflation? What is inflationary about restoring some laid-off policemen in Detroit?

The veto message says the jobs will come too late—in 1977 and 1978. The answer is, we have a program in this bill designed to move quickly, to have construction workers on-site quickly since only projects ready-to-go will be approved. Even so, unemployment, even by the administration's own estimates, will still be far too high in 1977 and 1978.

The veto message says each job created will be too costly. Not when you average together the local government jobs to be maintained or restored under title II with the construction jobs in title I, and remember the fact that a community facility of lasting worth will also be constructed under title I.

Mr. President, I have served as chairman of the Subcommittee on Economic Development for many years. This recession has occupied much of the subcommittee's time in the past 2 years. Our mission is long-range economic development for the long-term lagging regions of the country. When unemployment continues to hold at high levels, it is difficult to separate out the long-range programs and goals from the antirecessionary when the lingering effects of the recession are so pervasive.

As chairman, one of my hopes has been that we can enact a jobs bill such as this one to demonstrate the efficacy of well-tailored public works programs to fight recessions. This is such a bill. It is a 1-year program. It is needed. It is worth a try.

Mr. President, I think it is about time that we act on a nonpartisan basis here in Congress, and vote to override the President's veto on this very important bill.

I ask unanimous consent to have printed in the RECORD, at this point, correspondence from the AFL-CIO, the Coalition of Northeastern Governors, the Farmers Union, the Brotherhood of Carpenters & Joiners of America, the UAW, and the Council on National Priorities and Resources in support of this measure.

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

PUBLIC EMPLOYEE,
DEPARTMENT AFL-CIO,
Washington, D.C., July 14, 1976.

DEAR SENATOR MONTOYA: The Public Works Employment Act, which as you know passed the Senate 54-28 and the House 339-57, has been vetoed by President Ford. The Public Employee Department, AFL-CIO, is deeply concerned.

In our view the override of the veto of S. 3201, which will presumably be before the Senate in the very near future, would be an important contribution both to the maintenance of state and local government services and to the building and construction industry. We are particularly interested in Title II's anti-recession grants. Although reduced from the provisions of last winter's vetoed, H.R. 5247, this bill would provide $1.25 billion to state and local governments to maintain basic services during periods of high unemployment.

The override of the President's veto, and final enactment of this bill, would help to ease the burdens of our cities and to mitigate the problem of unemployment which was so eloquently addressed in the platform adopted by the Democratic National Convention in New York.

We sincerely hope that you will vote to override President Ford's veto of this important measure.

Respectfully,
W. HOWARD MCCLENNAN,
President.

PED PRESIDENT DENOUNCES FORD VETO OF PUBLIC WORKS JOBS BILL

"Despite President Ford's designation of the public works jobs bill as a giveaway, the fact remains that severe unemployment and the fiscal crisis of local and state governments demand the concentrated attention of the federal government," declared William H. McClennan, president of the AFL-CIO's Public Employment Department, following the President's second veto of a public works measure.

"As a nation, we simply cannot permit the unemployment problem and financial plight of our communities to fester without forthright action by this Administration.

"Fortunately, the overwhelming votes in the Senate and House for the vetoed bill give great hope that Congress will reject the President's disregard for suffering experienced by public and private industry workers and their families. Public services by our communities must be maintained at realistic levels."

The vetoed measure made available to states and cities $1.25 billion in antirecession funds, $2 billion for public works projects and $700 million for waste water treatment. As many as 300,000 jobs would be financed by these mechanisms, according to the legislation's sponsors.

The House vote was 328-83. Senators approved the measure 70-25. If maintained on an override vote, the margins are sufficient to pass the legislation, regardless of the President's objections. Twenty-nine AFL-CIO unions representing 1.5 million public workers in state, local, federal and postal services, comprise the Department.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., July 13, 1976.

Hon. JOSEPH M. MONTOYA,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONTOYA: I am enclosing a copy of a press release which President Meany issued on the question of President Ford's veto of the accelerated public works bill. We most certainly hope you will agree with us and will vote to override this most recent veto of a serious attempt by the Congress to provide badly needed jobs for many unemployed.

Sincerely yours,
ANDREW J. BIEMILLER,
Director, Department of Legislation.

Enclosure.

AFL-CIO President George Meany today made the following comment on President Ford's veto of the Accelerated Public Works Bill:

"This veto comes as no surprise. It is one more item in President Ford's unbroken record of hostility toward the unemployed and indifference to the needs of the states and cities and their citizens.

"This bill, already passed twice by heavy majorities in both Houses of Congress, is too important to be sacrificed to the President's narrow ideology and his political image.

"America's unemployed must be put back to work. America's hard-pressed cities and states must receive aid. America's economic mess, created by the Nixon-Ford Administration, must be eliminated.

"This measure would be a major step toward achieving these goals. Therefore, we urge all members of the House and Senate to give the nation the help it needs by overriding Mr. Ford's veto immediately after the current recess ends."

JULY 20, 1976.

Hon. JOSEPH M. MONTOYA,
Dirksen Senate Office Building,
Washington, D.C.:

We Governors of the Northeast were greatly disappointed by the President's recent veto of the public works/counter cyclical assistance legislation.

An override of this veto will provide vitally needed services for, not only the States we represent, but, indeed for all the Nation—a Nation struggling to overcome the ravages of economic misfortune.

Enactment of the Public Works Employment Act of 1976 (S. 3201) will create 200,000 badly-needed jobs. In addition, this legislation will provide vital counter-cyclical aid to State and local governments—aid which is essential to the continuation of critical basic services and aid which will assure the maintenance of 90,000 jobs that might, otherwise, be eliminated. As governors of a region particularly hard-hit by recession and unemployment, we urge you to vote to override the President's veto of S. 3201.

THE COALITION OF NORTHEASTERN GOVERNORS

Governor Ella Grasso, Connecticut;
Governor Michael Dukakis, Massachusetts.
Governor Brendan Byrne, New Jersey.
Governor Hugh Carey, New York, chairman;
Governor Milton Shapp, Pennsylvania;
Governor Philip Noel, Rhode Island;
Governor Thomas Salmon, Vermont.

NATIONAL FARMERS UNION,
July 19, 1976.

URGENT LEGISLATIVE MESSAGE

To: Members of the United States Senate.
From: Tony T. Dechant, President.

Farmers Union urges you to vote to override President Ford's veto of the Public Works Employment Act of 1976, S. 3201. The members of the Senate clearly indicated their support of this important legislation in the vote of 70 to 25 for passage of the Conference Report. This overwhelming support of the Senate recognized that continued high unemployment holds at 7.5 percent, with the construction industry suffering a 17 percent national unemployment rate.

Farmers Union believes that a full employment economy provides the best market to farmers to sell at a fair price the food and fiber they produce. But 129 of the 150 major labor areas in our nation have over 6 percent of their work force unemployed in May 1976, and 38 of those areas have over 10 percent of their people out of work.

The public works program will help state and local governments move ahead on construction of already approved public facilities such as water and sewer lines, libraries, streets and sidewalks and roads, courthouses, schools, police and fire stations, and badly needed health facilities.

Such a program will help to accelerate the attainment of the rural development goals outlined in the April 26, 1976 Sixth Annual

Report of the President to Congress on Government Services to Rural America, pursuant to Title IX, Section 901(e) of the Agricultural Act of 1970, and the Third Annual Report of the Secretary of Agriculture to the Congress on Rural Development Goals issued May 7, 1976, pursuant to Title VI, Section 603(b) of the Rural Development Act of 1972.

Wages paid on these jobs will help support local merchants and increase tax contributions to local, state and Federal governments. The construction adds to the needed services and facilities of our hard-pressed cities and small towns, and counties.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
Washington, D.C., July 16, 1976.

Hon. JOSEPH M. MONTOYA,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR MONTOYA: The President's second veto of the scaled down Public Works Jobs Bill, S. 3201, comes as an expected, yet still a callous blow to our membership and the U.S. Construction Industry.

While all other sectors of our Nation's economy have been enjoying at least a modest upswing during the present so-called "recovery", the Construction Industry and we in the Building Trades have continued to bear the highest unemployment rates in the country.

The national average unemployment rate for the building trades is in excess of 15%. This is merely the shadow of our true urban rate, which is well in excess of 20% for our members. S. 3201 is, in our view, if anything, a modest attack on this problem through the wise mix of quick-starting Public Works Projects, much needed countercyclical aid, and water treatment programs.

On behalf of our entire membership I urge you to vote to override the President's veto of S. 3201, the Public Works Jobs Bill.

Sincerely yours,

CHARLES E. NICHOLS,
General Treasurer and Director of Legislation.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURE IMPLEMENT WORKERS OF AMERICA—UAW,
Washington, D.C., July 19, 1976.

DEAR SENATOR: Once again, we find ourselves in deep disagreement with the President in his decision to veto a bill assigned to give unemployed Americans meaningful jobs and assist hard pressed state and local governments. Congress should override the ill-advised, economically-short sighted veto of the public works jobs measure (S. 3201).

The Congress has tried to reach a compromise with the President on this issue. It reduced the amount of funds involved as compared with the original badly-needed public works bill. In our judgment, the President is being irresponsible on this important legislation.

We agree with the solid majority in Congress which has voted for the bill in large numbers. We did not believe the veto of the original public works jobs bill could be justified under any circumstances given the economic conditions facing the nation. This second veto is unconscionable and should be overwhelmingly overridden.

A vote to override will be in the national interest; the UAW urges you to vote to enact S. 3201 over the President's veto.

Sincerely,

LEONARD WOODCOCK.

COUNCIL ON NATIONAL PRIORITIES AND RESOURCES,
Washington, D.C., July 19, 1976.

DEAR MEMBER OF CONGRESS: In vetoing the Public Works Employment Act, President Ford has once again shown his insensitivity to the needs and hardships of the unemployed and to the economic waste associated with high unemployment. Incredibly, the Administration has decided to deny meaningful jobs to 350,000 American citizens. We urge you to reverse this decision by voting to override the veto when the Congress considers the measure this week.

By vetoing the bill, Ford is refusing desperately-needed aid to thousands of struggling localities. The counter-cyclical provisions of S. 3201 would help state and local governments avoid critical financial problems and forestall budget cutbacks, personnel layoffs and tax increases—all of which counteract federal efforts to stimulate the economy.

The Council on National Priorities and Resources believes the counter-cyclical public works bill is crucial to economic recovery. Certainly last month's unemployment rate, still higher than in any previous recession year since World War II, attests to the need for greater government stimulation of the economy.

High unemployment translates not only into personal hardship, and a loss of self esteem for the millions of people out of work but into budget deficits as well. Many figures have been advanced to document the costs of the recession. The most telling point is that each percentage point of unemployment costs the federal government $17 billion in revenues and increased expenditures. Moreover, high unemployment in this recession has so far cost the nation more than $800 billion in lost GNP—national resources desperately needed. Thus, putting people back to work, as would be done by enactment of this measure, is a productive venture.

The budget resolution adopted by the Congress in May specifically provides the needed funds for this public works/counter-cyclical measure. Thus, enacting the bill over the President's veto would merely represent reaffirmation of the Congress' announced fiscal policy.

As you know, the Congress passed S. 3201 by an overwhelming margin—more than the two-thirds necessary to override the veto. We hope you will continue to support this critical legislation by voting to override the President's veto.

Sincerely,

ROBERT R. NATHAN,
Chairman.

The PRESIDING OFFICER. The Senator's additional minute has expired. Who yields time?

Mr. McCLURE. Mr. President, I yield 2 minutes to the Senator from Texas.

Mr. TOWER. Mr. President, I strongly urge this body to sustain the President's veto of S. 3201.

This bill was questionable when it passed the Senate, but it has been made worse in conference by elimination of the "trigger" from the title I public works funds. As it now stands, it is my understanding that these "emergency" funds can be used in communities where unemployment is not a problem. Approving this measure would be an irresponsible act and a waste of the taxpayers money. Under the guise of providing emergency funds to create new jobs, these funds could be used in areas where, in fact, no unemployment problem exists.

The proponents argue that this is needed because there are no other programs which can provide assistance to the unemployed, especially in the construction industry. Of course, this argument has no foundation. It is proposed that under existing programs over $21 billion will be outlayed for public works projects in fiscal year 1977. This is a 17-percent increase over this year's funding. If S. 3201 is approved, it will provide more funds in fiscal years 1978 and 1979 than fiscal year 1977. Surely this is not an emergency program to attack the unemployment problems of today. Its major effect won't be realized for years to come.

In addition to this $21 billion that will be outlayed for public works projects for fiscal year 1977, yesterday we approved a housing conference report which authorizes over $3 billion for new or substantially rehabilitated housing. In the Banking Committee, we have heard over and over again the desperate condition of the construction industry. So, we are doing something about it. We are saying "let's put dollars into housing—not in 1978 or 1979—but today." This means jobs for the construction industry today, and much needed housing for America tomorrow. These housing funds not only mean construction jobs today, but it has a multiplier effect. It means more manufacturing jobs for appliance workers, carpet producers, pipe suppliers, and wire manufacturers.

Let me quote from the committee report on the housing bill:

> *A primary objective* of the above funding allocation is to increase the concentration of current HUD programs on new housing construction, with the intent of increasing the housing supply and of *creating jobs in the construction industry*, one of the most highly depressed sectors of the economy.

The Banking Committee thinks that the housing bill could create over 1 million jobs in the next fiscal year.

The unemployment problem is primarily in the construction industry. Funds for housing production will help alleviate it now, and not 2 or 3 years from now, as would the public works bill.

I think the economy, and the American taxpayer would be best served by sustaining the veto of S. 3201.

The PRESIDING OFFICER. Who yields time?

Mr. BAKER. Mr. President, I yield the Senator from Kansas such time as he may require of the 6 minutes remaining.

Mr. DOLE. Mr. President, in the opinion of the Senator from Kansas, the President has once again displayed courage and good economic sense to veto the make-work approach to our economic problems epitomized by the Public Works Employment Act. I do not say this with any discredit to the distinguished chairman of the committee, but there is a different view, a different philosophy. The Senator from Kansas voted to sustain the President's veto of a larger version of this bill in February. It was a bad idea then, and even though it has been scaled down somewhat, about all it is now is a scaled-down bad idea.

Mr. President, the economic recovery is both stronger than anticipated and further along. If there ever was a time for this program, it has long since past. Well over half of the $4 billion provided in this bill would spend out not this year, when unemployment is above 7 percent, not next year when the unemployment rate may be above 6 percent, but in 1978

and beyond when the unemployment rate will be below 6 percent and still falling.

Mr. President, included in this bill is some $1.3 billion in revenue grants to States and localities. We have for the last 2 years heard dire predictions about the fate of States and cities—of massive layoffs of public employees adding heavily to our unemployment. Mr. President, this has simply not come to pass. To be sure, this has not been an easy time for many cities and States. Indeed, it has not been an easy time for all of us. I have seen reports that local governments have been forced to cut back and economize on some services. But it is to the credit of the ingenuity of local governments that they have weathered the recession so well. It is this type of self-reliance that is the strength of our private economy and the local units of government. What these individuals need is not a belated hand out, but rather an assurance that the inflation-recession cycle is being brought under control and will not be repeated. This reassurance can be given by sustaining the President's veto of this legislation.

Included in this bill is also $700 million for EPA construction grants. The cleaning up and preservation of our environment is a national priority which the Senator from Kansas supports. I look much more favorably on this portion of this legislation. The projects to be undertaken are warranted in their own right, aside from considerations of economic policy and unemployment. Additional funds for important projects in Kansas would be authorized. It is my understanding that while there remains some $6 billion of unobligated balances for these grants, the allocation of these funds is such that 4 States now have no funds available and some 15 States will have exhausted their allocation by the end of fiscal year 1977. It is unfortunate that this section is a captive of this bill and has not been presented in its own right for our consideration.

The Congress has sustained the President in rejecting this program once before. It is indeed regrettable that Congress has not displayed the ingenuity to come forth with better and more acceptable ideas and proposals. Along with several of my colleagues the Senator from Kansas has introduced legislation that would provide for private employment through wage subsidies. The appropriate committees have not seen fit to hold hearings and to even consider such an approach. Instead, we get a warmed over version of the same old ideas—public works.

There may be some of my colleagues who have very serious reservations about this legislation but who feel some compulsion to "do something" about unemployment. It is late in the legislative session and this bill may be Congress last shot at what is claimed to be a positive employment program. I would urge my colleagues to stand fast and again sustain the President's veto. The Congress and the administration have responded positively to unemployment since the onset of the recession. We have cut taxes and twice extended that tax cut. We have enacted a temporary public service employment program and will probably act to continue that program in the next few weeks.

We have in place numerous programs to provide assistance and income support for those who are temporarily without jobs.

The economy has responded to these measures with a vigorous and continuing recovery. Mr. President, we must resist the temptation to overreact, to enact a program which would do little for employment now when it is most needed and which would add to inflationary pressures 2 years from now when it is least needed. I would repeat that over half of the $4 billion would spend out in 1978 and beyond. According to recently revised economic projections, the unemployment rate will be below 6 percent. Some $2 billion would be committed and spent at a time when we will be seeking budgetary balance.

Mr. President, if this body fails to sustain the President's veto of the $4 billion spending measure, the confidence of consumers and businesspersons alike in the ability of our Government to act positively, but wisely and with moderation, will be undermined. The prospect of accelerated inflation and continued deficit spending that is raised by this legislation can easily do more damage than what little good this bill would yield directly. This revived confidence has been the strongest source of our economic recovery to date and has been the thrust of the President's economic program. The President has already saved the taxpayers of this country more than $2 billion by refusing to go along with the original public works bill and thereby forcing its revision. We now have the opportunity to join with the President in saving another $4 billion and further supporting private confidence.

A final consideration which I would urge my colleagues to bear in mind is where this legislation might lead us. We are urged to pass this employment-creating bill—300,000 jobs it is claimed—because the unemployment rate is too high. Well, according to the Humphrey-Hawkins bill, the unemployment rate will always be too high until it reaches 3 percent. So when that rate is 5 or 5½ percent, what do we need? You guessed it, another public works bill, or something like it. It is this basic approach to employment—and the further and expanded use of it—that is at issue here.

Mr. President, as I look at the arithmetic, the veto will probably be overridden, but again I would commend the President of the United States for having the courage of his convictions in doing what he should do and can do to make good economic sense, and I urge my colleagues to support the President by sustaining the veto of S. 3201.

Mr. BAKER. Mr. President, I have no further requests for time. A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAKER. If I were to yield back the remaining 3 minutes, does the previous unanimous-consent order still require the vote to occur at 2 o'clock?

The PRESIDING OFFICER. The Senator is correct.

Mr. RANDOLPH. Mr. President, may I inquire how much time remains to the Senator from West Virginia?

The PRESIDING OFFICER. The Senator from West Virginia has 30 seconds remaining of this time.

Mr. RANDOLPH. Does the Senator want that now, or later?

Mr. BAKER. Mr. President, I will give the Senator from West Virginia another 30 seconds.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 1 minute.

Mr. RANDOLPH. Such courtesy is appreciated.

The commitment of the Senator from Tennessee (Mr. BAKER) to these programs is certainly recognized by me. He has long been active in developing legislation in this area within the committee. His contributions have been valuable. I am grateful for his effort, and for the efforts of all the members of our committee in approaching these problems.

Mr. President, I regret that the President has spoken of our action on this matter as an empty promise. This is the fulfillment of a promise. He has spoken of a giveaway program. This is a productive program, an investment in America and its people.

Members of this body differ as to their votes. I vote against what I call giveaway programs of billions of dollars to foreign aid, but I vote for programs that are positive in nature to employ Americans in constructing those projects which are of lasting benefit.

This measure provides such projects, and I hope and believe the Members of the Senate will override the veto of the President. The vote we shall take, I am sure, will be on the merits of the legislation. We will not cast our votes on the basis of political partisanship.

Once again, I call attention to the contributions of the committee staff to the preparation of legislation. The majority and minority staffs operate with the same spirit of cooperation that characterizes the members of the committee themselves.

Throughout the history of this bill, the staff has worked to help us find solutions to difficult problems. Recognition is due the involvement of Barry Meyer, Bailey Guard, John Yago, Philip Cummings, Richard Harris, Richard Greer, Judy Parente, and Stevens Swain.

Mr. BAKER. Mr. President, I do not urge my colleagues to sustain the President's veto without considerable distress, because I agree with much of what the distinguished chairman of the committee has just said. But I think we have messed this thing up; I really do. As the distinguished Senator from Maine said a little while ago, this is our sixth effort to try to pass an anticyclical jobs program. Our efforts began almost 2 years ago to combat unemployment and the ravages of inflation. But somewhere along the line, we got derailed.

Suddenly it was no longer an antirecessionary jobs program. It was a wastewater treatment program and counter-

cyclical revenue sharing plan to aid hard-pressed local units of government. The price tag went up from $2.5 billion, which all of us supported, to $5.3 billion when it passed the Senate. Incidentally, this bill is not as much improved moneywise in conference as might first appear on the surface because of that trigger I spoke of before. With the trigger intact the effective authorization of the committee bill was $1.5 billion at current unemployment levels which compares with a total authorization in the Senate-passed bill of $5.3 billion, or $4.2 billion if the trigger is taken into account. The bill sent to the President, upon which we are asked to act today, contains a total authorization of $3.950 billion, with no trigger mechanism. Thus the authorization of the vetoed bill is only $250 million under the effective authorization of the Senate bill and is $2.450 billion over the effective authorization of the bill as reported by committee.

Mr. President, I urge our colleagues to vote to sustain the veto.

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. BAKER. 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

Mr. RIBICOFF. Mr. President, for far too long this Nation has been gripped by an unemployment crisis which, at times, has reached levels not seen since the depression of the 1930's. At the present time over 7 million men and women are out of work. This figure does not include the additional millions who have despaired of finding employment and are not actively seeking jobs or those who are employed only parttime. The current official national unemployment rate stands at 7.5 percent but it is much higher in some parts of the Nation. In Connecticut, for example, we have a statewide joblessness level of over 9 percent, but certain communities are experiencing unemployment rates of 14 percent and higher.

Last month the Congress passed legislation—S. 3201, the Public Works Employment Act of 1976—which would create or preserve at least 300,000 jobs. Many of these positions would be in the construction industry where unemployment has been at levels of 30 percent and higher in some locations. This much needed measure would also provide funds to carry out public works projects and to construct waste water treatment facilities. S. 3201 also furnishes countercyclical antirecession funds to aid hardpressed cities and States—money which will assure the maintenance of an estimated 90,000 jobs, such as those of policemen, firemen, and other essential municipal employees, which might otherwise be eliminated.

President Ford's ill-conceived veto of the public works employment bill displays a disregard for the plight of our unemployed citizens and apathy toward the requirements of our cities and States. Contrary to his claim, this measure is not inflationary and falls within the congressional budget resolution of $413 billion for fiscal year 1977. The public works jobs bill is critical to help put Americans back to work, to save Americans from being forced out of their jobs and to aid Americans in recovering from the severe economic dislocations of the past several years. The House and Senate passed this legislation by substantial margins last month and I urge that we override this veto with the same vigor.

Mr. TUNNEY. Mr. President, I am voting today to override the President's veto of the Public Works Employment Act, legislation vital to this country's economic well-being.

Mr. Ford says we cannot afford programs to put people back to work.

This recession has already cost the American people $400 billion in lost output. The Federal Treasury is paying out $19 billion annually in unemployment compensation.

I say we can no longer afford not to put California and America back to work.

The Public Works Employment Act provides $2 billion for badly needed investment in public facilities. This investment would create several hundred thousand additional jobs.

Public works projects are not make-work programs, they are wise investments in America's future. They improve the economy's infrastructure which will lead to future increases in its productivity.

Mr. Ford says we must fight inflation and balance the Federal budget.

It is foolhardy to believe we can balance the Federal budget as long as 7 million Americans are idle and hence not paying taxes to the Federal Treasury.

And the best way to fight inflation is to put Americans back to work producing the goods and services needed by their fellow Americans.

Only this administration's so-called economic experts continue to believe the discredited theory that high unemployment keeps prices stable. These "experts" told us we could have low unemployment or price stability but not both.

So they engineered an economic program designed to cause massive unemployment to keep prices down. The result was both high unemployment and galloping inflation.

The Ford administration should have learned by now that scarcity drives up prices and abundance drives them down.

Mr. TAFT. Mr. President, I am voting to enact into law S. 3201, the public works jobs bill.

I am doing so for three principal reasons:

First. Unemployment in the construction industry remains at a level that is escalate if further postponed; and

Second. Local governments all over this Nation are in dire financial straits because of inflation, increased service requirements, and a failure of local revenues to grow as fast as expenses, and all of these factors have resulted in cancellation or suspension of needed public works projects—the cost of which will escalate if further postponed;

Third. A public works bill seems certain to be enacted by this Congress and S. 3201 represents the best and least expensive compromise obtainable.

Moreover, the total cost of the bill has been reduced to under $4 billion from a grossly inflated $6.1 billion originally asked for by the Congress.

Furthermore, the Tallmadge-Nunn water pollution amendment in the previous public works proposals would have penalized the State of Ohio by denying it $40 million of waste water treatment funds. Now, under S. 3201, neither Ohio nor any other State will lose funding.

What I have opposed in the past has been a gross enlargement of public works spending programs to initiate a host of new projects, funded at an unsustainably high level, to produce temporary public jobs in projects thought up simply to utilize temporary Federal funds. The funds in this bill are to be used for the thousands of long-term projects under construction which had to be set aside when State and local governments ran low on funds to complete them. This sort of responsible continuation of existing programs, and support for those projects which are ready to resume construction within 90 days will actually be useful in reducing the enormous unemployment in the construction industry.

I vote to override the President's veto with some reluctance. Unemployment figures have dropped, and it is conceivable that the market will provide more jobs in the private sector for those still needing them, as the economy continues its upswing. This should be carefully monitored by the administration and in the appropriation process. Mere expenditure of Federal money is basically not the most effective way of improving our economic situation. The best way of using the taxpayers' money to reduce unemployment generally is through tax reduction, establishment of job training programs, and encouragement of capital formation by tax policies and Government economy.

Spending, under this proposal, if unchecked, could well occur at a time when it might contribute to the inflationary pressures in our resurging economy, and the program should be reviewed as the situation changes.

Circumstances may indicate that some of this money might be better spent by encouraging private industry and promoting expansion of permanent jobs in the private sector. However, I believe a limited public works bill is necessary, and that this is the best bill we can get.

Mr. PEARSON. Mr. President, I would like, very briefly, to explain why I am shortly going to vote to sustain this veto. Hopefully, my explanation will serve to convince other Members to vote likewise, but I do not intend to take on the advocate's mantle.

First, this bill's ineffective provisions will not accomplish its laudatory purposes. But more importantly, the legislation represents an economically dangerous stimulant for future inflation.

The bill is ineffective because it is likely to create no more than 160,000 jobs, with no real assurance that even these will be permanent additions to the employment market. The administration has calculated that the effect of this $4 billion bill will be to reduce unemploy-

ment by six-hundredths percent. That reduction, any reduction, is valuable if it results in a net economic gain to our citizens. But this marginal and temporary additional reduction in already improving employment rates will be more than offset by adverse inflationary pressures. Pressures that will come at a crucial point in our economic recovery.

There will be almost no immediate impact on employment by enactment of this legislation. The delayed intended benefit will come when it will do more harm than good in terms of the Nation's needs late next year. It will refuel the all-consuming fires of inflation which the administration has so fiercely been fighting. At a time when inflation, not unemployment, will be the Nation's principal economic foe, this bill will pour an additional unwanted billion dollars into a market not yet ready for such stimulation.

The long-range budgetary implications of this law will prove to be economically damaging. The Federal deficit is expected to swell an additional $1½ billion next year alone, solely as a result of this legislation. Resulting drains on capital supplies will reduce the availability of private investment funds with concomitant reductions in the very employment force the bill ostensibly intends to bolster. In this way the bill is at best ineffective, and more likely it is counterproductive.

The alleged value of this legislation is that it will create a few jobs at $25,000 a piece. In terms of its impact in Kansas, I am unable to determine that it will have any lasting beneficial result. Nationwide, I am convinced it will, on balance, not supply any true solution to the unemployment problem in the full context of economic recovery.

Mr. President, for these reasons I will cast my vote, in the interest of America's economic security, to sustain the veto of the so-called Public Works Employment Act. But there is additional cause to vote in favor of this veto.

President Ford has done the unpopular thing. He has vetoed a bill, the sponsors of which claim, will offer humane attention to the unfortunate unemployed. At a time when political temptation would be easily accepted, the President has acted with intelligence and courage consistent with the long-range economic well-being of the Nation. This kind of fortitude and foresight deserves support.

Mr. THURMOND. Mr. President, for the second time this year the Senate is faced with the critical decision of whether or not to support President Ford's veto of a so-called Public Works Employment Act.

I thought the President was right last February in rejecting the first legislation of this nature, which called for the additional deficit spending of nearly $6.2 billion for largely ineffective, unwise, and highly inflationary purposes. The present version of this bill carries a price tag of nearly $4 billion but, in my carefully studied opinion, this cost reduction does not render the bill acceptable. I think President Ford made another wise and courageous decision to veto this bill, and I intend to vote to sustain his veto.

Yet, Mr. President, I want to make it clear that I do not consider this bill to be entirely without merit. Nor am I oblivious to the still serious problems of unemployment and community needs which it seeks to address. Were this legislation entirely aimed at putting people to work in the construction of needed public facilities, I would be more inclined to support it.

Unfortunately, the Senate did not heed the advice of the chairman and ranking minority member of its Public Works Committee in respect to the Muskie "countercyclical assistance" amendment. Acting very unwisely, in my opinion, the Senate added approximately $1.3 billion to the cost of this measure by approving the Muskie "countercyclical assistance" amendment. This provision makes no lasting contribution to local communities. It is primarily aimed at assisting big cities with financial problems that are most likely of their own making, although they may have been aggravated by the recent recession. In short, this particular provision is essentially an extension of the Federal Government bailout of New York City philosophy to other financially troubled areas. The inclusion of this most unwise section makes the entire bill suspect.

Mr. President, this bill also incorporates the Talmadge-Nunn formula for reallocating previously impounded and released wastewater treatment construction funds in a more equitable manner. This formula reflects the most recent EPA recommendations for allocating these funds to the States, according to a formula based on both population and needs.

I supported the Talmadge-Nunn amendment when it passed the Senate last summer by a more than 2-to-1 vote. However, rather than simply incorporating this more equitable distribution of already authorized funds, this bill authorizes an additional $700 million in new funds to insure that the 17 States which enjoyed an unfair advantage under the old, outdated formula, lose nothing under this new, more equitable allocation. Mr. President, I do not believe the deficit ridden Federal budget can stand this kind of unwarranted generosity.

Mr. President, when this bill is closely examined, I believe it shows itself to be an ineffective and extremely costly answer to the problem of unemployment. Even the accelerated public works portion of the legislation would not likely have the immediate job-creating impact that its proponents claim. The limited number of jobs produced would be largely temporary. Thus, to proclaim this bill to be a constructive solution to unemployment is highly misleading, because when the money is gone, the jobs will be also. In the meantime, the financing of these public works projects through increased Federal deficit spending threatens the continued economic recovery in the private sector, because of the capital drain, higher interest rates, and general inflation that would result.

Mr. President, Congress ought to show its concern for the financial problems of local governments by promptly enacting an extension of the revenue sharing program, with no hampering strings attached. Congress ought to constructively confront unemployment problems by encouraging balanced economic growth in the private sector, with particular emphasis on job-creating tax incentives. Congress ought to show a responsibility to all the American people by recognizing that more inflation benefits neither local governments, people with jobs, nor those without them.

S. 3201, despite its good intentions, is not consistent with responsible economic policies. Accordingly, I urge the Senate to sustain the President's veto.

Mr. DOMENICI. Mr. President, I will vote to override the President's veto of S. 3201, the Public Works Employment Act. I will vote to override the veto even though I have reservations about some aspects of the measure. I believe it will be the last opportunity for this Congress to pass a public works program and I believe there are many needed public works projects in areas of serious unemployment which can be undertaken.

One of my chief concerns is the potential impact of a long spend out of funds provided in this bill. The conference agreement removed the triggering mechanism on the public works programs which was included in the Senate version of the bill. The purpose of the trigger was to phase out the program as recovery progresses and to minimize any inflationary impact. I am hopeful that through the appropriations process and proper administration of the program we can control the spend out of funds, relating the level of activity to the needs of the economy. I know that many Members are concerned about the impact of expenditures under this bill on the rate of inflation. It will require careful attention and administration to insure that these projects are initiated quickly so that they will produce jobs now when they are needed.

This is an authorization bill. I am certain that appropriations will reflect the economic recovery and provide us a second means to gage the ultimate impact of the program. Also, I trust that funds will be targeted to those smaller communities of extreme need but which lack the resources to meet those needs. These areas can put the funds to use almost immediately and utilize idle resources.

However, despite these concerns, I believe the bill is needed. For example, serious unemployment exists today among unemployment in the construction trades is not as severe as the national rate, that the employment situation is becoming more serious as unemployed workers move into the State seeking jobs. Not only would communities benefit from the projects authorized by this legislation, but so will many of these unemployed workers.

I believe that many small communities can be greatly assisted with the funds in this bill for waste water treatment construction grants. These funds will be in addition to ongoing activities and projects in communities further down the State's list could be undertaken. Also, I believe that the countercyclical amend-

ment will provide funds for communities to maintain vital public services that are being eroded by continued fiscal difculties.

For these reasons and because I believe it is the last opportunity to enact a program of this kind in this Congress, I will vote to override the veto.

Mr. BEALL. Mr. President, I rise to urge my colleagues to override the President's veto of S. 3201, the Public Works Employment Act of 1976.

When S. 3201 was considered by the Congress, I voted against its passage. I did so because of what I regarded as serious deficiencies in the bill's approach. Specifically, I was concerned with the targeting provisions of the bill and when the jobs authorized by the measure would actually be created. On the latter point, I was concerned that the bill did not contain adequate safeguards to assure that the money would actually be expended when unemployment was at its highest and that the programs would be allowed to drag out and provide a stimulus at a time when the economy improved.

I am voting to override today for a very practical reason. That is, I believe that unless the Congress enacts this jobs bill, there may not be another chance and opportunity to continue the public works jobs program. I want to make it clear, Mr. President, that I have supported public works employment. As a matter of fact, I voted on July 29, 1975, for a public works employment bill which contained higher authorization levels than the present bill. I also voted on February 19 of this year to override the President's veto of that measure.

Mr. President, as a member of the Budget Committee, I supported the budget allocation for jobs, and this bill is within the limits established by the Budget Committee. It was the wisdom of some of the provisions and not the need of the unemployed nor the size of the allocation that led me to cast my earlier votes.

Mr. President, this represents the last best chance to get a public works employment measure and even with its serious deficiencies, it will be of benefit.

In addition, during the recess period, I have had an opportunity to discuss this bill with a number of elected officials and citizens.

Only this morning, for example, Mr. President, I heard that a number of Maryland school districts are ready to participate and use these funds in a constructive manner.

Finally, Mr. President, I have reached the decision I make today because of the fact that large numbers of Marylanders and Americans remain unemployed and need help.

Mr. KENNEDY. Mr. President, I rise to urge the Senate to vote to override the unwise and unproductive veto by the President of the Local Public Works Employment Act, a bill which means hundreds of thousands of jobs for the unemployed in Massachusetts and in the Nation.

Not only will this measure assure employment opportunities which are critical to reduce the current 7.5 percent unemployment rate across the Nation, but it will mean the construction of vital facilities in our cities and towns.

I have supported this measure from its inception and cosponsored the countercyclical revenue-sharing program which is an integral part of this bill.

It is unfortunate that we are forced once again to seek to enact this measure over the President's veto. Had the earlier bill been signed, men and women would be working now throughout the country providing vital public services and building schools, libraries, police, and fire facilities.

Both the Governor of Massachusetts and the mayor of Boston, as well as other local public officials in my State have written in support of the bill and in support of an override of the President's veto.

The bill itself provides some $2 billion for local public works projects and emphasizes the accelerated start of construction by requiring that work begin within 90 days of project approval.

Equally important in my view is the requirement that 70 percent of the funds be targeted to areas where unemployment is higher than the national average. This will assure that the funds will go where the need is greatest.

Massachusetts, for example, has an unemployment rate of some 8.4 percent and in the construction industry some 20 percent of our construction workers are idled. The level of employment in the construction indusrty is even 14 percent less than a year ago, demonstrating the critical need for stimulating this industry, which has been at the margin of the all too slow recovery from recession.

The bill also provides $1.25 billion in countercyclical grants to State and local governments for the maintenance of basic services during times of high unemployment. These funds are essential to permit local governments to continue to provide basic public services when, as a result of the recession, their revenues have declined and the demand for services have increased. This provision will mean $57.2 million for my own State, $19.1 million to the State government and $38.1 million to local communities.

I believe this bill is a critical part of the effort to achieve national economic recovery, and the opposition of the administration only reflects again its misreading of national priorities. The veto reflects an abdication of national leadership in the battle against continuing unacceptable levels of unemployment. That veto should be overridden.

Mr. BUCKLEY. Mr. President, I would like to offer a few remarks in explanation of my decision to vote to sustain the President's veto of S. 3201, the Public Works Employment Act of 1976. As my colleagues may recall, I was among those who voted to override a veto of the original version of this bill, H.R. 5247, which was sustained in the Senate on February 19. I supported the original bill because I was anxious to see enacted a new, and I believed, approach to helping States and local governments adjust to the economic realities of the recession we were experiencing at that time. I am referring to the so-called countercyclical revenue-sharing concept which was adopted as an amendment to the public works jobs bill last July 29.

My support for this concept is based upon the belief that the Federal Government should assume a certain responsibility to help offset the adverse effects of its own actions. In other words, it should not, in this instance, leave State and local governments holding the bag when the recession, induced by wrongheaded economic policies followed by the Federal Government, cut deeply into tax revenues while adding to public assistance obligations, especially as so many of those commitments have been mandated by the Federal Government in the first instance.

Therefore, I consider it a legitimate exercise of Federal Government authority to help relieve the financial burdens of the cities and municipalities whose economies had been most severely affected by the recession that the Federal Government had brought about. The formula for distribution in the original proposal focused Federal funds where they were most needed.

I supported the larger bill to which the countercyclical amendment was attached with some reluctance. While the countercyclical provision was based on a total outlay of an estimated $1.8 billion, the price tag for the entire package was some $6 billion, the balance going to public works projects. It has long been understood by most reputable economists that public works appropriations are an inefficient way to reduce unemployment, the stated objective of the parent bill. The administration's statement accompanying the President's veto message on S. 3201 convincingly describes why the public works approach will fail to create the number of jobs claimed by its proponents and will fail to make little, if any, contribution to the currently declining trend in unemployment.

Yet I did vote for the original bill because I found irresistable the fact that, for once, the formula for distribution of funds—in the countercyclical revenue-sharing program—was fair from the perspective of New York City and State, and might have created a precedent for other programs. I also believed that this bill was an appropriate alternative to a multibillion dollar public service jobs program. As my colleagues are aware, a goodly portion of the public service jobs funds are being devoted to maintaining on municipal payrolls employees who were or would have been furloughed because of fiscal problems created by the recession. It is precisely the function of the countercyclical program to anticipate and prevent such layoffs, and the consequent reduction in basic services such as police and fire protection or sanitation.

When the President's veto of the first public works bill was sustained, I had hoped that we might be able to salvage the countercyclical revenue-sharing concept by enacting it as separate legislation. Yet almost immediately the Democratic leadership proceeded to reconstruct an identical package, in spite of the flaws which the President identified, and in spite of the fact that the country was well on its way to economic recovery. I appreciate the problems still facing the

construction industry, but I emphatically believe that there are far more effective and far less inflationary means to resolve them. Because the Federal funds will have to be borrowed to implement this program, the availability of funds in the private sector will be diminished, funds that could be used to create more permanent jobs that would not require continued taxpayer support.

Perhaps most disappointing to me, however, was the abandonment, in all but name, of the countercyclical concept. While it is still called by the same name, the mechanism for distributing funds was significantly altered, all to the detriment of States like New York and its local governments. Instead of being targeted to areas of excessively high unemployment created by recession, the second generation countercyclical provision applies to a broader set of problems. And, instead of basing the formula on local tax effort, an index of how strapped a locality might already be, it has ended up as warmed over general revenue sharing. Finally, based on the contribution New York taxpayers make to the Federal Treasury, the bill we are considering today would cost New Yorkers more than they could hope to recover from the provisions of the legislation. At a time when New Yorkers, and others in the Northeast are more sensitive than ever to the unfairness in the distribution of a number of Federal programs, I find it very difficult to accept the restructuring of an otherwise sound concept in a way that would cost New Yorkers more than they will receive. Under these circumstances I believe the only responsible course is to vote to sustain the President's veto.

The PRESIDING OFFICER. The hour of 2 p.m. has arrived.

The question is, Shall the bill (S. 3201) pass, the objections of the President of the United States to the contrary notwithstanding? The yeas and nays are mandatory under the Constitution. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from North Carolina (Mr. MORGAN), is necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER), is necessarily absent.

I also announce that the Senator from Pennsylvania (Mr. HUGH SCOTT), is absent on official business.

The yeas and nays resulted—yeas 73, nays 24, as follows:

[Rollcall Vote No. 399 Leg.]

YEAS—73

Abourezk	Eagleton	Johnston
Allen	Eastland	Kennedy
Bayh	Fong	Leahy
Beall	Ford	Long
Bentsen	Glenn	Magnuson
Biden	Gravel	Mansfield
Brooke	Griffin	Mathias
Bumpers	Hart, Gary	McGee
Burdick	Hart, Philip A.	McGovern
Byrd, Robert C.	Hartke	McIntyre
Cannon	Haskell	Metcalf
Case	Hatfield	Mondale
Chiles	Hathaway	Montoya
Church	Hollings	Moss
Clark	Huddleston	Muskie
Cranston	Humphrey	Nelson
Culver	Inouye	Nunn
Domenici	Jackson	Packwood
Durkin	Javits	Pastore
Pell	Stafford	Talmadge
Percy	Stennis	Tunney
Randolph	Stevenson	Weicker
Ribicoff	Stone	Williams
Schweiker	Symington	
Sparkman	Taft	

NAYS—24

Baker	Fannin	Proxmire
Bartlett	Garn	Roth
Bellmon	Hansen	Scott, William L.
Brock	Helms	Stevens
Buckley	Hruska	Thurmond
Byrd, Harry F., Jr.	Laxalt	Tower
Curtis	McClellan	Young
Dole	McClure	
	Pearson	

NOT VOTING—3

Goldwater	Morgan	Scott, Hugh

The PRESIDING OFFICER. (Mr. DOMENICI). On this vote, the yeas are 73 and the nays are 24. Two-thirds of the Senators present and voting having voted in the affirmative, the bill, on reconsideration, is passed, the objections of the President of the United States to the contrary notwithstanding.

TAX REFORM ACT OF 1976

The PRESIDING OFFICER. Under the previous order, the hour of 2:15 p.m. having arrived, the Senate will now resume consideration of the unfinished business, H.R. 10612, which will be stated by title.

The second assistant legislative clerk read as follows:

A bill (H.R. 10612) to reform the tax laws of the United States.

The PRESIDING OFFICER. The pending question is an amendment proposed by the Senator from Indiana (Mr. HARTKE) to committee amendment No. 20.

The amendment to the committee amendment is as follows:

Sec. 1038. Limitations on foreign tax credit for income taxes paid in connection with foreign oil and gas extraction income.

(a) IN GENERAL.—Section 907 of subpart A of part III of subchapter N of chapter 1 (relating to foreign tax credit) is amended by striking out subsections (a), (b), and (c), renumbering subsections (d), (e), and (f) as (c), (d), and (e) and adding the following new subsections:

"(a) REDUCTION IN AMOUNT ALLOWED AS FOREIGN TAX UNDER SECTION 901.—In applying section 901, the amount of any income, war profits, and excess profits taxes paid or accrued (or deemed to have been paid) during the taxable years with respect to the foreign oil and gas extraction income from any country which would (but for this subsection) be taken into account for purposes of section 901 shall be reduced by the amount (if any) by which the amount of such taxes exceeds the product of—

"(1) the amount of the foreign oil and gas extraction income from that country for the taxable year multiplied by—

"(2) the percentage which is—

"(A) in taxable years ending in 1975, 110 percent of,

"(B) in taxable years ending in 1976, 105 percent of,

"(C) in taxable years ending after 1976, the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11.

"(b) FOREIGN INCOME DEFINITIONS AND SPECIAL RULES.—For the purposes of this section—

"(1) The term 'foreign oil and gas extraction income' means the taxable income derived from sources without the United States and its possessions from—

"(A) The extraction (by the taxpayer or any other person) or minerals from oil or gas wells, or

"(B) The sale or exchange of assets used by the taxpayer in the trade or business described in subparagraph (A).

"(2) DIVIDENDS, INTEREST, PARTNERSHIP, DISTRIBUTION, ETC.—The term 'foreign oil, and gas extraction income' includes—

"(A) dividends and interest from a foreign corporation in respect of which taxes are deemed paid by the taxpayer under section 902,

"(B) dividends from a domestic corporation which are treated under section 861(a)(2)(A) as income from sources without the United States,

"(C) amounts with respect to which taxes are deemed paid under section 960(a), and

"(D) the taxpayer's distributive share of the income of partnerships,

to the extent such dividends, interest, amounts, or distributive share is attributable to foreign oil and gas extraction income."

(b) DENIAL OF CREDIT FOR ROYALTY PAYMENTS.—

(1) IN GENERAL.—The text of section 903 (relating to definition of creditable taxes) is amended to read as follows:

"(a) IN GENERAL.—For purposes of this subpart and sections 164(a) and 275(a), the term 'income, war profits and excess profits taxes' means a tax paid in lieu of a tax on income, war profits, or excess profits otherwise generally imposed by any foreign country or by any foreign possession of the United States.

"(b) ROYALTIES.—

"(1) IN GENERAL.—For purposes of this subpart and sections 164(a) and 275(a), in the case of taxes paid or accrued to any foreign country with respect to income derived from the extraction, production, or refining of oil or gas in such country, the term 'income, war profits, and excess profits taxes' does not include any amount paid as a royalty.

"(2) DETERMINATION BY SECRETARY.—The Secretary shall determine, in accordance with the provisions of paragraph (3), with respect to payments made to any foreign country in connection with income from the extraction, production, or refining of oil or gas in such country, what portion (if any) of that payment constitutes the payment of a royalty.

"(3) BASIC RULES.—In the case of any foreign country which imposes an income, war profits, or excess profits tax on income from activities other than the extraction, production, or refining of oil, gas, or other natural resources in that country, any part of a payment made to that country as an income, war profits, or excess profits tax which is not reasonably similar (in terms of the rate of tax, or of the amount of tax paid for the income or profit involved) to the amount payable with respect to income or profits arising out of other activities, as determined by the Secretary, is considered to be a royalty payment. In the case of any other foreign country, any part of a payment made to that country as an income, war profits, or excess profits tax which is determined by the Secretary, on account of the manner in which it is determined, the rate or amount involved, or any other reason, to constitute the payment of a royalty is considered to be a royalty payment.".

(2) TREATMENT OF CARRYOVERS.—Section 904(f)(4) (relating to transitional rules for carrybacks and carryovers) is amended by adding at the end thereof the following new subparagraph:

"(C) CARRYOVERS TO YEARS BEGINNING AFTER DECEMBER 31, 1976.—

"(i) Whenever pre-1977 taxes are, under the provisions of subsection (d), deemed to be post-1976 taxes, the pre-1977 taxes shall

be redetermined in accordance with the provisions of section 901(e)(3) (relating to limitation of credit for foreign taxes on oil-related income) and section 903(b) (relating to royalties) as if those provisions applied to the taxable year in which the pre-1977 taxes were paid or accrued.

"(ii) For purposes of this subparagraph, the term 'pre-1977 taxes' means taxes paid or accrued to any foreign country or possession of the United States in any taxable year ending before January 1, 1977, and the term 'post-1976 taxes' means taxes paid or accrued to any foreign country or possession of the United States in any taxable year beginning after December 31, 1976.".

(c) EFFECTIVE DATE.—The amendments made by this Act apply with respect to taxable years ending after December 31, 1976.

Mr. HARTKE. Mr. President, I ask unanimous consent that the names of the Senator from Idaho (Mr. CHURCH) and the Senator from Delaware (Mr. BIDEN) be added as cosponsors of this measure.

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

Mr. JAVITS. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. HARTKE. I yield.

Mr. JAVITS. Mr. President, I ask unanimous consent that Ira Shepard and James O'Connell have the privilege of the floor during the consideration of this measure.

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

Mr. MANSFIELD. Mr. President, I was wondering if the distinguished chairman of the committee would give consideration to taking up the Hartke amendment, which is now pending, the revision of retirement income credit, and credit for child care expenses today and, if need be, tomorrow, and then have the bill go over until Monday because of the fact that hearings have been reopened and it is difficult for the committee and the chairman, especially, to keep two balls in the air at once.

Mr. LONG. Mr. President, I believe we can make more progress than that because, in response to inquiry about certain matters, we have held further hearings. I would like to vote on certain matters that come next in the bill, because even though we have taken further testimony on them, one of them is about a bill that has passed the Senate once already. I do not think anybody will change his mind on that. I want to take a poll of the committee.

On those that fall in title VIII, I am polling the committee and I do not think anybody will care to change his mind.

In title VIII, there is no suggestion of change. I was hoping we could dispose of titles VIII and IX in addition to the matters the majority leader has mentioned.

Mr. MANSFIELD. The Senator then is prepared to go ahead and hold hearings tomorrow and to carry on with the discussion of the bill on the floor also?

Mr. LONG. Yes. It seems to me that there are several items on which we are hearing additional testimony and if we get to those, I would suggest that we simply defer that and vote on it later and go on with the other things on which it is very clear that the Senators know what their position is. I think we can make a lot more progress on the bill than the Senator realizes.

Mr. MANSFIELD. That is all right. I wanted to raise the possibility, because I felt the chairman and his committee may have been over burdening themselves too much with hearings in the morning and coming here in the afternoon. I thought that perhaps the best way to face up to it would be to consider the Hartke amendment, and then the other two—revision of retirement income credit and credit for child care expenses—and then have the bill go over until Monday so that the chairman and the committee would not be rushed so much. If he desires to go ahead this way, it is fine.

Mr. LONG. I think that that is the best way.

Mr. JAVITS. Mr. President, will the Senator yield so we may be able to allocate our time?

Mr. MANSFIELD. Yes.

Mr. JAVITS. I have an amendment on this rather important issue in title VIII. I would like to ask the chairman whether or not he is going to proceed with the day care and other matters that the majority leader spoke of first, or is he expecting to go to title VIII first?

Mr. LONG. I should think that we could debate and ask the Senate to take its position with regard to the amendment the Senator has on title VIII. I know what the Senator's position is and I think he knows what mine is. It is not a new subject, really.

Mr. JAVITS. Fine.

Mr. LONG. I think we can dispose of it.

Mr. NELSON. Will the Senator yield? I should like to ask the chairman of the Committee on Finance a question.

Mr. MANSFIELD. Yes; I yield the floor to the Senator.

Mr. NELSON. I ask the chairman of the Committee on Finance, on some of those items that have been referred to by Senator MANSFIELD now, which may be in controversy or doubt one way or the other, is my understanding correct that the Senator does not intend to take those up before we complete the hearings?

Mr. LONG. Here is what I think we ought to vote on: The majority leader has suggested certain amendments that he has suggested we vote on; we passed through those titles yesterday. Some Senators were not aware of the fact that this matter was going to be considered.

I ask unanimous consent to have an amendment by Mr. INOUYE on foreign conventions considered to be in order.

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

Mr. LONG. We can dispose of the Hartke amendment, then we can vote on that; then we can vote on these amendments to these titles which we have already been through that the majority leader mentioned, that other Senators would like to offer.

With regard to title VIII on capital formation, section 802—we have had further testimony on that. I am undertaking to poll the committee on that, but I do not think anybody is going to change his position on it. I know I shall not and I do not think anybody else is going to.

I do not see why we cannot proceed to vote on sections 803, extensions of foreign tax credit; 804, employees stock ownership plan; 805, investment credit in the case of movie and television films; and 806, investment credit in the case of certain ships. That happens to be something that we have already passed and sent to the House on a previous occasion.

Also, on section 807, the 8 years' carryover.

Mr. CURTIS. Will the distinguished chairman yield?

Mr. LONG. On title IX, there is no real controversy.

Mr. CURTIS. Will the Senator yield?

Mr. LONG. Yes.

Mr. CURTIS. I certainly approve of the position of our chairman that we move ahead on this bill. It is very important that we move with dispatch. It is an important matter to consider.

Is my understanding correct that unanimous consent has been granted or is being sought to take up some amendments in reference to title V, that technically has already gone by?

Mr. LONG. If it has not been, I am going to ask for it.

Mr. CURTIS. I wish to include in that request that an amendment that may be offered by the distinguished Senator from Wyoming (Mr. HANSEN), relating to a military matter, be included in the unanimous-consent request.

Mr. LONG. I say to the Senator, may we simply take that amendment at the end of the bill. I think I do not know of any objection to letting Senators offer their amendments when they were not aware that the section was being voted on, which they meant to amend at that time.

Mr. CURTIS. Fine.

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

Mr. LONG. Yes.

Mr. JAVITS. The Senate rather skipped over title VI quickly yesterday and I thought I would bring up an amendment on VI that will not take long. Will the Senator bear that in mind for me?

Mr. LONG. Yes, I would like to know what the amendment will be.

Mr. JAVITS. It is the artists amendment.

Mr. LONG. Yes, whatsoever the Senate wishes to do about it, we shall do.

Mr. HATHAWAY. Will the Senator yield?

Mr. LONG. Yes.

Mr. HATHAWAY. I have three amendments to title V, which was passed over yesterday, just to change deductions to credits. It is in keeping with our earlier agreement to do it in order, rather than wait until the end of the bill.

Mr. LONG. Yes sir, I would like to do that. May I suggest that we do these amendment by amendment? We will take the Hartke amendment next and vote on that. Then if the Senator from Massachusetts wants to do his, we will take the Kennedy amendment.

Mr. JAVITS. Could we go to mine after Kennedy?

Mr. KENNEDY. Will the Senator yield for a question?

Mr. LONG. May I suggest that one of

our staff members here simply contact the Senators and line the amendments up in the order in which they ought to be and we shall take them in order?

Mr. KENNEDY. Would the Senator be willing to yield for a point of information?

Mr. LONG. Surely.

Mr. KENNEDY. The chairman of the Committee on Finance was extremely accommodating when some of us spoke to him about the initial proposal, the reform proposal which was introduced by the Senator from Wisconsin (Mr. NELSON). He indicated that, after we had considered the first provisions of the committee bill in terms of tax shelters and the minimum tax, we would go onto our reform package. Part of that package was the foreign tax credit. Those of us who make up this group—we thought that after the foreign tax credit, we would go to the improved tax credit for the elderly, which is section 504. In terms of our particular interest, that would have completed action on the reform package.

After section 504, there was the provision, for child care expenses, which the Senator from Maine and I were interested in. All of us were prepared to follow the agreed procedure, that we would go seriatim through the package.

After we finished our vote on the recommittal motion yesterday, it was our expectation to go on to the foreign tax credit for oil.

Now we are in the position where we would just like to carry out what was previously agreed to. If we are not permitted to do that, then obviously we can offer those amendments in any other section and preserve our rights.

All we would really like to do, at least from my point of view and, in my conversation with the other members of the group, is to follow what I think was agreed upon by the floor manager of the bill and understood by the other members. But we realize where we are in terms of the rules, and we are prepared to follow the Senator's wishes. But I would hope that we could finish the amendment of the Senator from Indiana which, I understand, has been agreed to, then proceed to the retirement income credit, which I will propose; and then to the credit for child care expenses, which will be proposed by myself and the Senator from Maine. It seems to me that would be the way to proceed. But we could also offer those in other sections, in whatever way is agreed upon. But, it seems to me, it would be consistent with our previous understanding and logical to complete the package now.

Finally, I did mention to the majority leader that I thought this would keep us busy for some time, but that I hoped if we do reach the special interest provisions, which begin at section 802, that given the fact that the Finance Committee is having hearings yesterday, today, and tomorrow, we could deter action until the results of the hearings are clear. We want to know what Treasury and IRS and the Finance Committee will do, before we vote on these provisions on the floor. The Senator has stated the Finance Committee hearings probably will not change any votes. But I would like to see, as a matter of record what the Treasury has stated on these proposals and what the IRS has stated on them. These views could be of some use to the Members of the Senate during the course of the floor debate. But I am also prepared to offer amendments on those particular provisions, such as section 802, which is the returnable investment credit. I know my colleague, the Senator from New York, is ready on section 804, the ESOP provision. We will be glad to do what the leader and the chairman of the Finance Committee want to do. We are prepared to debate and to discuss these matters, and we are glad to expedite the work of the Senate.

Mr. LONG. Mr. President, one of the great Senators of this body who, I think, we could all agree, was a great reformer by anyone's standards, the great former Senator from Illinois, Mr. Douglas, used to say, he used to refer us to this fine old Christian hymn, "Lead on Kindly Light"——

Mr. KENNEDY. I know the point.

Mr. LONG. "I ask not to see the distant shore, one step is enough for me," and as far as I am concerned, may I say to the Senator, I am willing to do it any one of the several ways the Senator has suggested here.

Now, why do we not agree all right, we will take the Hartke amendment next, and then we will take whichever one the Senator wants to take next, let him just name it.

Mr. KENNEDY. If the Senator will yield, Mr. President, upon the completion of the Hartke amendment, we would have the retirement tax credit for the elderly.

Mr. LONG. Let us take that one next.

Mr. KENNEDY. Then if we could just follow on as the Senate would normally follow, we would preserve our rights. That would be the way I would suggest up to the sections on the special interests in title VIII. Then I would sincerely hope, although I will abide by the desire of the leadership and the chairman of the committee, that when we begin the special interest provisions on which the Finance Committee is holding hearings, we could wait for the Treasury Department recommendations and the IRS recommendations and the committee's action, which we will all have at the first of the week. But, if not, I am prepared to offer amendments in those areas now.

Mr. LONG. So far as that is concerned we can go to whatever order the Senators would like. I am willing to accommodate everybody. All I suggest is there is enough work in this bill for us to move ahead on and vote on issues that must be voted on. As far as I am concerned, there are only about four things in this bill I do not agree with, and so we can move, and there is so much in the bill we ought to be voting on, much of which, some of which, came over from the House, and that, although most of the Senate agrees with it, some individual Senators probably will not, and so I would just hope we could dispose of as much of it as we can.

That is the sort of procedure we use in the Finance Committee. If we cannot decide one thing right now, we decide as much as we can, and then after awhile the whole thing has been decided. So if we go along that way, I think we will all make good progress, and I would not be surprised but what we will find ourselves agreeing on some things for a change, which will be fine.

Mr. MANSFIELD. Mr. President, if the Senator will yield, the purpose was, of course, not to try to overburden the Finance Committee, but to try to get the necessary reports from the Treasury Department and the other agencies affected and, in that way, to complete section 504 on page 191, section 505 on page 196, as well as the Hartke amendment now pending, and then to lay the pending business aside until Monday, clean up other parts of the calendar. But the chairman of the committee indicates he would prefer to go ahead, and I see no way out of it.

Mr. KENNEDY. If the leader will yield, Mr. President, if we are going to proceed, perhaps we can go into the areas where the Finance Committee is not having hearings, such as the administrative provisions of title XII, where a number of us have recommendations. We can continue to make progress that way.

Mr. LONG. Fine.

Mr. KENNEDY. With the option to come back to the other provision.

Mr. MANSFIELD. Would the Senator agree to that?

Mr. LONG. Yes.

Mr. MANSFIELD. Fine.

Mr. HASKELL. Mr. President, if the Senator will yield, does the Senator intend to have a committee meeting on the various provisions that are now being subject to hearing prior to bringing them up on the floor?

Mr. LONG. Yes, at 10 o'clock Friday.

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

Mr. LONG. But meanwhile though I would hope we could just move ahead—There is so much in this bill and, frankly, you know, as much as we quarrel about some of these things, about who has the better way of doing this, I cannot help but observe that by the time we get through differing as to what the approach ought to be, and then we finally vote on the title, some of these titles are being carried by an almost unanimous vote, and while some would prefer to do it one way and some the other, they all agree we ought to do something about it. So I would hope we could just move ahead and do as much of it as we can because I hope that we will complete this bill before our Republican friends have to go to the Republican Convention. There is a distinct possibility that if we just keep on voting—that we can complete this.

Mr. HASKELL. I am all for it, may I say to the Senator. I just wanted to ascertain whether we would have a committee meeting on the provisions that are subject to hearing before we vote on the floor.

Mr. LONG. That is right. I do not know whom it helps or whom it hurts if we complete action on the floor before the Republican Convention. But I feel that if we do not, some of our Republican friends are going to treat us to some

nationwide criticism because we have not voted on it, and I hope we can do it, and the best way to do it is to vote on as many issues as we can in whatever manner it pleases the Senate.

Mr. JAVITS. Mr. President, will the Senator yield? So that the Members understand, do I understand that we are going through title V?

Mr. LONG. We will take care of the amendment which the Senator's wife has been working on so hard one way or another.

Mr. JAVITS. I am not talking about mine, but just to dispose of our time. We are going to deal now with the Kennedy group's amendment to title V; is that right?

Mr. LONG. Yes; we will take that.

Mr. JAVITS. I thank the Senator.

Mr. LONG. First, we will take the Hartke amendment, because it is pending, and then we will turn to that.

Mr. NELSON. Mr. President, will the Senator yield for a question?

Mr. LONG. Yes.

Mr. NELSON. Yesterday at the hearings I did not have an opportunity to leaf all the way through the presentation of the Commissioner of the Internal Revenue Service. My inquiry is if that particular sheaf of paper, which was presented by the Commissioner yesterday, covers all of the amendments that we are now having hearings on before the Finance Committee.

Mr. LONG. The Treasury, not the Commissioner, has submited a position paper covering all amendments so we will have the Treasury position on all of them.

Now, I believe the Treasury, having reversed itself on some of these provisions, will proceed to reverse itself again when it knows certain additional information. That may be or may not be. We will just have to see.

But that is one good thing about holding hearings, when someone is misinformed and someone points out he is in error, if he is the right kind of person he will admit he made a mistake, and that will change his view.

Mr. NELSON. As the chairman knows, the Treasury this morning conceded they had changed their position on one of the amendments, and also, I think, with the amendment recommended by the committee.

I raise this point, however, because I have not had a chance, even as a member of the committee, since yesterday to look through the Treasurer's report on all these amendments.

I think it would be helpful if the Members here all knew, or had on their desk the Treasury report, and on those where they reversed themseves the chairman could explain it on the floor.

My next point is that I am happy to proceed however the Senator wishes to proceed on this. However, I noticed in the hearings this morning two amendments which I think I continue to favor, but questions were raised about them that I have not yet had an opportunity to pursue.

My only concern would be if those amendments popped up now, having just discovered there is criticism of them in the way they are worded, I do not know whether I would be against them in their present form.

My inquiry is, if one of those that is controversial came up is the chairman prepared to lay it aside and move on?

Mr. LONG. Yes.

Mr. NELSON. May I make one more point, because I may forget it later on.

I intend to offer an amendment when we are through here, a modification of the DISC amendment.

I want the chairman to know that I will offer another DISC amendment and agree to a time limitation.

It is my understanding that there will be another modification of the minimum tax amendment which will probably be offered.

So the chairman of the committee should know it.

Mr. LONG. I hope those who want to offer it will get their amendment prepared and let us take a look in advance so we have a chance to prepare our arguments, just as they do.

May I say, Mr. President, if we can find the conference report on the child care conference, I will offer that as soon as I can do so.

Mr. GRIFFIN. Will the Senator yield to me so I can address an inquiry to the majority leader?

Mr. LONG. Yes.

Mr. GRIFFIN. Perhaps in view of this colloquy, he can give us some idea what the revised program will be now for the rest of the week.

Mr. MANSFIELD. I am delighted to answer the query of the acting Republican leader.

LEGISLATIVE PROGRAM

Mr. MANSFIELD. The Senate is aware the leadership did try to reach an agreement by means of which the pending business would be laid aside after today and return to it on Monday so it would not interfere with the hearings which the distinguished chairman of the committee has reopened.

Evidently, on the basis of the information available, we will go ahead every day on the tax bill in the afternoon.

For the information of the Senate then, I should like to outline the schedule for the next few days.

Following the vote on the override of the President's veto of S. 3201, the public works employment bill, the Senate has returned to consideration of the unfinished business, H.R. 10612, the tax reform bill. There will be votes on that bill during the remainder of this day until a reasonable hour this evening.

The Senate will convene at 9:30 a.m. on tomorrow.

ORDER FOR ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

At this time, Mr. President, I ask unanimous consent that when the Senate adjourns tonight it stand in adjournment until the hour of 9:30 tomorrow morning.

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

Mr. MANSFIELD. At approximately 10 o'clock, the Senate will proceed to the consideration of LEAA. At 2 p.m. tomorrow, approximately, that bill will be laid aside temporarily, if not completed, and the Senate will return to consideration of the tax bill.

There will be votes during the day tomorrow on the two bills, going until a reasonable hour in the evening.

On Friday morning, after routine morning business, the Senate will return to consideration of the LEAA, if it is not completed—I anticipate it may be well completed on Thursday—and then take up the Clean Air Act on Firday.

The Clean Air Act will be considered until 2 p.m., when we will return to consideration of the tax bill.

There will be votes on those two bills during the day.

We will continue consideration of the clean air bill until disposed of before turning then to Calendar No. 915, H.R. 8603, the postal reform bill.

We will continue on this two-track system, if possible, until disposition of the tax bill.

I remind the Senate that we have only 15 working days left after today until we recess for the Republican Convention, with a number of major proposals to dispose of. I trust we will make every effort to complete the agenda as scheduled. We have made good progress. I hope it continues.

I would not foreclose the possibility of Saturday meetings between now and the time off for the Republican Convention.

Mr. GRIFFIN. I thank the majority leader.

TAX REFORM ACT OF 1976

The Senate continued with the consideration of the bill (H.R. 10612) to reform the tax laws of the United States.

Mr. BUMPERS. Will the floor manager yield for a clarification of a question in my mind?

Mr. LONG. Yes.

Mr. BUMPERS. I have two amendments, one to title VIII and one to title X. I understand when we quit last night that title VIII was the pending business, and the Senator from Indiana asked that that be set aside until he could present the amendment which he is, apparently, presenting here today.

My question is this: I understood the Senator from Massachusetts suggested all these special interest amendments be postponed until at least Monday. Is that correct?

Mr. KENNEDY. The Senator is correct.

Starting at title VIII. It seems to me we have a good deal that can be done—titles V and VI, and also in title VII, the administrative provisions. Then, hopefully, when the Finance Committee has completed its 3 days of hearings, the members can vote and we can have a chance to examine the Treasury Department recommendations, and we would come back to them on the floor.

I think there is more than enough work in the other provisions to keep us busy. But that is what I had suggested.

I think the chairman indicated, "Let's move ahead and see what progress we can make."

That seems to be satisfactory. But I still feel we would be much better off deferring action on this.

Mr. BUMPERS. I have no quarrel as long as we all understand it.

There was a unanimous-consent agreement entered into last night before we left that as soon as the Hartke amendment was disposed of we would return to title VIII. That is, the committee amendment to title VIII. Has a subsequent unanimous-consent agreement been entered into which vitiates that?

Mr. KENNEDY. No. I think the floor manager of the bill is prepared to make one.

I would add that if it is not accepted, of course, our rights are preserved, since we can offer amendments to other parts of the bill. So our rights are going to be preserved.

But it does seem, as the Senator has made the point, to make more sense to follow what was previously agreed to.

Mr. BUMPERS. Does the floor manager agree with the comment of the Senator from Massachusetts?

Mr. LONG. Yes.

Can the Senator tell me what section of title VIII he has in mind offering an amendment to?

Mr. BUMPERS. Section 806.

Mr. LONG. Section 806 is one of the sections on which further testimony has been taken.

Incidentally, that is a bill which has passed the Senate once already. We have passed it.

Mr. BUMPERS. I understand.

Mr. LONG. It came from the Commerce Committee.

But in view of the fact that we have taken further testimony on it, I really think we ought to respect any request, that we defer action on that until the committee, having taken further testimony, has a chance to vote again on it.

That is fine with me. We can go ahead and vote on it later on. So, as far as I am concerned, we can do it either way.

But I would suggest we defer action on section 806 until at least Friday and the committee can vote on that Friday.

Mr. BUMPERS. I have one additional question I would like to address as a parliamentary inquiry to the Chair.

The PRESIDING OFFICER. The Senator will state it.

Mr. BUMPERS. Yesterday afternoon we were moving quickly in passing committee amendments. Unless some of us stayed here to guard the floor and protect our rights, this can and often does happen. I do not mean to say there is anything wrong with it, it is just that we have to be very zealous in guarding our rights.

My question is: If these committee amendments are adopted, in the absence of a unanimous-consent agreement to the contrary, does that eliminate our right to introduce an amendment to an agreed-to committee amendment?

The PRESIDING OFFICER. Yes, but if the committee amendment were just an insert, as opposed to a strike and insert, the matter inserted cannot be amended, but the original House language can be.

Mr. BUMPERS. That would mean that perfecting amendments would still be in order, then; is that correct?

The PRESIDING OFFICER. To the House language, not to the committee language. That is correct.

Mr. BUMPERS. I thank the Chair.

Mr. LONG. I am happy to say to the distinguished Senator from Arkansas that so far, and I hope it will stay that way, we are accommodating one another when we do it by unanimous consent.

Mr. BUMPERS. I want the Senator to know I am not protesting. I just want to know where we are going. The majority leader and the manager have outlined it pretty well. I am satisfied with it.

Mr. LONG. I am not sure what the Senator's amendment is but I think it has to do with the shipping amendment. I would be happy to help assure the Senator he will be protected when he offers his amendment.

Mr. BUMPERS. I thank the Senator.

Mr. HARTKE. Mr. President, are we ready to proceed with the amendment?

The PRESIDING OFFICER. The amendment is before the Senate.

Mr. CURTIS. Will the Senator yield?

Mr. HARTKE. I will be glad to yield.

Mr. CURTIS. It is my understanding that last night unanimous consent was asked to take up this amendment and my rights were reserved. I have had the opportunity to look into the amendment. I am not for the amendment but I shall not object to the procedure adopted.

Mr. HARTKE. I did that very specifically with the understanding that the Senator from Nebraska did not want to take it up then.

Mr. CURTIS. I have no objection to taking it up at this time.

Mr. HARTKE. Fine.

Mr. President, this is amendment No. 2043, a star print thereof. I have discussed this matter not alone with one of the chief architects in this field of foreign tax credit, Senator CHURCH, but also with the chairman of the committee. I could go into great detail, but quite honestly it is an extension of the amendment which was passed last year and then the modification of that bill which was passed by the Senate and adopted by the conference committee which changed the foreign tax credit from being unlimited and limited down to basically the 50 percent.

What this does was explained in the Finance Committee this morning. It is to change the 50 percent and bring it back to 48 percent. There was a discussion of another amendment which dealt with individuals. Mr. Nolan was there this morning. He was formerly with the Treasury. As he explained at that time to the committee and for the information of the committee, what this really does is places the individual and the corporation on the same basis. That is, that on the foreign tax credit there will be an allowance up to 48 percent. It applies only to oil and gas. It is not the original amendment which I submitted in the committee, which would have changed the credit to a deduction. That was the amendment which passed the Senate last year.

If I may have the attention of the floor manager, I would be glad to go through this, but I am prepared to submit my statement for the record rather than to go into lengthy debate.

Mr. LONG. Mr. President, I do not plan to oppose the amendment. I personally think I will probably vote for the amendment. The Senator did not offer the amendment in the committee. I believe he offered some amendment which was far more sweeping than this.

Mr. HARTKE. I have talked to Senator PACKWOOD who opposed the deferral amendment. He does not intend to oppose it either. As a matter of fact, I believe I understand he intends to support this amendment.

I did not offer this amendment in committee. The amendment I offered in committee would have changed the tax credit to a tax deduction. That was the measure passed last year in the Senate. That amendment was defeated in the committee. This amendment, therefore, is not as far reaching as the other proposition.

I might say that this amendment does preserve the general proposition which the chairman has enunciated a number of times in committee. That is, among equal sovereigns the same type of a principle applies. That is exactly what is preserved in this amendment. The fact is it only changes the law insofar as it reduces the present allowance for tax credit up to 50 percent down to the corporate tax rate of 48 percent, thereby providing for complete tax equity.

Mr. LONG. I am going to vote for the amendment. I want to make clear that this amendment, from the point of view of those who are going to pay an additional tax, is subject to the same criticism as those who would criticize some of the amendments that were adopted at the close of the committee session, because hearings had not been held on them.

I know of no reason why we should not do this. I am going to vote for it. But I think that we might understand that those who might complain about it will have the opportunity also to say they did not have the opportunity to be heard. My reaction is that if that is the case, they can come and protest and someone can either offer an amendment subsequently or else it can be considered in conference.

Mr. HARTKE. Mr. President, in light of that situation, I will proceed with my statement concerning the explanation of this amendment.

FOREIGN TAX CREDIT TO 48 PERCENT FOR OIL AND GAS INDUSTRIES AMENDMENT

Mr. President, the foreign tax credit has been enshrined in our tax code. Its function is twofold. One is to assure that corporate profits are not double taxed and the other is to demonstrate our respect for the right of other sovereign nations to impose taxes on American businesses operating within their jurisdiction. My view, as the Members well know, is that this concept needs to be rethought in the context of current economic realities. However, I concede at this point, that the foreign tax credit has become something of a sacred cow. But this sacred cow is being milked to bloat the corporate profits of oil and gas companies by ingeniously manipulating its more subtle provisions.

Last year, in the Tax Reduction Act of 1975, some headway was made toward the goal of closing these loopholes which serve no interest but those of the corporations. But the loopholes that remain are still substantial and cannot be justified on any substantive grounds. The amendment I am offering seeks to tighten these controls by reducing to 48 percent, the maximum foreign tax credit allowable, to oil and gas companies. It will also tighten the procedures under which the credit is computed.

Extractive industries—and the oil industry expecially—have most abused the foreign tax credit. The idea behind the foreign tax credit is straightforward—the U.S. Government ought not to "double" tax the earnings of American companies operating abroad. To implement this objective, our Government allows a credit for all foreign taxes paid to be applied against taxes owed the United States. If the foreign government taxes at a rate lower than our own, the Treasury collects the difference. If the foreign country taxes at a rate higher than our own, we allow the company to do one of two things. Either it can carryback 2 years or forward 5 this "excess" credit, or it can apply it to the operation of other subsidiaries in countries where there is a U.S. tax liability because the rate of taxation is lower than our own.

It is in the area of excess credits that oil and gas companies have been able to take unfair advantage of the tax laws. These companies face a unique set of circumstances. Every business has certain costs associated with it which typically include labor and capital. But extractive businesses have another factor of production which is the cost of the mineral being extracted. The owners of minerals, like oil or bauxite, do not simply allow American firms to take their resources without payment. The payment is most often referred to as a "royalty."

From the point of view of a company, a royalty payment is a payment to a factor of production like labor or capital. Most extractive industries operating abroad find that these resources are owned by the national government of that country. And it is precisely because the owner of the minerals is a government and not a private person that the occasion for manipulating American tax law arises.

Where the owner of the minerals is a foreign government, there are two distinct sets of transactions that occur between the company and the government. Conceptually, these transactions are distinct, but in practice they are often blurred.

The first transaction is the payment of a royalty by the company to the government. Typically, this involves a particular amount for each unit of mineral extracted—so many dollars for a barrel of oil, or so many dollars for a ton of bauxite. This transaction is of a purely business nature as it involves the exchange of property.

The second type of transaction is substantially different. It is a tax transaction. Every sovereign government has the right to tax any person or persons operating within its jurisdiction, regardless of nationality, unless this right is freely relinquished, as in the case of some tax treaties. Therefore extractive industries operating abroad are taxed by the foreign sovereign as a condition of doing business there. It is this tax transaction to which the principle of the foreign tax credit applies.

Because these two separate transactions—the tax transaction and the royalty transaction—occur between the same entities in extractive industries where the government is the owner of the mineral resource, it is possible to confuse the two. The possibility of confusion increases when, for whatever reason, the foreign government adopts procedural formulas which intentionally blur the distinction. And this, Mr. President, is precisely what has occurred.

As a courtesy to foreign companies, many of these governments have seen fit to eradicate the distinctiveness of the two transactions by subsuming them both under the appellation tax. But a rose by any other name, Mr. President, is still a rose. So it is with royalty payment. The fact that a foreign government chooses to call a royalty payment a tax does not change the reality. What it does is make it more complicated for our Government to differentiate between the two, and it provides the occasion for widespread abuse by the companies. The intent of our tax code, which is to prevent double taxation, remains intact.

The melding by these foreign governments of royalty payments and taxes gives our companies a very high corporate tax rate on paper. It is my understanding that at present the corporate tax rate in most of the oil producing countries averages about 67 percent. To allow the 19 percentage points differential as an excess tax credit is a fraud on the American taxpayer. It is nothing more or less than a public subsidy to corporations whose holdings and profits are already astronomical.

The Congress recognized this last year and placed major restrictions on the abuse. Those changes did not go far enough, and the abuse continues. In the conference between House and Senate, a compromise formula was agreed upon. Under it, oil companies were to be allowed to claim 4.8-percent excess credits in 1975; 2.4 percent in 1976; and 2 percent beginning in 1977 and thereafter. In other words, the aggregate foreign tax credit that could be claimed in one country by an oil company was to be phased down to 50 percent.

Other restrictions limiting the types of operations that the excess profits can shelter were also enacted. The key provision is one which limits sheltering to "oil-related income." However, a proviso was also included to allow this to include shipping. Thus, we sanctified the practice of using royalty payments paid to the OPEC countries to shelter shipping operations organized in tax haven countries like Liberia and Panama. H.R. 10612 further expands the definition of "oil-related income" to include interest paid to the U.S. parent by a branch company.

I applaud Congress for its actions last year. But now, it is time to complete the task we began. I doubt if any of the Members of Congress really intended to continue tax loopholes that work to the benefit of these vast and powerful multinational corporations. They are in no need of Government subsidy. They are extremely viable and extremely profitable enterprises. They ought to pay their fair share of American taxes, just as the family of four which makes $20,000 a year does. That family pays about 13 percent of its income in taxes; Exxon, in 1972, paid only 6.5 percent on its total earnings. Other oil companies paid even less.

The amendment under consideration would reduce the total allowable credit in any country for an oil or gas company 48 percent—that is, the rate of U.S. corporate taxes. This would end the problem of excess credits by insuring that there would be no excess credits. The question of what kinds of income to allow the credits to shelter would disappear. The amendment would also tighten the procedures under which taxes and royalties are differentiated.

Revenue estimates for this amendment vary considerably. A somewhat conservative but realistic figure is $60 million per year in increased taxes to the U.S. Government. But the revenue effect is secondary to the principle of equity that is at stake, and to the effects on investment in the American economy. The excess credit for the oil companies is a positive incentive for those companies to invest their foreign earnings abroad, whether it be in shipping or refining or some other activity. Every new dollar invested in the United States will help employ more of our citizens and to increase the tax base. Every new dollar of investment will be an investment in America's continued future as an industrial nation.

I commend this amendment to my colleagues, and hope they will be able to support it.

MULTINATIONAL OIL CORPORATIONS AND FOREIGN TAX CREDITS: THE GREAT TREASURY RAID OF 1976

Mr. CHURCH. Mr. President, Revenue Ruling dated April 8, 1976, the Internal Revenue Service disallowed as foreign income taxes creditable against U.S. tax certain payments made by major oil companies to the Government of Indonesia. By press release dated July 14, 1976, the Service further elaborated on this ruling. It held that in order to be creditable against U.S. taxes, the oil companies must affirmatively demonstrate that payments made to oil producing exporting countries are genuine income taxes within the meaning of U.S. law. Under the criteria set forth in the press release, it is highly doubtful that payments to countries which constitute the cartel of oil producing exporting countries—OPEC—can qualify for creditability status. The result could be billions—not millions—of dollars of added revenues for the U.S. Treasury.

However, sections 1035 (e) and (f) of the bill reported by the Finance Committee can be interpreted as evidencing a congressional intent to override the IRS rulings and preserve the status quo under which such payments have been allowed as creditable foreign income

taxes. Moreover, the oil companies are seeking to persuade the IRS to recognize payments to the OPEC countries as payments made "in lieu" of income taxes under section 903 of the Code and, therefore, entitled to be creditable against U.S. tax. Section 903 has never previously been invoked for this purpose. It was enacted in 1942 for entirely different reasons. There is no justification for the companies position.

If the bill is enacted in its present form, it will permit the continuation of a flagrant raid on the U.S. Treasury. In order to block this raid, I will support the amendment offered by the distinguished Senator from Indiana (Mr. HARTKE), amending section 903 of the Code to make it clear that royalty payments are not to be deemed payments "in lieu" of income taxes within the meaning of that section and setting a maximum allowable limit of foreign tax credits equivalent to the U.S. corporate income tax rate. At the appropriate time, I may introduce amendments to the bill reported by the Finance Committee striking sections 1035 (e) and (f).

The issues are sufficiently important that a full discussion is in order. We start with the basic fact that these oil companies have accumulated so many excess foreign tax credits that they pay no tax to the U.S. Government on their foreign source income derived from oil and gas extraction activities. Indeed, they hardly pay any tax at all to the U.S. Government. On average, for the past 5 years, the five major American-based multinational oil corporations—Exxon, Gulf, Mobil, Texaco, and Standard Oil of California—SOCAL—paid between 1.6 and 6 percent of their total earnings in taxes to the U.S. Government. In contrast, the average rate of tax for corporations was 34.9 percent in 1974.

When I agreed to speak in support of this amendment, I did so with considerable trepidation, for a discussion of this international oil pricing and taxes reminds me of nothing so much as a Mad Hatter's tea party in which nothing is what it appears to be: Royalties are called income taxes, posted prices are not real but fictitious, subsidiary corporations are created not for profit but to lose money—in perpetuity.

But the story is really not all that complicated so long as we keep our attention focused on certain basic facts. A foreign tax credit provision was first enacted in the Revenue Act of 1918. Its purpose was to protect U.S. corporations against so-called double taxation of their foreign income: To insure, for example, that a U.S. corporation would not have to pay both French and U.S. income taxes on income earned in France. From the beginning it was always intended to have a very limited application. With a few irrelevant exceptions, it was intended to apply only to income taxes—not to excise taxes, tariffs, or any form of royalty.

What is at issue here is not the propriety of the provision itself, but the impropriety of its present application to the international oil industry. That application first became an issue in 1950, when the Saudi Arabian Government was considering imposing an income tax on the operations of the Arabian-American Oil Co.—Aramco—which was then owned by Exxon, Mobil, Texaco, and Socal. Aramco had a provision in its concession agreement with Saudi Arabia which exempted it from such taxation. Nevertheless, the Aramco partners brought the matter to the attention of the State Department, which raised the matter in the National Security Council. The Council determined that Aramco's acquiescence in the tax would be in the U.S. national interest, since it would funnel money to the poverty-ridden, but firmly anti-Communist Government of Saudi Arabia.

By having Aramco accept the new tax, the administration could provide American economic assistance to Saudi Arabia without having to ask Congress for funds; by then permitting Aramco to credit fully the Saudi "tax" against taxes owed the United States, the U.S. Treasury and not the company would bear the financial burden of this aid. The mechanism used to reach this decision was entirely within the executive branch. Congress had no opportunity to participate, nor was the public apprised. In the words of Ambassador George McGhee, Assistant Secretary of State for Near Eastern Affairs during this period:

> As I understand it, the (State) Department, through the National Security Council, made known its views on the overall political situation, and in the Council the U.S. policy was put together which led the Treasury Department to make the tax credit concession.[1]

That decision permitted Aramco to receive a tax ruling allowing the companies that owned Aramco to credit tax payments made to the Saudi Arabian Government against their U.S. income tax liability. Shortly thereafter, this tax ruling was applied to all U.S. oil companies holding concessions overseas.

Indeed, in 1967, the attorney for the five American majors, John J. McCloy, reminded Secretary of State Dean Rusk of the foreign policy rationale behind this decision. McCloy told Rusk that an IRS audit of the tax returns of the companies might damage the American national interest:

> The present system of providing substantial revenues to the oil producing countries of the Middle East by means of a combination of royalties and of local income taxes on the producing companies (creditable under U.S. tax law) was recommended to the oil companies and to the foreign governments involved by the Department of State and the Treasury Department.

McCloy continued:

> These departments recognized that it was in the national interest of the United States to keep such nations stable and friendly to the United States and thereby ensure American access to the vast oil reserves there located. If the oil companies did not provide the necessary revenues by paying substantial taxes to producing countries, large amounts of direct foreign aid might well be required.

[1] Multinational Corporations and United States Foreign Policy hearings before the Subcommittee on Multinational Corporations of the Committee on Foreign Relations, U.S. Senate, on Multinational Petroleum Companies and Foreign Policy, January 30, 1974, Part 4, p. 87.

Thus the first basic fact is that this original tax rule was granted for reasons of state not reasons of law. It was a foreign policy decision, not one based on tax equity or other revenue considerations. But the revenue effect of this decision was swift and dramatic. In 1950 Aramco paid the United States $50 million in income taxes; in 1951 the company paid $6 million: and this soon dropped to zero. The quick acquiescence in the proposed income tax reduced Saudi Arabian pressure for relinquishment of portions of Aramco's concession, while costing Aramco nothing. It thus set the pattern for the entire Middle East. By 1954, almost every major petroleum exporting country had established an income tax on the Saudi Arabian model.

Whether during the 1950's there was sufficient legal justification under applicable tax law for rationalizing this essentially foreign policy decision, is a question which I shall not try to resolve, since it is very clear that, from 1960 on, all such justification has been lacking. After 1958, and especially after the formation of the oil producing exporting country—OPEC—cartel in 1960, the posted price on which OPEC country taxes were based came to be far higher than the actual price at which oil was sold. There was no relationship between the so-called income tax imposed by an OPEC country and the profit or loss realized by the company selling the oil. A country like Iran, for example, a member of the OPEC cartel, in effect, imposed a fixed charge per barrel of oil sold. A company like Mobil, one of the major multinational oil companies, which made up a consortium of companies operating in Iran, paid that fixed charge regardless of whether it earned a profit or lost money on the sale of that barrel of Iranian oil. Other OPEC countries accomplished the same result, although the manner in which they did so may have differed from country to country.

So our second basic fact is that since 1960, at least, the payments made by the major oil companies to the OPEC countries have been fixed per barrel payments which never varied with the flux of profit and loss of the companies. Simply put, they have been royalty payments.

This basic fact was obscured by a bewildering superstructure of subsidiary corporations, complicated dividend and investment arrangements, and arcane jargon which kept the Internal Revenue Service sufficiently befuddled that it could never disentangle the substance of the transaction from the form. Like the proverbial shell game in which the hand is faster than the eye, the Government tax experts could not follow the financial pea as it was moved around among the various corporate shells created by the most ingenious and imaginative Wall Street legal talent that money could buy.

But there was never any doubt on the part of this corporate legal talent about the real nature of these transactions. In 1970, at the request of Mr. McCloy on behalf of his clients, the Justice Department issued a series of Business Review

letters which enabled the oil companies to join together for the purpose of negotiating prices with the OPEC cartel free of any fear of antitrust prosecution by the Department. In the course of these negotiations, the companies designated individual tax counsel to figure out how best to structure the payments to the OPEC cartel so as to obtain the maximum tax creditability advantages for themselves. Within the confidentiality of their own internal communications, tax counsel to the companies candidly stated their opinion that—

> The artificiality of this system is obvious and well known, but it has not been challenged by IRS.[2]

In late 1973, the last remaining appearances of rationality were stripped away from this artificial system of international oil pricing and taxation. Late that year, the OPEC cartel imposed a 500-percent increase over the price of crude oil prevailing on October 1, 1973.

This precipitous price rise resulted in an equally marked increase in the amount of so-called "income taxes" paid by the multinational oil companies to the cartel countries. After elimination of those foreign tax credits used to offset U.S. taxes on foreign extraction income, there remained an estimated $16 billion in excess tax credits that would reduce taxes paid to the United States on both domestic and foreign operations to virtually nothing.

Alarmed by the prospect of such huge tax credits, the Treasury perceived the need to finally impose some limit on the creditability of payments made by the companies to the OPEC nations. The Tax Reduction Act of 1975 thus provides a separate limitation to be used in computing the foreign tax credit allowable to all foreign oil related income. It requires that the amount of any taxes paid to foreign governments which will be allowed as a credit on foreign oil extraction income is limited to 52.8 percent of that income—after deductions—in 1975, 50.4 percent in 1976, and 50 percent in subsequent years. These tax credits must be computed on an overall limitation and applied only to foreign oil-related income.

The 1975 Tax Act also requires that no tax credit will be allowed with respect to payments to a foreign country in connection with the purchase and sale of oil or gas where the company does not have an economic interest in the oil and gas and the purchase or sale is at a price which differs from the fair market value. The specific purpose of the separate limitation is to restrict the use of excess foreign taxes so that they would not offset taxes paid the United States on all domestic and foreign income. Since the percentage limitations are still above the U.S. corporate tax maximum of 48 percent, excess tax credits could still be accumulated by the companies. But the Tax Reduction Act of 1975 did not deal with the critical question as to whether the payments were fixed per barrel charges or creditable income taxes. We thus dealt with the symptom—the astronomical rise in potential excess foreign tax credits—but not the cause, the character of the payments themselves.

The OPEC cartel, however, was not so inhibited. On December 13, 1974, the OPEC countries established the rule that "the average government take from the operating oil companies will be $10.12 for the so-called marker or standard crude. This $10.12 could be made up of any combination of taxes, royalties, buyback payments, or other payments, so long as these various elements always total $10.12 per barrel. Denominating part or all of this amount as an income tax instead of a royalty, has no significance other than to permit U.S. oil companies to claim foreign tax credits for these payments under U.S. tax law.

The OPEC cartel had thus made explicit what had always been implicit in the artificial pricing system of international oil: That oil company payments to the OPEC countries were no more than fixed per barrel charges. Once this elementary fact is recognized, the stakes are not reckoned in the millions of dollars but in billions of dollars of lost revenues for the U.S. Treasury. We are no longer dealing with the question of whether to limit oil company excess foreign tax credits but with the fundamental issue of whether any part of the oil company payments to the OPEC cartel are properly creditable income taxes.

Recent IRS rulings indicate that the IRS is no longer willing to automatically accord these payments creditability status. The companies must prove that the foreign payments are made pursuant to genuine income taxes. And under the criteria stated by the IRS, it is unlikely that the Service can be persuaded that under present circumstances, payments made to the cartel countries are entitled to creditability status. Indeed, the service has already disallowed such creditability status to payments made by the oil companies in Indonesia. Similarly, the credibility of some part or all of the payments made to the Government of Iran are also in jeopardy.

The companies recognize the peril they face. They have undertaken a three-pronged attack to preserve the status quo: first, Platt's Oil Gram, a respected industry trade weekly, and the New York Times report that industry tax lawyers are invading Indonesia to rewrite that country's laws so as to bring company payments within the IRS criteria. But no matter how the laws of individual countries are rewritten, so long as the OPEC cartel insists on a uniform fee per barrel of crude oil—adjusted for gravity and freight differentials—a vigilant IRS must disallow these payments for tax creditability purposes.

Recognizing this danger, the companies have apparently persuaded the Finance Committee, to, in effect, overrule the IRS. This is the practical effect of sections 1035 (e) and (f) of the Finance Committee bill.

The joint committee's revenue-loss estimates of approximately $40 and $25 million for 1035 (e) and (f) respectively are based on the assumption that the IRS will continue to recognize the payments to OPEC countries as creditable tax payments. Implicitly, then, 1035 (e) and (f) seem to prejudge precisely the question at issue between IRS and the companies. Section 1035(e) anticipates an expected IRS ruling dealing directly with Iran but effectively with all similar oil and gas arrangements throughout the world. In the 1975 Tax Reduction Act. Congress eliminated foreign tax credits for oil payments when the oil company did not have an economic interest in the oil and the purchase or sale is at a price differing from its fair market value. Iran claims ownership of the oil in its domain. The companies operate in Iran by means of service contracts and contribute part of the capital investment costs. There are strong indications that IRS will disallow substantial tax credits claimed by the companies in Iran by holding that they have no economic interest in part of the oil there. But section 1035(e) essentially prohibits for 10 years any ruling by the IRS on leases in effect as of March 21, 1975, that a taxpayer has no "economic interest" in the oil and that the oil was purchased at a price different from the fair market value.

Section 1035(f) directly overrules an April 8, 1976, IRS ruling holding that a contractor—in this instance, Mobil Oil Co.—under a production sharing contract with Indonesia could not take a foreign tax credit on oil retained by the Indonesian Government. Section 1035(f) exempts from the IRS ruling, contracts entered into before April 8, 1976, the day of the IRS ruling. Thus both provisions would appear to preempt the IRS rulings, existing and anticipated, unfavorable to the companies.

The companies are now seeking to persuade the IRS that payments made to the cartel countries are payments "in lieu" of income taxes under section 903 of the Code and on that basis entitled to creditability status. Not until recently has section 903 been invoked by the oil companies in justification of their claim. It is a mark of their desperation that they have resorted to this provision which was first enacted in 1942 for completely different purposes.

The issue is thus clearly drawn: Are we going to permit the continued raid on the Treasury or are we going to block it? The amendments I support are designed to block it. First, the Hartke amendment would make it clear that under section 903 of the Code, royalty payments are not considered to be payments "in lieu" of income taxes. Thus the companies would be blocked from using section 902 as an escape hatch to avoid the impact of the recent IRS rulings.

Second, in the event that the IRS did rule that oil company payments to the OPEC cartel countries were entitled to creditability status, it would put a cap on excess foreign tax credits that could be accumulated by the companies. I can find no justification at all for allowing oil companies to accumulate any excess foreign tax credits.

I may also offer amendments striking sections 1035 (e) and (f) from the present bill, leaving it to the IRS to determine the creditability status of oil company payments to cartel countries. It is ironic, of course, that during all the years

[2] Op. Cit., p. 109.

that the Service meekly acquiesced in the oil company claims for creditability of their foreign payments, the companies opposed legislative initiatives by the Congress in this field. But now that the IRS has asserted itself, and the creditability claims of the companies are in doubt, the companies are clamoring at the gates, seeking to have the Congress preserve their special privileges.

I say it is time for this Congress to finally say to the oil companies that we are not going to save them from the IRS. The Service is perfectly capable of distinguishing a genuine income tax in Great Britain or Norway, for example, from the fixed per barrel charge imposed by the OPEC cartel.

In effect, then, I am proposing that the oil companies no longer receive the special dispensations to which they have become accustomed.

Mr. HARTKE. I am ready to vote, Mr. President.

Mr. LONG. May I ask about one problem?

Mr. HARTKE. Yes.

Mr. LONG. The logic of the Hartke amendment applies very well to corporations. It does not take care of the problem of an individual. In other words, the Hartke amendment is based on the theory that, in view of the fact that our corporate tax goes up to 48 percent, a person should not be able to take a tax credit on foreign taxes paid beyond 48 percent.

If that happens to be an individual, his tax rate can go up above 48 percent. That is one of the amendments we conducted hearings on today. Mr. Nolan testified that the same logic would indicate that the rate for individuals should correspond to what the individual tax rate is, just like the rate for corporations should apply to what the corporation's rate is.

If we agree to the Senator's amendment, I think we should keep in mind that we are going to have this problem on which we conducted hearings today and on which the Senator interrogated the witness. It has to do with the fact that the logic that would dictate 48 percent would dictate a different percent with regard to individuals. That is something the committee can bring before the Senate.

Mr. HARTKE. The chairman of the committee states the proposition correctly. There is no question about it. Since I was the author of the original amendment and participated in the conference, there is no question that the tax application as far as individuals was not intended to apply in that fashion. What was said by Mr. Nolan this morning is correct. What the chairman has said is correct. I think if we apply the matter correctly, to correct the law from 1975 and to make the two absolutely agree with each other, the amendment which dealt with some trust—I have forgotten what it was—should also be adopted at some later time, too, or whenever the Senate wants to adopt it.

Mr. LONG. I wonder if the Senator would be willing to modify his amendment to include that part of the language which appears at page 500 line 19 through line 18 on page 501 which applies the same principle to individuals.

Mr. HARTKE. I would be willing to so modify. Will the Senator move?

Mr. LONG. I will so move, if the Senator will so modify his amendment.

Mr. HARTKE. That is right.

Mr. LONG. It would apply the appropriate rate against individuals, that the rate at which they are entitled to take credit is the average effective rate at which they pay here in the United States.

Mr. HARTKE. I so modify it.

The PRESIDING OFFICER. The amendment is so modified. Will the Senator please send the modification to the desk?

Mr. LONG. It is the language which appears on page 500 line 19 through line 18 on page 501.

Mr. BROCK. Mr. President, may I ask a question of the chairman while we are waiting for that? Or perhaps the question should be addressed to the Senator from Indiana.

What if an individual's rate is 37 percent? Would that be the limit, or would it be 48 percent, or higher?

Mr. HARTKE. No; the rate will apply at 37 percent; the equivalent rate for the individual will apply. That is the intention of the amendment. In other words, what we are seeking to do is have a progressive rate of taxation for individuals.

Mr. BROCK. It seems to me like that might hurt people with lesser incomes.

Mr. LONG. The individual's rate could be 70 percent, it could be 30 percent, it could be as low as 14 percent, but the individual would have the same principle as the corporation: He would be entitled to take the credit at the rate at which he pays, so that the same principle that dictates the 48-percent rate for the corporation would be applicable to the individual.

Mr. BROCK. I understand, but I do not necessarily agree. The individual might be better off the other way.

Mr. LONG. He might or might not, but the principle is correct.

Mr. HARTKE. No; let me explain. It is very simple. It does not make any difference where the rate is, his rate will apply with relation to the tax he is paying in the United States. I can assure the Senator that, in fairness to the individual, whatever his tax rate is, he will not get a windfall.

Mr. BROCK. The guy who has a lesser rate of income has less tax than the guy with the greater income, who pays a higher rate.

Mr. LONG. But the principle is exactly the same. If one is paying taxes in this country at a 14-percent rate, then he has a right to a tax credit at the 14-percent rate. If he is paying a 70-percent rate, he is entitled to take the rate which he pays here. For a corporation, the rate is 48 percent, and they are entitled to take the credit at the 48-percent rate. That means that no one will have any excess credits.

Mr. BROCK. I understand. But I think this may hit the little guy harder than the guy with a lot of money.

Mr. LONG. It does not.

Mr. BROCK. Maybe there are not many people without much money doing this, I do not know.

Mr. HARTKE. This will eliminate the excess credit for corporations, or eliminate the excess credit for individuals, but at the same time will not penalize individuals simply because they are at a lower tax rate.

Mr. BROCK. One of the complaints about this bill is that we really have not thought a whole lot about some of these things, and I guess the Senator from Tennessee has not thought a whole lot about this proposition, because he has not heard it suggested until today.

Mr. LONG. It is in the bill.

Mr. BROCK. As he is offering it?

Mr. LONG. This part of it, yes.

ADDITIONAL STATEMENT SUBMITTED

Mr. BIDEN. Mr. President, I commend the distinguished Senator from Indiana for the amendment that he has introduced today. This is a change in our tax laws that is sorely needed. It has been needed for a long time. I had hoped that, when the amendment of the Senator from Indiana on the same subject was adopted last year by the Senate, the problem had been solved. However, the version that came from conference was certainly not satisfactory. I hope that this year the issue can be laid to rest.

The problem with which this amendment deals—tax credits for oil companies operating abroad—has been of concern for some time. The Senator from Indiana has been concerned, and so have I. In the last session of Congress, I introduced legislation to accomplish what the Senator is trying to achieve today. No action was taken in that Congress. Because of the importance that I attached to the abuse of the foreign tax credit by oil companies, I introduced remedial legislation again early in this Congress, January 21 1975. That bill, S. 294, would have stopped the use of royalties as tax credits by oil companies and eliminated the problem of excess foreign tax credits.

Mr. President, we hear much these days of what is called "sunset" legislation. This is legislation that causes certain Government programs or policies to self-destruct periodically. I have introduced two of these "sunset" bills myself. One would provide that all Government spending programs would automatically end in 4 years unless they were reviewed and reenacted by Congress. My other bill would do the same for many of our Federal regulatory agencies. I begin to wonder today if we do not need a third process that would automatically terminate all tax breaks periodically if they are not reviewed and reenacted by Congress.

This amendment highlights the problem of building more and more tax breaks into our laws and then forgetting about them. It is clear that the provisions on foreign tax credits as applied to oil companies should have terminated years ago, if indeed they should ever have been allowed to happen. Years ago, Congress recognized that double taxation of foreign subsidiaries of American companies

might be unduly burdensome and harmful to American business and the economy. Therefore, legislation was enacted which allowed foreign income taxes to be credited on a dollar-for-dollar basis against U.S. income tax liability.

This seemingly sound principle has been grossly expanded, however, to include other charges which can in no way be construed as creditable taxes. Rather than taxes on income, they are actually royalties. Royalties are fixed, per-barrel charges which are production costs and should be treated as such.

The revenue rulings which allowed these production costs to be credited as taxes were promulgated by the Treasury Department as early as 1950. Although it is moot to ponder the validity of these rulings at the time they were first made 20 years ago, they definitely are not valid today. Furthermore, steps must be taken which will specifically forbid this practice. Like the legislation I have introduced, this amendment will achieve just that.

I hope that passage of this amendment will introduce a measure of fairness to taxpayers and consumers. The oil companies will begin to pay their fair share of taxes, and in so doing relieve some of the pressure from the consumer, who is now suffering the double burden of paying higher petroleum product prices and being forced to pay for Treasury tax losses due to the current inequitable tax advantages of the oil companies. It will take away an unfair advantage that oil companies operating overseas now have, not only over their domestic counterparts, but also over most other types of corporations as well.

Mr. President, I again commend the Senator from Indiana on his amendment. I urge my colleagues to support it.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment, as modified was agreed to.

Mr. HARTKE. I would like to say that in the package that was submitted by a group of us this is one of the basic items in that package so for the so-called reform group this is a victory, to which the chairman of the committee has agreed.

Mr. LONG. Well it is also a victory for the committee. We had one of our amendments agreed to. And for the Treasury it is also a victory because we picked up $130 million.

Mr. HARTKE. I would like to make the further statement for the RECORD that the Treasury did this morning endorse this amendment.

The PRESIDING OFFICER. The question recurs on agreeing to committee amendment No. 18.

AMENDMENT NO. 2046

Mr. KENNEDY. Mr. President I send to the desk an amendment for myself, Mr. NELSON, Mr. HOLLINGS, Mr. MATHIAS, Mr. BROOKE, Mr. CLARK, Mr. GARY HART, Mr. PHILIP A. HART, Mr. HARTKE, Mr. HASKELL, Mr. HATHAWAY, Mr. HUDDLESTON, Mr. HUMPHREY, Mr. MONDALE, and Mr. PROXMIRE to H.R. 10612, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY), for himself and others, proposes an amendment numbered 2046.

Mr. KENNEDY's amendment (No. 2046) is as follows:

On page 191, beginning with line 22, strike out all through the line after line 12 and insert the following:

SEC. 504. REVISION OF RETIREMENT INCOME CREDIT.

(a) IN GENERAL.—Section 37 (relating to retirement income) is amended to read as follows:

"SEC. 37. CREDIT FOR THE ELDERLY.

"(a) GENERAL RULE.—In the case of individual who has attained age 65 before the close of the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 15 percent of such individual's section 37 amount for such taxable year.

"(b) SECTION 37 AMOUNT.—For purposes of subsection (a)—

"(1) IN GENERAL.—An individual's section 37 amount for the taxable year is the applicable initial amount determined under paragraph (2), reduced as provided in paragraph (3) and in subsection (c).

"(2) INITIAL AMOUNT.—The initial amount is—

"(A) $2,500 in the case of a single individual,

"(B) $2,500 in the case of a joint return where only one spouse is eligible for the credit under subsection (a),

"(C) $3,750 in the case of a joint return where both spouses are eligible for the credit under subsection (a), or

"(D) $1,875 in the case of a married individual filing a separate return.

"(3) REDUCTION.—The reduction under this paragraph is an amount equal to the sum of the amounts received by the individual (or, in the case of a joint return, by either spouse) as a pension or annuity—

"(A) under title II of the Social Security Act,

"(B) under the Railroad Retirement Act of 1935 or 1937, or

"(C) otherwise excluded from gross income. No reduction shall be made under this paragraph for any amount excluded from gross income under section 72 (relating to annuities), 101 (relating to life insurance proceeds), 104 (relating to compensation for injuries or sickness), 105 (relating to amounts received under accident and health plans), 402 (relating to taxability of beneficiary of employees' trust), or 403 (relating to taxation of employee annuities).

"(c) ADJUSTED GROSS INCOME LIMITATION.—If the adjusted gross income of the taxpayer exceeds—

"(1) $7,500 in the case of a single individual,

"(2) $10,000 in the case of a joint return, or

"(3) $5,000 in the case of a married individual filing a separate return,

the section 37 amount shall be reduced by one-half of the excess of the adjusted gross income over $7,500, $10,000, or $5,000, as the case may be.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) MARRIED COUPLE MUST FILE JOINT RETURN.—Except in the case of a husband and wife who live apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, the credit provided by this section shall be allowed only if the taxpayer and his spouse file a joint return for the taxable year.

"(2) MARITAL STATUS.—Marital status shall be determined under section 143.

"(3) JOINT RETURN.—The term 'joint return' means the joint return of a husband and wife made under section 6013.

"(e) ELECTION OF PRIOR LAW WITH RESPECT TO PUBLIC RETIREMENT SYSTEM INCOME.—

"(1) IN GENERAL.—In the case of a taxpayer who has not attained age 65 before the close of the taxable year (other than a married individual whose spouse has attained age 65 before the close of the taxable year), his credit (if any) under this section shall be determined under this subsection.

"(2) ONE SPOUSE AGE 65 OR OVER.—In the case of a married individual who has not attained age 65 before the close of the taxable year but whose spouse has attained such age, this paragraph shall apply for the taxable year only if both spouses elect, at such time and in such manner as the Secretary shall by regulations prescribe, to have this paragraph apply. If this paragraph applies for the taxable year, the credit (if any) of each spouse under this section shall be determined under this subsection.

"(3) COMPUTATION OF CREDIT.—In the case of an individual whose credit under this section for the taxable year is determined under this subsection, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 15 percent of the amount received by such individual as retirement income (as defined in paragraph (4) and as limited by paragraph (5)).

"(4) RETIREMENT INCOME.—For purposes of this subsection, the term 'retirement income' means—

"(A) in the case of an individual who has attained age 65 before the close of the taxable year, income from—

"(i) pensions and annuities (including, in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1), distributions by a trust described in section 401(a) which is exempt from tax under section 501(a)),

"(ii) interest,

"(iii) rents,

"(iv) dividends,

"(v) bonds described in section 405(b)(1) which are received under a qualified bond purchase plan described in section 405(a) or in a distribution from a trust described in section 401(a) which is exempt from tax under section 501(a), or retirement bonds described in section 409, and

"(vi) an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408 (b), or

"(B) in the case of an individual who has not attained age 65 before the close of the taxable year, income from pensions and annuities under a public retirement system (as defined in paragraph (8)(A)),

to the extent included in gross income without reference to this subsection, but only to the extent such income does not represent compensation for personal services rendered during the taxable year.

"(5) LIMITATION ON RETIREMENT INCOME.—For purposes of this subsection, the amount of retirement income shall not exceed $2,500 less—

"(A) the reduction provided by subsection (b)(3), and

"(B) in the case of any individual who has not attained age 72 before the close of the taxable year—

"(i) if such individual has not attained age 62 before the close of the taxable year, any amount of earned income (as defined in paragraph (8)(B)) in excess of $900 received by such individual in the taxable year, or

"(ii) if such individual has attained age 62 before the close of the taxable year, the sum of one-half the amount of earned income received by such individual if the taxable year in excess of $1,200 but not in excess of $1,700, and the amount of earned income so received in excess of $1,700.

"(6) LIMITATION IN CASE OF MARRIED INDIVIDUALS.—In the case of a joint return, paragraph (5) shall be applied by substituting '$3,750' for '$2,500'. The $3,750 provided by the preceding sentence shall be divided between the spouses in such amounts as may be agreed on by them, except that not more than $2,500 may be assigned to either spouse.

"(7) LIMITATION IN THE CASE OF SEPARATE RETURNS.—In the case of a married individual filing a separate return, paragraph (5) shall be applied by substituting '$1,875' for '$2,500'.

"(8) DEFINITIONS.—For purposes of this subsection—

"(A) PUBLIC RETIREMENT SYSTEM DEFINED.—The term 'public retirement system' means a pension, annuity, retirement, or similar fund or system established by the United States, a State, a possession of the United States, any political subdivision of any of the foregoing, or the District of Columbia.

"(B) EARNED INCOME.—The term 'earned income' has the meaning assigned to such term by section 7701(a)(36), except that such term does not include any amount received as a pension or annuity.

"(f) NONRESIDENT ALIEN INELIGIBLE FOR CREDIT.—No credit shall be allowed under this section to any nonresident alien."

(b) TECHNICAL AMENDMENTS.—

(1) Section 904 (relating to limitation on foreign tax credit) is amended by redesignating subsection (g) as subsection (h), and by inserting after subsection (f) the following new subsection:

"(g) COORDINATION WITH CREDIT FOR THE ELDERLY.—In the case of an individual, for purposes of subsection (a) the tax against which the credit is taken is such tax reduced by the amount of the credit (if any) for the taxable year allowable under section 37 (relating to credit for the elderly)."

(2) Section 6014(a) (relating to tax not computed by taxpayer) is amended by striking out the last sentence thereof.

(3) Section 6014(b) is amended—

(A) by striking out paragraph (4),

(B) by redesignating paragraph (5) as paragraph (4), and

(C) by inserting "or" at the end of paragraph (3).

(4) Sections 41(b)(2), 46(a)(3)(C), and 50A(a)(3)(C) are each amended by striking out "retirement income" and inserting in lieu thereof "credit for the elderly".

(5) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by striking out the item relating to section 37 and inserting in lieu thereof the following:

"SEC. 37. Credit for the elderly."

The PRESIDING OFFICER (Mr. PERCY). This amendment attempts to amend a committee amendment that has already been agreed to.

Mr. LONG. Mr. President, I ask unanimous consent that it be in order to consider this amendment at this point.

The PRESIDING OFFICER. Is there objection? Without objection, the Senate will proceed with committee amendment No. 15. The amendment, by unanimous consent, is in order.

Mr. KENNEDY. Mr. President, social security benefits at this time are exempt from the Federal income tax. The retirement income credit was first adopted in 1954 to provide for comparable tax relief for elderly persons not receiving social security income.

The credit has not been updated since 1962, even though social security benefits have been increased seven times, by some 135 percent, since then.

The tax credit is 15 percent of retirement income. In general, persons 65 years of age or older are eligible for the credit; however, retired persons under 65 are eligible if their income is from a public employee retirement plan.

Four major changes in the current tax credit are made by the House bill and the Finance Committee bill. First, the maximum amount of income eligible for the credit is raised from $1,524 to $2,500 for single persons, for a new tax saving of $146. It is raised from $2,286 to $3,750 for married couples, for a new tax saving of $220.

Second, all types of income are made eligible for the credit. Under present law, only investment or pension income is eligible. Elderly persons who must work do not get the benefit, since earned income is not eligible for the credit. The effect of the amendment is to transform the "retirement income" credit into an "elderly" credit.

Third, earned income above $7,500, or $10,000 for a couple, must be used to offset the maximum amount eligible for the credit. Under the present law, earnings over $1,200 offset the credit.

Fourth, the credit is to be available regardless of prior work experience. Under present law, persons must have earned $600 or more in each of 10 prior years to be eligible.

The Senate adopted this same amendment in 1974, but it was dropped in conference because the House had not considered it. Now the House has approved it, and it is part of the House bill.

This amendment would make only two changes in the Finance Committee provisions: it would make the changes fully effective in 1976, eliminating the Finance Committee's 2-year phasein, and it would continue the credit for public retirees under 65.

The amendment is supported by elderly groups. The National Council of Senior Citizens has stated:

> The immediate extension of the retirement credit is a matter of crucial concern and particular urgency, since the elderly have little time to wait.

Mr. President, I hope the Senate will adopt this amendment. Essentially, our amendment restores the provisions of the House bill. The revenue loss amounts to some $340 million in fiscal year 1977. Under the Finance Committee bill, it is $101 million in 1977, and $270 million thereafter. So the amendment will cost $239 million more than the committee bill in 1977, and $70 million more in future years.

The Senate yesterday went on record very clearly in terms of the gasoline tax deduction amendment, to reverse the action of the committee and restore $285 million of benefits to taxpayers under the gasoline tax deduction. It seems to me this is an area of much greater priority, to insure that the credit for the elderly will at least represent, in terms of its credit aspects, similar treatment to that which the Senate has provided in raising social benefits over the years.

That is the practical aspect of this amendment. It is highly warranted and justified. I do not think there is any other group in our society that is in greater need of additional help and assistance than elderly people who are living on retirement income and on fixed income. The purpose of this amendment is to try and provide some modest relief for those individuals.

Mr. LONG. Mr. President, this amendment confronts the Finance Committee with the problem that was imposed on use by the Budget Committee. The Budget Committee gave us a recommendation that we confine ourselves to a $15.3 billion tax cut. We have argued back and forth as to whether that meant that the committee had to add additional taxes or not. But there is one thing I do not think we argued about or had any controversy about at all, and that was that the $15.3 billion did not include this item.

So what the Finance Committee did was to take this measure which was in the House bill and to phase it in over a period of time. We did not make it quite as generous as this amendment would be so that by doing that, by phasing it in, not being quite as generous with regard to public employees below age 65, the Finance Committee undertook to hold down the costs so as to stay with a $15.3 billion figure.

So we are well above it now, and this puts us, with an amendment to add $239 million on top of a bill that is already well beyond the budget ceiling.

How are we expected to handle this? As far as those of us on the Finance Committee are concerned, having received our orders from the Senate in the budget resolution, we looked at this item which was not in the budget resolution, phased it in over a period of time, and undertook to be not quite so generous so that the budget would be protected. Now we find that we are confronted with an amendment which, with the budget already busted, it is busted by another $239 million.

If the whole idea of maintaining fiscal integrity is to be abandoned, then of course I suppose all of us might just as well go vote for everything that is going to do more good for more deserving people. Goodness knows, we have a lot of deserving people, fine aged people, disabled and poor, just all kinds of fine deserving people and little children in this country.

But what attitude are we to take with regard to the plight of our Government which is now in the process of going more and more deeply into the red? It is sort of like old times for the Senator from Louisiana to stand here trying to head off these spending amendments on social security, unemployment, and welfare bills, and these various tax cuts that have popular appeal, but they go far beyond anything the Government can afford.

With this amendment added to the gasoline tax action yesterday, striking out what the Senate proposed to do in the way of reform, a reform which had been recommended by the Treasury time and again, between the two amendments that add $524 million to the proposed deficit, and with the Beall amend-

ment, which was agreed to yesterday, that runs the deficit proposed already over $600 million.

I suppose, Mr. President, those of us who worship at the shrine of fiscal integrity feel a duty to stay by the budget process, but I must say it becomes sort of a lost cause when we find ourselves more or less abandoned. It is like years of old when the Finance Committee used to fight alone to try to keep these bills within a budgetary limit.

So I will be compelled to vote against the amendment, Mr. President, just for the simple reason that the Government cannot afford it.

Mr. CURTIS. Mr. President, the retirement income credit is something that in which I am very much interested. I had something to do with its original enactment. At that time, social security benefits were not taxable by administrative ruling of the Treasury Department. Railroad retirement benefits were nontaxable by reason of an act of Congress. Civil service retirement benefits were taxable after the employee's own contributions were consumed in the payments.

But at that time there were a great many other people who did not have any retirement program. If they had any income at all it was interest on their savings income from a small rental property, or something else. They had no assistance and still their retirement income was taxed fully. So the income retirement credit was created to equalize the situation among those who had a tax-free retirement, those who had a partially tax-free retirement, and those whose retirement income was fully taxed.

It needs to be upgraded now and then. The Finance Committee did that. But in order to take care of many needs and to be fiscally responsible, there are several provisions in this bill as it comes from the Finance Committee that are phased in over a period of years.

What the distinguished Senator from Massachusetts proposes in this regard is not anything that we oppose in principle but, in fact, it should be phased in over a few years to lessen the impact on the budget.

His proposal, as I understand it, also contains one other point, and that is it lowers the age for those who receive retirement income credit for public employees. This amendment thus raises the question whether or not such action should be taken for everyone. At the least, we should do so with our eyes open to the fact that if the retirement credit is available for civil service retirees under 65, it would just be a matter of time until it will be proposed that we do it for everyone, and maybe we should, but, on the other hand, as the distinguished chairman has said, what we have done here is updated the credit. We thought that we were cooperative with the efforts to have the budget more under control by phasing it in. Moreover, eliminating the credit for those under 65 will greatly simplify the credit with little or no adverse effect.

It is my hope that the amendment not be pushed.

COMMUNICATIONS ACT AMENDMENTS

Mr. PASTORE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2054.

The PRESIDING OFFICER (Mr. PERCY) laid before the Senate the amendment of the House of Representatives to the bill (S. 2054) to amend section 203 and 204 of the Communications Act of 1934.

(The amendment of the House is printed in the RECORD of July 20, 1976, beginning at page 22862.)

Mr. PASTORE. Mr. President, the only significant difference between the House and Senate versions of this legislation concerns the language which makes clear that the extended 90-day notice period for common carrier tariff changes is the maximum period which the Federal Communications Commission may prescribe. The Senate version of S. 2054 makes this intent plain by implication, providing that the Commission may "allow changes upon less than the notice herein specified". The House version specifically provides that "the Commission may not require the notice period specified to be more than 90 days." This is a difference of form and not substance, and therefore I believe we should accept the House substitute.

Mr. President, I move that the Senate concur in the House amendment.

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

TAX REFORM ACT OF 1976

The Senate continued with the consideration of the bill (H.R. 10612) to reform the tax laws of the United States.

Mr. KENNEDY. It is interesting for me to hear the argument this afternoon that this is an amendment that cannot be accepted because of its cost.

It is important at this point to remind the Senate what we have done for many different groups in our society. The amendment I propose this afternoon is targeted on perhaps the neediest groups of people in our society—elderly citizens living on retirement income.

The argument is made that at least we ought to stop the benefits for persons under 65. But many of these individuals. teachers or firefighters or policemen who have worked 20 or 30 years and then retired but have not reached the age of 65. These are the people who are going to benefit under this provision.

We hear that we cannot afford to spend $240 million more to try to do something about those individuals, to try to equalize their retirement income with respect to what persons are receiving under social security, but for one reason or another are not participating in social security.

It is important at the outset that we understand who actually will benefit. They are the elderly people who are not participating under social security—especially public employees, firefighters, policemen, and teachers who are participating under separate retirement plans. It is said we cannot afford $240 million for them. But at the same time, they tell us we can afford the $1 billion rejection of our minimums tax proposal to try to tax the richest 1 percent of the population. That was rejected by the Committee on Finance and rejected by the Senate. It was rejected by the chairman and the ranking member of that committee. It would have provided $1 billion more in taxes from the top 1 percent of the people of this country. But they say we cannot afford to benefit those who are elderly, who represent perhaps the bottom level of the people of this country in terms of income.

The Senate rejected the amendments on DISC. If the amendment by the Senator from Colorado had been accepted, it would have raised $1.5 billion from the richest and the most powerful corporations in this country. The Senate rejected our deferral reform, which is a loophole that underwrites the movement of jobs in manufacturing from this country to foreign countries. Tax deferral costs us $300 million a year.

The Senate believed sufficiently in tax shelters that it refused to accept our reform to raise $300 million in that area, again from individuals in our country who are in the top 3 or 4 percent of income.

That is $3 billion of benefits with respect to the richest individuals and the most powerful corporations in the country; $3 billion has been rejected, and there was no mention at that time that we could not afford it. Yet we cannot afford $3 million for the elderly.

We now have an amendment to benefit the elderly; to help those who are not participating in social security, just to equalize their treament with what Congress has done with respect to social security. It is justified and warranted. And the amendment also provides some additional relief for those who are participating in public employee retirement funds who believed the commitment that Congress made to provide a tax credit that would be maintained over the years of their retirement.

But now we have found that the Committee on Finance is prepared to abandon that commitment, on the ground that we cannot afford it.

Mr. President, I do not think a clearer issue will be presented to this body, in terms of our alternatives and priorities, and about whom the Senate is trying to help in this legislation.

I hope we can afford this proposal. If we are not prepared to say that we can afford it now, I hope we can accept it and go back into all the other areas—DISC, deferral tax shelters, the maximum tax—and pick up the additional moneys to warrant it. I am prepared to support any of those proposals here this afternoon which would make up that difference.

There could not be a clearer example of priorities in this legislation than the proposal we are considering in this amendment. I hope it will be accepted and supported by the Members of this body.

Mr. LONG. Mr. President, there may have been a time in my early years in the Senate when I might have made an argument somewhat like that of the Senator. I cannot recall whether I ever did, but let me analyze it for a moment.

Basically, the Senator's argument is that if he had his way, he would put several billion dollars of additional taxes on rich people, and he would provide tremendous social welfare benefits to people who are not rich, particularly the poor. That is fine. I certainly applaud the Senator for looking at it that way. If I could specify the particular rich people that I would like to specify—those who have foundations, for example—I probably would do the same. But the Senator has not been successful in taxing those people he would like to tax. So, having failed to raise the revenue which he would like to raise, he now wants to spend the money, anyway.

I did what little I could, within the limits of my conscience, to help raise a lot more money. I voted for about $4 billion of additional revenues that we do not have now. I do not like to incur the wrath of all the bankers and building and loan associations in the country; but I voted, notwithstanding that, to have a withholding tax on interest and dividends, and it did not succeed. One reason why it did not succeed was that the Senator got up and damned it with faint praise. But that is all right. We all have a different opinion about these matters.

Then I tried to do something about the deduction for the gasoline tax, which does not benefit those who take the standard deduction, anyway, and I got nowhere with that. That would be another $570 million we would have picked up. Those two items total $2.7 billion.

If we had the revenue, which I voted for, I would be glad to vote for the Senator's amendment. We do not have the revenue.

The Senator is talking about spending money we do not have. In my early years in the Senate, I suppose I tended to take somewhat the same view about some of these matters. But when I became a member of the Committee on Finance, I found more and more the pressure of circumstances requiring me to think in terms of fiscal responsibility. That being the case, it may be that the chairman of the Budget Committee and his committee are now prepared to relieve me of any obligation to stay by that $15.3 billion ceiling.

Can I look to the distinguished Senator from Maine and think that I am now relieved of any obligation to stay by that $15.3 billion ceiling, that the sky is the limit from now on?

Mr. MUSKIE. Mr. President, I think the Senator understands from the discussions we have had on the floor that the $2 billion tax reform target is one not that the Senator from Maine proposed but one that Congress as a whole did.

That is my view and it is still my view. It is not my prerogative to pick and choose what the revenue losers will be or the revenue gainers will be. The Senator from Louisiana and the Senator from Massachusetts are as aware as the Senator from Maine of what the budget targets are. I hope we do not forget them as we move along. But I have not been given a prerogative. If I were to assert it, I cannot think of any Senator who would be more vigorously in opposition to my asserting that prerogative than the Senator from Louisiana, because he has been very careful to spell out what my business is. His view of what my business is is much less expansive than my view of my business is. But there certainly is no disagreement, there should not be, by any Member of this body that our targets are our targets.

There is an overall revenue target, there is also a tax reform yield target. The latter we are slipping farther and farther away from. I think an informal estimate indicates that we are down to about $500 million now, in terms of the net $2 billion in revenue gainers that we were hoping to get from tax reform. So we are slipping farther and farther away from that. That is obvious.

This amendment will take us away from it; other amendments that are pending will take us even farther away from it.

I can understand how Senators who are for one type of revenue gainer may be against another type of revenue gainer, and getting them together is the interesting exercise which I sit here and observe as chairman of the Committee on the Budget. I am almost tempted to reach the conclusion which the Senator from Louisiana has expressed from time to time, that when we are all through, it will balance out as a wash.

I much prefer some other revenue gainers than to vote against the pending amendment. I think I share the view of the Senator from Massachusetts that his amendment would establish a real equity that ought to be supported. Whether or not I can vote for his amendment when I get through listening to the arguments will be heavily weighted by my special responsibilities as chairman of the Committee on the Budget, I am sure. I have to try to be reasonably evenhanded on these things. But I would have much preferred to pick up some revenue from some of the things the Senate has already rejected.

The Senator from Louisiana knows what my views are on those; there is no sense in repeating them. But I do join him in cautioning the whole Senate that we are slipping farther and farther away, on almost every amendment submitted, from the goal of $2 billion in net revenue gain from tax expenditures.

It is hoped that we can pick up some revenue gainers. There still may be some other possibilities, but I am not going to act as the conscience of the Senate on each and every amendment. I am going to try to guide my own vote in accordance with what I think are the equities. It is not always easy to do, but I think I have a little tougher job to do in that respect than other Senators have.

Mr. LONG. The question, then, Mr. President, resolves itself to a matter of whether we can afford this. We are already way over the target. I do not know how we hope to get back within it. Frankly, it was my thought, and it is still my thought, that the Committee on the Budget should give us one figure: how much revenue does it expect us to raise? With regard to the activity of the Committee on Finance, how much money does it expect to raise and how much money does it expect to spend?

With regard to the money to be raised by the tax system, considering both the increases and cuts, my feeling has been, and I think the Senate by now understands my view, that we ought to have just one figure and that we ought to try to hew to that figure. I would have thought that the Committee on the Budget and the Committee on Finance ought to try to work together to see that, however we do it, to stay within that figure, so if somebody puts something else in, he has to take something out somewhere. If we could get together on that, maybe we could make it work.

Mr. MUSKIE. I would welcome that kind of arrangement, but the revenue number was $362.5 billion. That was the revenue number in the first concurrent resolution. It was made possible by, basically, a tax-cut extension which would be part of that $362.5 billion. Part of that we offset by $2 billion in tax reforms. There would be a $15.3 billion overall tax loss, leaving us with net revenues of $362.5 billion. I hope that we hold to that $362.5 billion. If we do not, then the pressures will mount to hold down spending and to reduce spending below targets that we set. We have done a good job on appropriation bills up to this point.

They also include subjects of interest to those who are compassionate about the disadvantaged. Direct programs also benefit the elderly and benefit a lot of people who cannot help themselves.

The priority-setting feature of direct appropriations as well as revenues involve some tough decisions. But we have to keep our eye on that $362.5 billion revenue here, until we finally put it in place in the second concurrent resolution. I am going to do my best to cast my votes in the line of that target.

Mr. LONG. Mr. President, I think the Senator made clear to me, as we entered into the debate that has been taking place on this floor, that he felt that we would both learn something about this budget process as we went along. I hope we do. I hope that, as we go through this matter, we can learn how to work together to try to make this budget process work.

As far as this Senator is concerned, I am going to vote against this amendment for one simple reason: I believe that when the Senate voted that budget resolution, it placed me under a responsibility, as chairman of the Senate Committee on Finance, of holding that figure in the Senate. As long as anybody around here wants to stand by the principle of fiscal integrity in this matter, I am disposed to try to stay with it, until I feel it is disposed of.

Mr. KENNEDY. Mr. President, it is interesting to listen to the chairman of the Committee on Finance make this ar-

gument about whether we can afford the improvement of this tax credit for elderly people and those who are beneficiaries under public retirement programs. We have seen legislation come to the floor of the U.S. Senate that protects almost every major loophole, for every rich and powerful interest that takes advantage of the Internal Revenue Code. We did not hear these doubts when we had the opportunity to raise a billion dollars in terms of DISC or hundreds of millions of dollars in deferral, which goes to the major multinational corporations; or on the minimum tax, where we could have recovered over a billion dollars, which now goes to the richest 1 percent of individuals in this country. But suddenly, when it comes to those people, primarily public employees—firefighters, policemen, teachers—who have retired, they say we just cannot afford it. Their hands go up in the air, and they say, if you can find the money, I am glad to support it. Well, the House of Representatives found the money. It is not so magical to try to find the resources. We can find the resources and we can find the money.

I daresay that I agree with the position that has been taken by the chairman of the Committee on the Budget. Individuals in this body are conscientiously attempting to follow the Budget Committee's resolution as we go through the many additional provisions of this legislation. They have a sense of equity but they are faced with a problem, when proposals are advanced that exceed the budget targets. They wonder whether they can, in good conscience, support those proposals, which they would have supported without hesitation if we had been able to recover the hundreds of millions or billions of dollars of revenues in these other areas.

I would say to my good friend and colleague, the Senator from Maine, that we will have the opportunity, certainly as we move through this legislation, to reconsider, hopefully, the minimum tax proposal amendment that will be offered by the Senator from Arkansas, and tax deferral, and see if we cannot recover some of those additional resources. Perhaps, then, the Senate of the United States will be able to exercise both sound fiscal judgment and a sense of equity, after having supported this particular proposal, recognizing that we should set our priorities straight and try to provide equity for those retirees who will be affected by this amendment. We know that far stronger groups have benefitted generously through the earlier provisions of this legislation.

You know, it is interesting, Mr. President, that the Supreme Court in the last term upheld the forced retirement of firefighters and police under the age of 65. In that particular case it involved a policeman from Massachusetts who was only 50 years of age. He had served in the fire department for his period of years and was then retired. If he had been on social security, he would have at least benefitted with the 135-percent increase we have provided over the last 12 years. But because this individual is a public employee and participating in a public retirement program, he may be denied his credit, as the Finance Committee has recommended because it refuses to find the necessary resources to help him.

There are few issues, as I mentioned before, that raise the question of priorities as clearly as this issue does, Mr. President, and I am very hopeful that the Senate will support this proposal.

I would like to ask for the yeas and nays on this amendment.

The PRESIDING OFFICER (Mr. PERCY). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MUSKIE. Mr. President, will the Senator yield? The definition of what the budget process is is not simple, and what its mandate is, what the authority of the various institutions which make it up may be. But let me say this about it: It is not the Senate Budget Committee alone, it is not the House Budget Committee alone, it is not the Congressional Budget Office alone, it is those three new institutions, but it is also every other committee of the Senate, and it is every Member of the Senate, as well as every Member of the House.

When we commit ourselves to the budget process and the targets which together we establish following it, we do not at one and the same time surrender our individual sense of equity and justice in the process. I think that gets confused in the debate over this tax bill. Tax bills during all of my term in the Senate, have become among the most complicated and difficult pieces of legislation to understand.

I have watched direct appropriations grow over the 18 years I have been in the Senate, and I have been reminded over and over again, especially by the more conservative Members of the Senate, of the growth in those direct appropriations, and I have heard them testify before the Budget Committee and speak on the floor of the Senate to the effect that that growth in direct appropriations and direct spending has been inflationary, that it has taken the Government into activities and roles and programs that exceed what the people want the Government to be involved in.

But, at one and the same time, there has been an even greater growth in the cost of tax expenditures. Over the same 10-year time frame that the more conservative Members of this body have focused my attention to on the growth in direct appropriations, there has been a greater growth in tax expenditures which we rarely examine closely, and which are rarely subjected to the same tests of equity and justice and priorities that we are asked to apply to direct appropriations.

I personally—and I am speaking now not as chairman of the Budget Committee, I am speaking now as an individual Senator reflecting my own sense of priorities and equities—think our performance on this tax bill in terms of the equities and the priorities has been very disappointing and, at one and the same time, we have fallen short, fallen short deliberately with our eyes wide open, of the targets we set in the budget resolution of this spring.

I applaud the willingness of the Senate to exercise discipline on the spending side, the appropriations side, of the budget. That has been a plus, and we have been credited with an important achievement, as an institution, on the outside by those who watch the performance of the Senate and of the Congress as a whole.

But we have not, in all frankness and candor, matched it by a similar performance on the revenue side and on the tax expenditure side. Maybe that is so because it is more complicated, more difficult, much more difficult to pinpoint in terms of the impact on people and on the economy.

I find it very difficut to watch this parade of amendments, revenue losers, revenue gainers, and to apply my twin responsibilities, my responsibility as chairman of the Budget Committee to try to hold the Senate's feet to the fire in terms of the targets we set in the spring, but my other responsibility as a Senator to respond to the sense of equity that I have developed in my own public career and as a representative of my people.

I think we have done a much better job on the appropriations side, and that we are in the process of doing a very disappointing job on the revenue side.

I am not sure whether I am going to vote for this bill when we finish working on it. I am not sure how long we are going to be working on it, but if this bill, when we have finished work on it, falls as far short of what we have mandated in the budget resolution and as far short of what I think is equity to the American people, as it now stands, I would doubt very much that I can vote for it.

That is not a threat to anybody. It is simply an explanation of the internal turmoil that I feel as I view these twin responsibilities that I have.

The Kennedy amendment puts me right in the middle of both of them, and I am not sure at this point how I will vote on it because in my role as Budget Committee chairman I ought to be concerned about the revenue loss.

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

Mr. MUSKIE. But in my other role I am concerned about the inequity of what we have done up to this point in this tax bill.

Mr. KENNEDY. I think the Senator from Maine has explained very well the dilemma, but would he not agree with me that we should not be forced into the position of depending on who gets on the floor first and advances his particular amendment? Why should we be put into a situation where we must vote against a meritorious proposal because of revenue problems, when the revenue issues in the bill are still open. Yet that is where we find ourselves today. The Finance Committee brings a bill to the floor with its own priorities, and say take it or leave it. But we have our own priorities. We have gone through what I think the Senator from Maine, in reviewing his own votes, and I would agree, were the major opportunities for significant increases in terms of revenues raised. We tried to conform with the budget resolution, and we failed so far.

But would not the Senator have felt easier if this had been the first amendment? Perhaps the Senator at that time could have supported it, not looking back over these past weeks. As we go through the rest of this legislation, I hope we can vote on the basis of merit on particular amendments, and then attempt to reconcile the revenue figures at the end. Why should the cost of the failure of the Senate to close some of these loopholes be borne by the elderly people of this country?

If we fail to provide these kinds of benefits, then the Senator from Maine will understand that in order to reduce the budget or reduce the deficit next year, we are going to have to find additional reductions in expenditures. If we look at the track record of Congress over the period of the past 10 years, those reductions will not come from the Defense Department. They will come in the area of child and maternal care, health, community mental health centers, title I education programs, meals-on-wheels. We have seen that happen over the past few years.

It does seem to me that, hopefully, we can gain the support not only of the Senator from Maine, but of others who are also concerned about the budget process in terms of the merits of these amendments. We can give them assurance that there will be an opportunity for us to raise the revenues before the final vote is cast. Then I, too, will join the Senator from Maine in expressing reservations or opposition if we are not going to provide at least some degree of conformity with the budget resolution. But I admire the sense of equity which the Senator from Maine has not only spoken about, but has exemplified during the course of his legislative career.

Mr. MUSKIE. I think that is a reasonable argument, a reasonable position to take.

It seems to me, we are almost forced now, given the way the debate on this pending bill has gone, to follow our own sense of equities until we finish the work and then look at the finished product and determine whether we can support it, depending upon whether it meets the budget targets, and at the same time, is an equitable matter.

I think that is almost the recourse to which we have been forced by the way in which the legislative process has worked on this bill. So I could not disagree at all with the argument.

As a matter of fact, the argument that the Senator just made follows the theme laid down by the floor manager of the bill in reminding us of Paul Douglas, "lead kindly light" philosophy.

We take one step at a time until we see where we have gone and then, at that point, stop and take stock of what we have got and either support it as consistent with established congressional policy, or we know our equities are inconsistent, then vote on the final product.

I guess we just cannot, through all these amendments coming along, judge each one in the context of the whole. We have almost got to take each one on its merits.

I think that is the Senator's argument.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, this bill contains $2.5 billion additional taxes on people.

We tried to do something for the low-income people and we did that with the earned income credit. That was to help the working poor. That cost some money.

We tried to do something to help employees to own stock in the companies in which they worked. That cost some money.

We expanded the standard deduction to help low-income people, and that cost us some money.

So that we have done things to help the poor and we have done things to tax the rich.

We did not do everything exactly the way the Senator had in mind, but anybody who knows what that minimum tax is and who has paid it and finds it has been increased five times over what it was, or, put the other way, increased by 400 percent, will know it is collecting a lot of additional taxes. And we have 50 amendments in the bill aimed at the kind of people against whom the Senator spoke in such impassioned terms as those who do not pay enough in the way of income taxes.

I do not like to vote for tax increases, but I have voted for this $2.5 billion I made reference to.

I voted for the $2 billion proposal on interest and dividends. I voted for another $600 million by terminating the deduction of State and local gasoline taxes. I voted for the Hartke amendment. That is $5 billion of additional taxes I voted for. Most of that $5.2 billion is taxes I would not enjoy voting for. But I voted for them just because the Government needs the money. Those are regarded as reforms.

I would like to have voted for the $35 tax credit to be extended all year, but I voted against the Allen amendment which I would like to have voted for.

I was prepared to vote against the Muskie amendment, which I would have loved to have voted for, just as a matter of my duty to the Nation's fiscal problems.

So there is $8 billion of fiscal responsibility that this Senator has tried to demonstrate, as manager of this bill.

With all deference to the Senator, I have been in this business of trying to help the aged, the poor, and disabled a lot longer than he has, and I have offered amendments that would cost as much as his, and some of them cost more.

I understand the problem. I sympathize with the people. I also recognize the Government's fiscal responsibility.

That being the case, I think even if the chairman of the Budget Committee retires to the field to try to save the fiscal solvency of this Government, I will still have to stay and see what I can do about it.

Mr. HANSEN. Mr. President, I think what may escape the attention or understanding of some people is that the Senate Finance Committee has had several months of long, continuous duty. We have held hearings on the House bill. We have had testimony from all kinds of people, from every sector of the economy. We have heard from the representatives of the retired people, the poor people. We have heard from welfare folks, we have heard from everyone we can imagine.

I think what needs to be understood is that while it is an easy thing to refer to the activities of the Finance Committee as representing a group of individuals concerned with extending tax benefits and tax breaks to the wealthy, to those who have it and denying it to the have-nots, lacking compassion and exhibiting little fairness, and totally devoid of a sense of equity, that really the exact opposite is true.

The facts are that it can be documented if anyone cares to read through the reports that have been put out—the reports of the hearings are several times the thickness of this volume here. It would be very interesting reading to find out exactly how the tax system works.

Let me give a few examples.

This morning we heard from a representative of the National Association of Homebuilders—I believe that was the organization represented. He comes from the State of Connecticut. He observed that in that State unemployment is 17 percent. Nationally, it is about 7.2 percent.

He made the point that so long as we continued to treat those persons with money that might otherwise be made available to go into public housing, as we have by the present tax code, we could expect a continuation of that sort of unemployment.

The point was very simple. This is not money that is going to be loaned to someone to build a house with a pretty good chance of repayment, with the adequate assurances that collateral will provide and other guarantees would provide. But rather, if we are going to address the problems of the poor people, the folks who do not have a decent home to live in, we have to understand that some inducement, some incentive, some encouragement must be given to investors in order that money might be made available.

I think 2 or 3 years ago we had national goals. I am certain the distinguished representative of the great State of Massachusetts has been out in the forefront in pleading the case of poor people, deploring the fact that housing has not been adequate.

I know that present occupant of the chair has told me about his visit through the State of Illinois and what he has observed in Chicago; the need that people there have for housing.

The fact is that housing is a pretty risky investment. It has been subsidized. We have had Federal programs that were drafted and designed to encourage a particular type of investment that would result in greater availability of housing.

I have talked with different Secretaries of HUD and HEW. They tell me when some family builds one new home it will

generally result in three different families upgrading their place of living. The family that built the house sells the house, and that house, in turn, will be bought by someone else who will sell another house. Then we have three families getting into a better situation than they had before, as far as dwellings are concerned.

We had a national goal of 2.6 million units of new homes per year. We are way down. We are way down because we are not building that many. There is not the encouragement for people to put money into housing programs necessary to stimulate that kind of activity.

One can say that is a tax loophole. Sure, if one wants to describe or define a loophole as something that gives a favor, inducement, or encouragement to somebody to do something.

If we look through the Tax Code over the years we will probably find that we have had all sorts of tax loopholes depending upon who defines the tax loopholes.

The situation is just this simple: By and large the Congress of the United States has had specific objectives, definite goals in mind, as it wrote into the tax code these specific provisions.

I am from a State which produces quite a bit of oil. We had a tax loophole as far as oil is concerned. That is, if you come from a State that does not produce any oil. But if one looks at it as people in the State of Wyoming did, if one looks at the depletion allowance as an inducement to take the risk that people have found results in finding oil in a significant field is about 1 time out of 50, one finds oil maybe 1 out of 15 or 20 times, the fact is that it is expensive, it is risky. People were encouraged to do it because of a tax loophole. The depletion allowance was 27.5 percent. That means that if one finds oil, if he is lucky enough and if he is able to go out and get the money put together to drill a well, at one time the Government of the United States said 27.5 percent of the production from that well translated into dollars would not be taxable. It would be charged off as a depletion allowance.

A few years ago when the Arabs raised the price of oil and it went up in not too many months to four times as much as it was, when the worldwide consumption of oil increased, as it did, when we devalued the dollar, as we did, there were many stories in the papers about how the oil companies were all getting rich.

The same thing could happen if the price of suits at a haberdashery downtown were to be increased about four times. We could say every person who has a clothing store will be rich.

He is rich, as far as the increased value of his inventory is concerned on that one time, but he will find out, as the oil companies did, that when he tries to replace that suit, or replace that barrel of oil, the price has gone up. But the press gave little attention, if any, to that fact.

The result was that most of the people, as reflected by the Congress, decided that the oil companies were getting too rich, so we lowered the depletion allowance. We brought about some other changes in the tax code, all of which did one thing: They made the domestic oil business less attractive to investors than it had been before. What happened? At one time we were importing about 12 to 15 percent of all the oil we used in the United States, but in the first week of March of this year we imported more than 50 percent of all we used.

People have very short memories. Not everybody understands or knows that when the boycott was on we actually had to transport fuel oil from the East Coast of the United States clear across the Atlantic to the Mediterranean to fuel the Sixth Fleet. We could not buy any oil and here we were right in the middle of the greatest oil-producing area of the world, the so-called Middle East. Because of the embargo we could not buy any oil there at all.

That is the kind of thinking we have been indulging ourselves in, and I think more and more people are beginning to question how wise we are.

I am sure that, as we debate the various provisions of this bill in the next 2 weeks, if it takes that long, we will hear these various charges made again and again of where is the equity; where is the fairness; are we devoid of compassion; have we no concern for people?

I think we do have concern for people. I think we would be far better off today. My guess is we will come to a realization of the fact that if we want to put the American oil industry back into business so as to lessen our dependency upon foreign sources of supply, we are going to have to take a different attitude in the taxes that we impose upon that industry and upon the independence of it, if we expect to get that kind of action.

We can say whatever we want to about an oil man, but the one thing we cannot say about him generally is that he is dumb.

Someone asked why did one of the major integrated companies buy some Montgomery Ward stock? It did so for a very good reason. Their managers could read the papers just as anyone else could. It did not look so good to have all their eggs in the oil basket. Why not get into some other activities? As people responsible for the dividends that the stockholders in their companies would hope to be able to realize over the years, it seemed to make sense to diversify and to get into some other things.

Mr. HATFIELD assumed the chair at this point.

Mr. HANSEN. I am going through this litany, I say to my chairman and our colleagues, for the very good reason: I believe it is very easy to criticize what the Senate Finance Committee has done, and it is quite another thing to understand why we are doing what we are doing.

One of the reasons I am going to support a liberalization of the tax laws that affect housing in this country is because I want to do something about it. I am going to continue to support capital gains treatment for timber. I know it is important to the distinguished occupant of the chair at this time. I say that for one very good reason: I want more lumber, not less, available. If more lumber is available for the building industry it is apt to be able to be purchased slightly cheaper than it would otherwise be, or if not cheaper at least its availability will be greater than it would otherwise be, and more people will own homes.

Then there is another very important reason. Just earlier today we passed a bill that in effect overrode the President's veto on public jobs.

We had some testimony on that, too, in the Finance Committee. Almost without exception, people agreed that it was far better to have a job in the private sector than it was for the Government to try to provide jobs.

I was reading some figures just a few days ago on New York State. New York State has the highest combined tax total, when you add together the Federal taxes, the State taxes, the county and the local taxes, of any one of the 50 States. Interestingly enough, last year New York State lost more jobs in the private sector, according to the information before me, than all the other 49 States put together.

What has happened here? Industry is leaving New York.

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

Mr. HANSEN. I yield.

Mr. TOWER. Is the Senator aware that New York City spends over twice as much per capita for its city government as the next highest city government, some $1,200 or $1,300 per person, yet their unemployment figures are, I think, above the national average?

Mr. HANSEN. Way above the national average. And there is not a city in the United States that has salaries, wages, and fringe benefits comparable to New York City. They have done some of the strangest things I ever heard of.

Mr. TOWER. As a matter of fact, until recently the city employees did not even contribute to their own pension funds.

Mr. HANSEN. Indeed not. I remember a few years ago when we had hearings on a pension proposal, we had representatives of New York come down here, and I thought, now we are going to hear from people who know what the problems are, because, as I remember, one out of every seven or eight people in New York City was on welfare at that time, and I thought we would hear from people who knew what they were talking about, and get some good information.

Mr. TOWER. Will the Senator yield further?

Mr. HANSEN. I yield.

Mr. TOWER. If I had a good welfare check coming in every month, I would move out of New York and move to Wyoming or Texas. Or Louisiana.

Mr. HANSEN. The people who came down and appeared before the Finance Committee testified for 2 or 3 hours, and never said one word about what was wrong with welfare in New York State. We never heard a word about it.

You know what they testified? They said.

If welfare is nationalized, if the Federal Government takes it over, we want to be sure that you Members of the Finance Committee understand that the State of New York has assured us that we are going to go from a 40-

hour week down to a 32-hour week. We want to have you understand that we have been been promised increases in salaries, and we want you to understand that everybody is grandfathered in, so that no one is going to lose his job.

That was about the story they told us. They were not concerned about the working mother, the widow with children, or anyone else, insofar as their testimony disclosed that day. They were thinking about "Old Number One."

They wanted to have a shorter workweek, they wanted to have guaranteed job security, they wanted to be entitled to the benefits that they had been promised and assured would be given them by the city of New York and by the State of New York in the years ahead. That is about what they talked about.

That, to me, was a rather disillusioning thing. But to get back to the point that I think is germane, relevant, and important, it is simply this: When you put people to work in the private sector, they become tax contributors and they are no longer tax consumers. They are earning some money, and they are going to pay some taxes to help out with the load that everyone agrees is too high these days. That is the first thing.

The second thing is that they are going to be producing something. They are going to be producing either goods or services, or both. And what does that do? It tends to fight inflation also, because if you are producing, if the demand expressed in dollars, as I remember some economists a long time ago tried to explain to me, remains constant, and if more goods are put into the marketplace, the price for each item is likely to drop, because, other things being equal, there is more goods to supply the demand at a fixed price. The same thing is true with services.

The sort of activity and the sort of encouragement that the Finance Committee has carefully considered and written into this bill was designed to do exactly that. It was designed to get people into the private sector, to get them to become taxpayers, and to get them to become producers of goods and services.

And it does something else. It gives them some pride. It gives them some confidence. It gives them the ability to say, "I am taking care of you" as they look at their little children. And those are very important attributes that we can give people and we should give people.

I think every person ought to have the right to a job. I do not deny at all that there may be times when there are not enough jobs to go around, and in those times I think we do need to exercise visible compassion and understanding, fairness, and the sort of consideration that makes us recognize that fact.

But what is the situation today? Our economy is getting better. There is no one today who says we are going the wrong way for the economy. We are going the right way. We are going up. There are more jobs available. There has been concern that we might be getting out of this depression or this recession too quickly, and that conceivably we could be fueling the fires of inflation again, and there was real concern among some of the economists that that might be taking place.

But most of the economists, on a pretty wide spectrum, I think, agree today that we are moving along, maybe not as rapidly as some would wish we were, more rapidly than others think is desirable, but nevertheless we are improving. So it seems to me that we are on the right track, and the right track, to my mind, has to be to give the sort of encouragement to industry that will make job opportunities for people in the United States.

Let me conclude by saying just one more word about this point, which I have touched on before: We will probably spend at least $25 billion, maybe $30 billion, this year for the oil we have to buy abroad. There was a flap here not too many months ago because the President put an embargo on grain shipments. One of the great things about the farms of America is that they have been able to outproduce the rest of the world, farm for farm, and thank God we have the kind of expertise, technology, knowhow, and incentive that gives people the desire to make these great wheatfields and farms that grow cotton, corn, or whatever as productive as they are, because that has been the saving grace, with two or three other things that could be added to it, that has kept our balance of payments in as near a situation of equilibrium as has been the case.

The fact is that we are spending a lot of money for oil, and if we do not change that around, we are going to become increasingly subject to the whims and the caprices of foreign countries and foreign dictators, who may decide, for reasons best known to them, that they do not like the way we are running our foreign affairs or our domestic affairs, and may decide to shut us off.

So I just say, Mr. President, that we want to open up some loopholes, if people call them that, and let them call them that, if it results in Americans being put back on the job. In my State of Wyoming not too long ago there was a shortage of oil rigs. One could not find an oil rig. There was a shortage of the things that were necessary in the exploration for oil in this country. One thing that these tax changes did was to stop all of that. There is no longer any shortage of oil rigs. They have them stacked up in Wyoming. They have them stacked up in other parts of the country. There is no shortage of the other things that are necessary to the active participation of people in this great industry because there is plenty of everything, and we are paying for it. We are sending over to other parts of the world at least $25 million a year.

It makes sense to me to turn that around, and it makes sense to me to let the price of oil that is produced in the stripper wells rise so as to make certain that no one shuts a well down when there is still oil in the ground that could be pumped out for one very good reason. It is a finite resource and if we have been leaving 70 percent, as we used to, of the oil in the ground, if we move that down to 60, down to 50, or down to 40 percent, we have, in effect, discovered some very major oil fields in the United States. It has been estimated that we have about 40 billion barrels of known reserves. By that is meant that at present prices we will recover about 40 billion barrels of oil from the discoveries we now have made. If we were to take the controls off of oil, if we were to let the price of stripper oil rise so as not to go above the world price but to go up to the world price, it would give enough incentive and encouragement to the domestic industry that along with secondary and tertiary recovery efforts, that are expensive, we might have instead of 40 million barrels of oil, 100 billion barrels of oil. It is going to cost more money, sure.

But what happens? If it is produced here in the United States, the taxes will be paid to this country and the jobs that are provided will be filled by Americans. Everything about it is going to put people to work in this country, and at the same time we are going to be able, with a freer hand, to determine what course of action we should take worldwide than is presently the case. I think that makes good sense.

I have imposed upon the chairman of the committee and my colleagues to spell out in some detail what I think ought to be considered because this is what we are talking about here today. We are talking about equity, fairness, and compassion.

In my judgment, let us not become so obsessed with doing what seems to be the immediate thing that we forget how human nature works. Let us get people back to work. Let us get them back to work in America doing American jobs, intensifying the kinds of activities here that can indeed lower unemployment in this country to 3 percent without the extra jobs.

I happened to vote against overriding that veto. If I am not on the losing side, I think something is wrong, and it is not often I think something is wrong because I am generally on the losing side. But I will have to say this: If we can follow the course which I think has been charted by the Finance Committee, that is the direction we are going to be moving in. We are going to be putting Americans to work. We are going to be increasing jobs in this country. We are going to be making taxpayers out of people who are now tax consumers.

I take this opportunity to express here my appreciation for the tremendous job that Chairman LONG has done in seeing that we perceive the entire role of the Finance Committee in trying to shape the kind of a tax bill that responds to the best long-range goals of all Americans. He has not been 100 percent successful. He has been criticized. He has been maligned. He has been called all kinds of names. But I, for one, can say this, that I think he has done a great job and I think history is going to vindicate his judgment.

Mr. LONG. I thank the Senator.

Mr. CHURCH. Mr. President, I support the adoption of the Kennedy amendment to H.R. 10612, the Tax Reform Act.

The Kennedy amendment is patterned after the House-passed version of the elderly credit provision. And it would

perfect the Finance Committee proposal in two ways.

First, it would permit public pensioners under age 65 to be eligible for the retirement income credit.

Second, it would raise the maximum amounts for computing this 15-percent credit from $1,524 to $2,500 for elderly single persons and from $2,286 to $3,750 for aged couples, effective this year. The Senate Finance Committee proposal would phase in these increases over a 2-year period: From $1,524 to $2,000 in 1976 and then to $2,500 in 1977 for elderly individuals. In the case of aged couples, the maximum amounts for computing the credit would rise from $2,286 to $3,000 in 1976 and eventually to $3,750 in 1977.

The House-passed version of the elderly credit—as incorporated in the Kennedy amendment—is preferable, in my judgment, to the Finance Committee recommendations.

Under ideal conditions, though, I would prefer a modernization of the retirement income credit along the lines of my proposal, S. 389. However, this measure has little chance for passage now—since the Ways and Means Committee and the Finance Committee have opted for the new elderly credit as a means to restructure the retirement income credit.

Like the House-passed provision, my bill would boost the maximum amounts for computing the 15-percent credit from $1,524 to $2,500 for single aged persons and from $2,286 to $3,750 for elderly couples, effective this year.

However, it would not have established income phaseouts as in the House and Senate bills: A $1 reduction in the maximum amounts for computing the credit for each $2 of adjusted gross income above $7,500 for individuals and $10,000 for couples. Thus, the moderate-income pensioner would receive greater tax relief under my approach.

In addition, S. 389 would build an automatic cost-of-living adjustment mechanism into the retirement income credit. The maximum amounts for computing the retirement income credit would be boosted proportionately with social security cost-of-living adjustments.

The need for modernizing the retirement income credit is long overdue. It has been 12 years since it was last updated.

The net effect is that it provides little relief for many potential eligible persons.

Senator KENNEDY's amendment would help ease the tax burden of many older Americans. In fact, it can provide a maximum tax savings for 1976 equal to $146 for aged individuals and $220 for elderly couples.

For these reasons, I reaffirm my support for the Kennedy amendment.

SEVERAL SENATORS. Vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCLELLAN (after having voted in the negative). On this vote I have a live pair with the distinguished Senator from Florida (Mr. STONE). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I therefore withdraw my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Montana (Mr. METCALF), the Senator from Minnesota (Mr. MONDALE), the Senator from North Carolina (Mr. MORGAN), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I also announce that the Senator from Florida (Mr. STONE) is absent because of illness.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oregon (Mr. PACKWOOD) is necessarily absent.

I also announce that the Senator from Pennsylvania (Mr. HUGH SCOTT) is absent on official business.

The result was announced—yeas 70, nays 22, as follows:

[Rollcall Vote No. 400 Leg.]

YEAS—70

Abourezk	Eagleton	McGee
Allen	Eastland	McGovern
Bayh	Fong	McIntyre
Beall	Ford	Montoya
Bentsen	Glenn	Moss
Biden	Gravel	Nelson
Brock	Hart, Gary	Nunn
Brooke	Hart, Philip A.	Pastore
Buckley	Hartke	Pearson
Bumpers	Haskell	Pell
Burdick	Hatfield	Proxmire
Byrd,	Hathaway	Randolph
Harry F., Jr.	Hollings	Ribicoff
Byrd, Robert C.	Huddleston	Roth
Cannon	Humphrey	Schweiker
Case	Inouye	Sparkman
Chiles	Jackson	Stafford
Church	Javits	Stevens
Clark	Johnston	Stevenson
Cranston	Kennedy	Symington
Culver	Leahy	Tunney
Dole	Magnuson	Weicker
Domenici	Mansfield	Williams
Durkin	Mathias	

NAYS—22

Baker	Hansen	Scott,
Bartlett	Helms	William L.
Bellmon	Hruska	Taft
Curtis	Laxalt	Talmadge
Fannin	Long	Thurmond
Garn	McClure	Tower
Goldwater	Muskie	Young
Griffin	Percy	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

McClellan, against.

NOT VOTING—7

Metcalf	Packwood	Stone
Mondale	Scott, Hugh	
Morgan	Stennis	

So Mr. KENNEDY's amendment was agreed to.

AMENDMENT NO. 2014

Mr. KENNEDY. Mr. President, I send an amendment to the desk in behalf of myself and Mr. HATHAWAY and ask that it be considered.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY), for himself and Mr. HATHAWAY, proposes an amendment:

On page 197, strike out lines 7 through 22.

On page 197, line 23, strike out "(c)" and insert in lieu thereof "(b)".

On page 199, line 4, strike out "(d)" and insert in lieu therof "(c)".

On page 199, line 13, strike out "(e)" and insert in lieu thereof "(d)".

On page 203, between lines 22 and 23, insert the following:

"(2) CREDIT TO BE REFUNDABLE.—Section 6401(b) (relating to excess credits) is amended—

"(A) by inserting before ', and 667(b)' the following: ', 44C (relating to expenses for household and dependent care services)'; and

"(B) by striking out 'and 44B' and inserting in lieu thereof '44B, and 44C'.

"(3) ASSESSMENT AUTHORITY.—Section 6401 (a)(4) (relating to assessment authority) is amended—

"(A) by striking out 'or 44B' in the caption thereof and inserting in lieu thereof the following: '44B, or 44C';

"(B) by striking out the word 'or' immediately before 'section 44B' and inserting in lieu thereof a comma; and

"(C) by inserting immediately after 'equipment)' the following: ', or section 44C (relating to expenses for household and dependent care services)'."

On page 203, line 23, strike out "(2)" and insert in lieu thereof "(4)".

Mr. LONG. Mr. President, will the Senator yield for a moment?

Mr. KENNEDY. Mr. President, I yield to the Senator from Louisiana.

Mr. LONG. Mr. President, I ask unanimous consent that it be in order to consider that amendment at this time.

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

VIETNAMESE ACT ON AMERICANS IN SOUTH VIETNAM

Mr. McGOVERN. Will the Senator yield to me?

Mr. KENNEDY. I yield to the Senator from South Dakota without losing my right to the floor.

Mr. McGOVERN. I appreciate the Senator's yielding to me. It will take me just a couple of minutes to make an announcement to the Senate.

Mr. President, I am pleased to report that I have been advised by the Government of Vietnam that Americans who were left behind in the April 1975 U.S. evacuation will be permitted to return to the United States next month.

This issue was among the questions I raised with PRG President Huynh Tan Phat and Foreign Minister Madame Nguyen Thi Binh when I visited Saigon in January. They told me that there was no policy obstacle to the return of the remaining Americans, but that it would take some time to resolve administrative problems.

Before I left Saigon, I was given the names of two Americans who have since returned to the United States, and I was told that Vietnamese authorities would "continue with the rest of the list."

Today's notification came in the form of a telegram to me from the Vietnamese Embassy in Paris. It states:

> Americans blocked in South Vietnam will be authorized to leave South Vietnam with their wives and children in August, 1976, with the aid of the High Commissioner on Refugees.

Mr. President, I wish to observe that in the light of the enormous internal problems that have faced this new government, I think it is commendable that they moved quickly on this matter. It is my own belief that we ought to respond by doing what we can to normalize relations with the Government of Vietnam. That is the best way to expedite the handling of other matters, including the problems of those Americans that are still listed as missing in action.

I am encouraged by this telegram today and I think it indicates a willingness on the part of the Vietnamese to put the war behind us and to move on to a happier and more normal relationship.

I thank the Senator from Massachusetts for yielding to me.

Mr. KENNEDY. I thank the Senator for making that statement and comment. I received a telegram this afternoon, as well, which is identical to the language which the Senator has stated. I join in indicating a positive response. It should be a matter of great satisfaction to those American families that will be permitted to leave South Vietnam. The United Nations Commissioner on Refugees has been constantly pursuing their interests and their well-being, and this willingness to assist, I think, has been notable.

I do appreciate the fact that the Senator from South Dakota has mentioned as an indication of the willingness of that government to move in the orderly process of normalizing relationships, which is one I would agree with and which is an effort that should be made by the United States.

TAX REFORM ACT OF 1976

The Senate continued with the consideration of the bill (H.R. 10612) to reform the tax laws of the United States.

Mr. KENNEDY. Mr. President, on this particular amendment which is presented by myself and the distinguished Senator from Maine (Mr. HATHAWAY) I will outline the amendment very briefly.

The House and Senate Finance Committee bills would replace the present itemized personal deduction for child care costs with a tax credit equal to 20 percent of the costs incurred for the care of a child under age 15—or for an incapacitated dependent or spouse—to enable the taxpayer to work. The maximum tax credit is $400 for one dependent or $800 for two or more dependents. The cost of the provision is $346 million in fiscal year 1977.

Under the proposed amendment, the child care credit would be made refundable—that is, a taxpayer would be entitled to a refund to the extent the credit exceeded tax liability for the year. The revenue cost of the amendment is $35 million in fiscal year 1977.

The refundable feature will benefit low-income working families, who will not benefit from the credit in the Finance Committee bill because their income is near or below the poverty level and they have little or no tax liability. In general, the amendment would benefit taxpayers with incomes of $5,000 to $7,500 a year, whose tax liability is less than $400 or $800 a year.

Proportionally larger numbers of women are represented in lower income brackets, so the refundable credit will be of special importance to them.

Women earn one-half as much as men earn when they work outside the home.

Sixty percent of all women who work outside the home are divorced, widowed, single, or are working to raise the total family income above $7,000 a year.

The number of female-headed households more than doubled from 1960 to 1974.

Two-thirds of the women heading households with children under 14 are in the labor force.

Thirty-four percent of the women with children under age 6 work outside the home.

Lower income women are forced to expend a greater amount of their minimal salaries for substandard child care.

Finally, Mr. President, the earned income credit, a separate provision in the tax law for low income workers, is already refundable. The present amendment would follow this precedent by making the child care credit refundable as well. I hope the amendment will be accepted.

Obviously, this amendment is advantageous for the encouragement of people to work. If we do not provide some degree of incentive for individuals to work, then there are additional expenses which will be necessitated for welfare costs or for other kinds of costs. So the child care credit is an extremely important work incentive, and I am pleased that the Senate has gone on record in support of it.

The advantage of a credit, as opposed to a deduction, should be obvious to every Member of this body. Quite clearly, it benefits those in the lower income brackets to the greatest extent. A deduction, for those who are in the lowest bracket, provides only a 14-percent benefit. For those in the highest bracket, the benefit is 70 percent. So a credit is a fairer and a more equitable way of achieving the goal. So it makes sense to have a credit instead of a deduction.

What we are doing in this particular amendment is to apply the same concept that has already been adopted by the Senate Finance Committee in the earned income credit. That means that if there are individuals who are working and who have child care expenses, but who do not have sufficient tax liability to use the full credit, they would receive a refund to the extent they are not using their full credit.

So, Mr. President, I hope this amendment will be adopted. It will help working mothers in the $5,000 to $7,500 income range to the greatest extent.

On the matter of equity, we have provided some very generous benefits in this bill for those in the top 1 percent income bracket, the most powerful individuals and the wealthiest corporations. We ought to be prepared to provide some relief for working low-income people who are trying to make ends meet, but who are caught in the crossfire of inflation, higher energy costs, higher household costs, higher food costs, higher medical costs, and who are attempting to work and provide for their families.

Mr. President, I hope this amendment will be accepted.

Mr. ALLEN. Mr. President, will the Senator yield for a question?

Mr. KENNEDY. Yes.

Mr. ALLEN. I notice the factsheet here shows that the revenue cost of the amendment is $35 million in fiscal year 1977. I assume that is added to the cost of the House and the Senate Finance Committee amendment cost of $346 million; is that right?

Mr. KENNEDY. The Senator is correct.

Mr. ALLEN. So with this amendment the cost would be $381 million?

Mr. KENNEDY. The Senator is correct.

Mr. ALLEN. Well now, did we not just get through passing an amendment that the Senator proposed that cost some $350 million or so?

Mr. KENNEDY. $240 million more than the committee bill.

Mr. ALLEN. $240 million, and here is the one now of a $381 million cost to the Treasury; is that correct?

Mr. KENNEDY. $346 million is already in the Senate bill.

Mr. ALLEN. The difference then between the Finance Committee amendment and the amendment of the distinguished Senator from Massachusetts is that the Finance Committee would allow the credits but after they used up the credits in paying tax, there would be no money paid to the taxpayers; is that correct?

Mr. KENNEDY. The Senator is correct. What we have proposed is to make the credit refundable. The refundable concept has been accepted by the Senate Finance Committee for the earned income credit. It was the brainchild of the chairman of the committee. I have supported it and I think it has been of great help and assistance to millions of the neediest people, working people, in our society. This amendment would extend that same concept to those people who are the working poor, in the $5,000 to $7,500 class, who have children, and who have expenses for child care.

It extends the concept of the refundable credit to those heads of households. Basically and generally, those persons, according to the figures and statistics, are the working, low-income women in our society.

Mr. ALLEN. Well now, we already have the concept of the low-income credit to provide for paying back the income tax paid up to $400, I believe, for incomes of $4,000, and then it is phased out on up to $8,000. So we would have $400 conceivably which could be obtained there in cash, and here you would permit an additional $800 for two children or more that would be refunded; is that correct?

Mr. KENNEDY. The Senator is correct, it will be available when the people are working. I think it is an important work incentive.

We have noted the various provisions of this bill which provide very generous benefits to companies and individuals. We have a child care program in the tax laws, and this amendment makes it more equitable, and at a very modest cost.

We already have many tax benefits for rich individuals and corporations. Why not one for low-income working mothers, when it is already available for higher income workers?

All we are saying is that if a family would have been eligible for the credit except for the lack of tax liability, he is

entitled to a refund. It is a basic principle of tax equity for low-income groups.

Mr. ALLEN. It seems strange to the Senator from Alabama, we provide in tax laws for taxpayers making a profit out of their tax payments.

I can see the advisability, possibly, of having separate programs of this sort. But when we provide for paying taxes, it is the concept of the Finance Committee to allow various credits that will eat up the tax liability.

But the Senator from Massachusetts would go one step further than that and provide for cash subsidies out of the tax laws. It seems to me we are putting an expensive social program in the tax laws and that this would more properly be the subject of some added social program, of which there are many before the Congress now.

I was wondering whether we ought to provide for paying cash to taxpayers. Taxpayers ought to pay cash to the Treasury, not the other way around.

I feel that the Finance Committee has gone just as far as it should go, to allow these credits to eat up tax liability, but not go a step further than that and pay the taxpayer tax money that other taxpayers are paying.

Mr. FORD. Will the Senator yield for a question?

Mr. KENNEDY. If I might respond, I hope the Senator will then indicate his opposition to section 802, which will be the refundable credit for expiring investment tax credits, suggested by the Finance Committee.

That is one of the special interest provisions and I hope the Senator will make that same argument when we come to that particular proposal.

Now, another point is that many low-income persons who are receiving welfare may already get these child care services, which are covered by welfare costs or other kinds of public programs. They would get no benefit from this amendment, because they have no costs for child care. That is why the cost of the program is so low. What we are talking about here is help for working mothers with child care costs.

The possibility of helping thousands of heads of households, primarily women who are attempting to work to provide for their family, at a cost of $35 million, seems to me to be a very worthwhile investment.

Mr. LONG. Will the Senator yield at that point?

Mr. KENNEDY. Yes.

Mr. LONG. May I say to the Senator, I had not thought of his amendment. This is the first time I have had it thoroughly explained to me. I have heard his argument and I am frank to tell the Senator, as one who serves on the committee, there is no way on God's green Earth we can consistently argue against the amendment.

So I will vote for the amendment and applaud the Senator for offering it.

Frankly, I have for a long time followed the view that we ought to recognize the fact that these poor people who do not pay any income tax are paying a great deal of taxes that do not meet the eye.

For example, it was a disappointment to me when I worked on the Tax Reform Act in 1969 and I asked somebody to bring in a chart to show us how the tax cut would be distributed so the rich would pay more and the poor less. But our able staff came in with something that indicates, "How do you want the corporation income treated, do you want 60 percent or 75 percent of the corporate tax as being passed on to the customer?"

I had never thought about it that way at all. But by the time they are through, for the most part, those taxes are passed through to the consumer in the cost of product.

These people also pay sales taxes. The landlord pays taxes on the property and passes that on through to the tenants in the amount of the rent.

So there are all kinds of taxes that get through to people that do not quite meet the eye.

But if we are going to provide this tax credit to a working mother who really does not need it because she has enough income that she can very well afford to pay for somebody to help look after her child while she is out working, we cannot justify the inequity of saying, "Well, maybe this well-to-do-mother should get the full benefit of it, but this less well-to-do mother should not get the benefit of it."

The House deviated from the previous concept of a deduction for child care to make it a tax credit.

So, someone hires a person to look after the child while the mother is working. We will treat them all alike, whether they are in the high income tax bracket, they will not get a better break than if they are in a lower bracket. Treat them all alike, so it does not benefit the upper income mother more than the other.

So we accepted the idea of a credit.

We see another bill which advocated, I think quite correctly, that the purpose of the investment tax credit was to persuade people to make an investment and to build a new plant and buy new equipment. We took the view it did not seem quite fair to say that the fellow who got the best of it would get the full benefit of it, but the man who had a tough time making profits never would get the benefit of it.

So we say, after 7 years, that he would eventually get his tax credit, which will not cost a penny for 7 years and, in the long run, will make us money because it will put business in a better position and improve their capability to buy new equipment and put people to work.

But I think the Senator is entirely right, we cannot do that for the business community by making the investment tax credit refundable for a $1 million corporation and not do the same thing for a poor mother trying to support her children.

So there is one logical answer, we can vote for the amendment and I will vote for it.

Mr. KENNEDY. Well, I am glad to hear that.

Mr. ALLEN. Mr. President, I am going to support the Finance Committee in its recommendation even though the chairman of the committee does not support the Finance Committee.

Mr. LONG. Will the Senator yield at that point?

Mr. ALLEN. Yes.

Mr. LONG. Let me say that this amendment was not offered in the Finance Committee. The argument was not made in the Finance Committee. It was not considered in the Finance Committee.

Mr. ALLEN. Yet the Finance Committee limits the credit to the amount of taxes. It does not provide for a refund.

Mr. LONG. But the Finance Committee did not make that tax credit a refundable tax credit.

Mr. ALLEN. That is the point.

Mr. LONG. Nobody suggested it do so.

The Senator offers the amendment and makes an argument I have not heard before. But now we have heard it. I sat here and heard the argument. And to say, "How would I respond?"

The answer is, I will not respond except to vote for the amendment, because, as one who believes in and as one who has favored this type of tax consideration for working mothers and led the charge, or case, for the earned income credit for the working poor who have children, I do not see how I could be consistent in opposing this amendment.

Everyone else can tell you their own position, but I do not see how I can be consistent by doing other than voting for the amendment. This one does not involve a great deal of revenue loss. I will get to the revenue problem later. This involves only $35 million. Frankly, if it had been offered in committee, I think I would have voted for it. This is one of those things that I do not believe I can vote against, but I certainly recognize the Senator's right to take a different view.

Mr. ALLEN. I thank the Senator for his explanation.

The distinguished Senator from Massachusetts said he wondered if I would apply this same argument to a situation involving a corporation. Of course I would not. I do not believe it is right to have supposed taxpayers making a profit out of the tax laws of the Nation, and making a profit out of taxes paid by other taxpayers.

Wipe the tax out. That is all right. That is what the Finance Committee amendment would do. But do not go beyond that. If we want to set up a subsidy in a social program providing for this amount of money, that is one thing. But do not mix social programs and taxation to provide that people make profits out of taxes they are supposed to pay. I do not see the logic of that.

If the Senator wants to set up a program of this sort, do so, but do not mix it in with taxes. Taxes are supposed to be something coming into the Treasury.

If the Senator wants to give concessions to taxpayers and say that because of this expense or that expense, or the low earnings, we are going to give back what taxes they paid, well and good. But do not build in a profit for any taxpayer where the people not only do not pay taxes but they would make a profit from people who do pay taxes.

I will oppose any such provision for corporations just as well as I would for individuals.

This is the first time I have ever heard

of paying individuals profits from the Federal Treasury in lieu of their tax liability. We have marked out taxes, we have erased taxes, but this is the first time I have ever heard—and maybe there are other instances I do not know of—of a taxpayer making a profit out of a tax liability. That seems to be what we are doing here.

Mr. LONG. May I say to my distinguished friend from Alabama that I have had somewhat heated exchanges at times with our friend from Massachusetts on the subject of tax expenditure. This is what I would define as being a tax expenditure. There is no doubt about that. This is a tax expenditure by my definition and I suppose by his as well. But, we would both agree to take a look at this and ask do we approve of using the tax system for this purpose?

I do, and the Senator might not. He certainly has a right to state that he would not do that. I believe the time will come when he will, for a simple reason. The tax system and the tax laws give potential for bringing about results that are wanted just as the appropriation procedure does. Sometimes we can use the tax system to help bring about a good result and sometimes we can use the appropriations system better. We should use whatever appears to be more appropriate at the time. At this time, the Senator does not think it is appropriate to do it, I understand. In my judgment, it is much more dignified to do it this way for those people than to try to do it by way of welfare.

Mr. ALLEN. Heretofore the Senator in his earned income credit has not provided for a cash rebate other than to the extent of taxes paid in, is that not correct?

Mr. LONG. It is not correct. The earned income credit does not ask the first question about how much taxes were paid. It simply says that if they are a low income earner and have children to support——

Mr. ALLEN. It pays back the social security, then.

Mr. LONG. No, it is not tied to that. We thought about it. That was our starting point. We started out thinking in those terms. But in due course we concluded that the best way to do it would be to do it as a simple refundable tax credit payable from the Treasury to the taxpayer. The Secretary of the Treasury has studied the matter and has concluded that under the law he had every right to do that. It presents no constitutional problem.

Mr. KENNEDY. Mr. President, I thank the Senator from Louisiana, both for his comments and his support. He is quite correct that we are building upon the refundable earned income credit idea which was first proposed by the Senator and accepted by the Finance Committee. We are extending that concept to working poor people who have children and who might otherwise be on welfare.

I agree with the comment he has made about the relationship between tax expenditures and appropriations. As the Senator from Maine so eloquently stated here earlier in the afternoon, we are talking about expenditures in two respects, direct appropriations and tax expenditures. The fact of the matter is most of the tax expenditures which are being considered go to a relatively small group of the wealthiest and most powerful individuals in our society. The child care credit is, as he quite correctly stated, a tax expenditure and it is going to go to the neediest and the working poor, primarily the heads of households, primarily the working poor women in our society.

Mr. MANSFIELD. Will the Senator yield?

Mr. KENNEDY. I yield.

Mr. MANSFIELD. I do not see how we can differentiate between taxes and social programs. I think they compliment one another. But it is hard to see how anyone can read the argument set forth—and I agree completely with the distinguished chairman of the committee—and not be in favor of an amendment of this kind. It certainly indicates that women are treated as inferiors, as far as the work force is concerned, and these figures are not only startling but disheartening.

Let me repeat them: Women earn one-half as much as men earn when they work outside the home.

Sixty percent of all women who work outside the home are divorced, widowed, single, or are working to raise the total family income above $7,000 a year. Below the poverty level.

The number of female-headed households more than doubled from 1960 to 1974. What does that mean? It means that the men are taking leave and responsibilities are on the women with the children.

Two-thirds of the women heading households with children under 14 are in the labor force. Startling.

Thirty-four percent of the women with children under age 6 work outside the home.

Lower income women are forced to expend a greater amount of their minimal salaries for substandard child care.

Well, I think this tells the whole story. I commend the distinguished Senator from Massachusetts once again for coming up with an amendment which is not expensive, as far as the additional cost is concerned, but it is meritorious in the best sense and takes care of a part of the population which I think has been discriminated against too much for too long.

Mr. KENNEDY. I thank the majority leader.

In my testimony to the Finance Committee last March, this idea was part of my proposals. I know it was not considered in the committee markup, but I wanted to give my assurance to the chairman of the Finance Committee that it was part of my earlier recommendations to the Finance Committee. As far as I was concerned, I was prepared to offer it then.

I know the Senator from Maine also has been very interested in this.

Mr. LONG. If the Senator will yield, there is one more point that might be made if one pictures a situation of a poor woman with one child or two who takes a job as a domestic, who pays someone to look after her children while she goes to work to do housework for someone else.

We are disappointed so far that a lot of people like that are not coming in and applying for the earned income credit. Even though they are entitled to it, they are afraid of that tax collector, it seems. We need to find a better way to get those people to apply for it, because they are entitled to it. In addition to that, they would be entitled to this child care credit.

But if that person did not take that job working as a domestic in someone else's home or as a maid in a hotel or whatever, then that person would be entitled to go on the welfare rolls and draw welfare, and it would cost us a lot more that way. The person who does take that type of job is doing the economy a favor in the long run, because it is less expensive to give that person the tax credit than to support that person on the welfare rolls.

I believe that people who are entitled to live on the taxpayers under the welfare system, but prefer to go out and set an example for their children and work to improve their condition, deserve a great deal of credit, and I think we should show them recognition.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HATHAWAY. Mr. President, I would just like to make a few brief remarks about this proposal. I was glad to hear the majority leader reiterate the statistics with respect to the working women. Certainly they would be the chief beneficiaries if this amendment passes.

For those who think this amendment would be costly, some of the costs will be offset by the costs we will save by getting women off welfare and getting them to be productive individuals. And actually I think with the passage of time the costs will go down, because once people get out into the work world, they will probably be earning sufficient money that the refundable part of the credit will not be as operative in subsequent years as in the first year.

Finally, in answer to the point the Senator from Alabama was making, let me say that we should not allow a person to profit by the Tax Code, but what we are actually doing is giving an $800 subsidy, or a maximum of $800, depending on how much is spent and how many children are being cared for. We are giving this subsidy to those who pay $800 or more in taxes by saying, "You do not have to pay your taxes," and we are giving to those who do not pay that much the difference between what they pay in taxes and the $800.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from North Carolina

(Mr. MORGAN), the Senator from Minnesota (Mr. MONDALE), the Senator from Montana (Mr. METCALF), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I also announce that the Senator from Florida (Mr. STONE) is absent because of illness.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. GARN) and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

I also announce that the Senator from Pennsylvania (Mr. HUGH SCOTT) is absent on official business.

The result was announced—yeas 71, nays 21, as follows:

[Rollcall Vote No. 401 Leg.]

YEAS—71

Abourezk	Gravel	McIntyre
Baker	Griffin	Montoya
Bartlett	Hart, Gary	Moss
Bayh	Hart, Philip A.	Muskie
Beall	Hartke	Nelson
Bentsen	Haskell	Pastore
Biden	Hatfield	Pearson
Brock	Hathaway	Pell
Brooke	Hollings	Percy
Burdick	Huddleston	Proxmire
Byrd, Robert C.	Humphrey	Randolph
Cannon	Inouye	Ribicoff
Case	Jackson	Roth
Chiles	Javits	Schweiker
Church	Johnston	Sparkman
Clark	Kennedy	Stafford
Cranston	Laxalt	Stevens
Culver	Leahy	Stevenson
Dole	Long	Symington
Domenici	Magnuson	Taft
Durkin	Mansfield	Weicker
Fong	Mathias	Williams
Ford	McGee	Young
Glenn	McGovern	

NAYS—21

Allen	Eastland	Nunn
Bellmon	Fannin	Scott, William L.
Buckley	Goldwater	Stennis
Bumpers	Hansen	Talmadge
Byrd, Harry F., Jr.	Helms	Thurmond
Curtis	Hruska	Tower
Eagleton	McClellan	
	McClure	

NOT VOTING—8

Garn	Morgan	Stone
Metcalf	Packwood	Tunney
Mondale	Scott, Hugh	

So Mr. KENNEDY's amendment was agreed to.

AMENDMENT NO. 1922

Mr. HATHAWAY. Mr. President, I call up my printed amendment No. 1922.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maine (Mr. HATHAWAY) proposes an amendment numbered 1922.

The amendment is as follows:

After section 501 of title V, insert the following new section 502, and renumber the subsequent sections accordingly.

Sec. 502. Credit against tax in lieu of deduction for personal exemptions.

(a) Subsection (a) of section 42 of subpart A of part IV of subchapter A of chapter 1 (relating to allowance of credit) is amended by adding at the end thereof the following new paragraph:

"(3) PERSONAL EXEMPTIONS.—In addition to the provisions of paragraph (1) of this subsection, in the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount determined under section 151 for personal exemptions."

(b) So much of section 151 (relating to deductions for personal exemptions) as precedes subsection (b) is amended to read as follows:

"Sec. 151. Credit for personal exemptions.

"(a) AMOUNT OF CREDIT.—The amount of the credit allowed by paragraph (3) of subsection (a) of section 42 for the taxable year for personal exemptions shall be $175 for each exemption allowed to the taxpayer under this section for the taxable year."

(c) Section 151 is further amended by striking out "of $750" wherever it appears therein.

Mr. HATHAWAY. Mr. President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

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

Mr. HATHAWAY. I yield.

Mr. TALMADGE. Mr. President, I ask unanimous consent that the amendment may be in order at this time.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. HATHAWAY. I thank the Senator.

Mr. President, this is a very simple amendment. It provides, with respect to a personal exemption, that a taxpayer shall be entitled to $175 credit instead of the present $750 deduction. This means that the taxpayer will be able to subtract $175 from his tax bill rather than $750 from his income. This makes the personal exemption a much more equitable exemption than the current tax credit.

At $175, the size of this credit has very little budgetary impact. In fact, it raises about $94 million in revenue.

A credit, as has been recognized by the Finance Committee and by the Senate in other instances, benefits everyone equally; but a reduction provides more of a benefit to the high income taxpayer than to the low income taxpayer.

Under the current law, if you have a $750 deduction for a personal exemption, to a person in a 60-percent bracket, for example, that is worth 60 percent of $750, which is $450. To the person in the 20-percent bracket, that is 20 percent of $750, and it is worth to him only $150.

Personal exemptions represent a tax allowance for the cost of supporting an individual. Providing a larger allowance to the higher income taxpayers violates the logic of cost, since it costs the lower income taxpayer just as much to live, and the logic of need, since the higher income taxpayer is better able to meet those costs. This is exactly what the current law does with a deduction instead of a credit.

Increasingly, more Members of Congress both in the Senate and in the House, are coming to realize that because of our graduated tax code, a deduction provides a benefit more generous to those with less need, whereas a tax credit treats everyone equally. Congress recognized the equity of tax credits when it provided the $35 credit as the centerpiece for our present tax cut. The House and the Finance Committee recognized it when they adopted the tax credit approach for child care.

The Finance Committee also recognized it in allowing a tax credit for higher education costs and in changing the estate tax exemption to a credit.

Finally, both Houses of Congress have recognized it in a number of different provisions for encouraging solar and other energy uses. We have recognized it in all these various areas. There is no reason whatever not to recognize it with respect to the personal exemption.

I shall read just a few figures in regard to how this will affect taxpayers throughout the country.

If this amendment is agreed to, a total of 42,245,000 taxpayers will benefit, 21,625,000 will not benefit. They will have to pay an increase in taxes. So that it is about 2 to 1 in favor of lowering the taxes of individuals throughout the country; 3,668,000, as a result of enactment of this amendment, will have to pay no taxes at all.

Mr. President, I have made all of the points that I think I can make in favor of this amendment. It is desirable from the point of equity. As I mentioned earlier, it has no revenue loss; in fact, we have a revenue gain of $90 million. It has been recognized in the Tax Code and by the Committee on Finance in various other parts of the law. There is no reason not to recognize it in this part of the law to do justice to our taxpayers throughout the country.

I think that I should say, finally, that we should not confuse this with a business deduction. If this were a credit instead of a business deduction, I would not be advocating it. The personal exemption of $750 is not a deduction allowed for the production of income; it is a deduction recognizing the cost of dependency care. Certainly, recognizing the cost of dependency care, those in greater need of dependency care, those in the lower income brackets, should get a better break than those in the upper income brackets. But in the present system, the reverse is true. This amendment attempts to do equity.

I suppose a more equitable situation would be to have a tapered credit or a graduated credit, so those in the lower income brackets actually get a bigger credit than those in the upper income brackets. But I am satisfied that the flat amount that is going to be able to be deducted by all taxpayers, regardless of their income, at least goes 90 percent of the way toward destroying the inequity that now exists under the present law.

Mr. NELSON. Will the Senator from Maine yield?

Mr. HATHAWAY. I am happy to yield to the Senator from Wisconsin.

Mr. NELSON. I commend the Senator from Maine for offering this amendment to substitute a tax credit for dependents in place of a tax deduction. This issue has been before us on other occasions, but not adopted.

It is totally inequitable to establish a proposition that we are going to allow a deduction to a taxpayer for each de-

pendent that he has, the purpose being to help him in the support of his wife and his children, and then decide to use a method in giving that help that is disproportionately beneficial the richer you are. So we have a situation that, if there are three dependents totaling $3,000, for each $1,000 of deduction, if you are at the top of the tax bracket, if you are at the 70-percent level of deduction, it is worth $700, as the Senator from Maine pointed out; if you are a working man or woman in the 14 or 15 percent bracket, each one of your deductions is worth $150 for every $1,000 deduction.

If the purpose is to give some assistance to the taxpayer in supporting his dependents, then at least each dependent ought to be treated in the same way. I think it is sound tax policy and equity to say that every taxpayer will be allowed the same amount of money in support of each dependent. If we give a credit, it will be exactly the same for everybody. As the Senator suggested, it might even be more equitable if we tailored it to the larger at the bottom than at the top; but in any event, this is far more equitable than the present system. I cannot see any sound argument at all in opposition to it. I hope that the Senate will vote in support of the proposal made by the Senator from Maine.

Mr. CURTIS. Will the distinguished Senator yield for a question?

Mr. HATHAWAY. Yes, I am happy to yield to the Senator from Nebraska.

Mr. CURTIS. How many taxpayers have a tax increase by virtue of this amendment?

Mr. HATHAWAY. The number of returns that would have an increase would be 21,625,000. The number that would have a decrease would be twice that amount.

Mr. CURTIS. That is the number of returns, but how many individuals?

Mr. HATHAWAY. I do not know.

Mr. CURTIS. In some instances, there would be several in a family on the one return.

What would this do in reference to the elderly who have some income, because, at the present time, they have doubled the personal exemption?

Mr. HATHAWAY. They would get a double credit under this provision. Every place where a person gets a $750 deduction he or she would get $175 credit.

Mr. CURTIS. But is it not true that this would mean a tax increase for every individual whose family income is taxed at 23 percent or more?

Mr. HATHAWAY. It would be about that, yes. Those with adjusted gross income of $17,000 and above would pay more taxes and those below would pay less taxes.

Mr. CURTIS. The Senator said 21 million returns would have a tax increase. How many would have a tax cut?

Mr. HATHAWAY. 42,245,000 would have a tax cut.

Mr. CURTIS. Returns?

Mr. HATHAWAY. That is in the number of returns, that is not individuals. I do not have the breakdown as to individuals.

Mr. CURTIS. In that 42 million, is the Senator not including some returns where there is no tax paid?

Mr. HATHAWAY. No; these are under current returns. There is another figure showing that if this went through, 3,368,000 would not have to file a return at all—or they would have no tax liability at all, I should say.

Mr. CURTIS. Many people file a return who may not have a tax liability.

Mr. HATHAWAY. All of these figures are computed on the basis of people paying something and they would have a decrease, because there is a separate figure showing which ones would pay no tax at all as a result of it.

Mr. CURTIS. It seems to me that if we are going to shift from an exemption to a credit, we ought to do it at some time when our situation was such that we were going to increase the amount so that the shift could be made without an actual increase in taxes for anybody. I believe that many taxpayers who, it would appear, would benefit by the Senator's amendment, are benefiting in a number of other ways, and probably do not have any tax liability.

Mr. HATHAWAY. The returns are on this chart, which I ask unanimous consent to have printed in the RECORD, along with my remarks.

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

ESTIMATED AGGREGATE DECREASE AND INCREASE IN FEDERAL INDIVIDUAL INCOME TAX LIABILITY, RESULTING FROM GRANTING A $175 NONREFUNDABLE MANDATORY CREDIT IN LIEU OF THE $750 EXEMPTION ALLOWANCE

[By adjusted gross income class; 1975 income levels; 1976 law (with full-year reductions)]

Adjusted gross income class	Returns with tax decrease			Returns with tax increase		Net change in tax liability (millions)
	Total number with tax decrease (thousands)	Number made nontaxable (thousands)	Decrease in tax liability (millions)	Number of returns (thousands)	Increase in tax liability (millions)	
0 to $5,000	6,928	1,886	$353			−$353
$5,000 to $10,000	18,505	1,528	1,375			−1,375
$10,000 to $15,000	13,789	230	1,117	2,899	$70	−1,047
$15,000 to $20,000	2,859	17	109	7,785	284	175
$20,000 to $30,000	146	5	9	7,701	1,056	1,047
$30,000 to $50,000	17	1	1	2,407	967	966
$50,000 to $100,000	2	(1)	(1)	687	537	537
$100,000 and over	(1)	(1)	(1)	147	144	144
Total	42,245	3,668	2,963	21,625	3,058	94

[1] Less than $500,000.

Note: Details may not add to totals because of rounding.

Mr. HATHAWAY. It indicates that the 42 million are those who are currently paying some tax.

Mr. CURTIS. Is it not true that for a married couple who have $10,000 or more income, this would be a tax increase?

Mr. HATHAWAY. No; it would be a decrease, up to about $17,000.

Mr. CURTIS. No, $10,000 or more.

Mr. HATHAWAY. It depends on how much more.

Mr. CURTIS. At $10,000, would they have it?

Mr. HATHAWAY. At $10,000, they would have a decrease in their tax liability as a result of this amendment.

Mr. CURTIS. At what point would they have an increase?

Mr. HATHAWAY. About $17,000.

Mr. CURTIS. I do not know if we are using the same figures or not, whether this is adjusted gross or whether it is not.

Mr. HATHAWAY. These figures were prepared by the staff of the Joint Committee on Internal Revenue Taxation on June 22 of this year.

Mr. CURTIS. I thank the Senator.

Mr. ALLEN. Will the Senator yield for a question?

Mr. HATHAWAY. Yes; I am happy to yield.

Mr. ALLEN. Would this amendment have a similar provision to the Kennedy amendment, that there would be a cash refund for any unused credit?

Mr. HATHAWAY. The answer to the Senator from Alabama is no, this is not a refundable credit.

Mr. ALLEN. When would that come? Would that come tomorrow or next week?

Mr. HATHAWAY. I do not intend to offer such an amendment. I do not know whether anybody else intends to or not.

Mr. ALLEN. Mr. President, will the Senator yield the floor? I want to make a comment on my own time.

Mr. HATHAWAY. I would be happy to yield the floor.

Mr. ALLEN. Of course, we are laying a precedent here for a move, if not as to this bill, certainly later, to provide for cash refunds to the potential taxpayer or the filer of a return of the unused credit, and I feel that that would be a bad precedent.

I remarked, in discussing the Kennedy amendment, in pointing out that in this bill and in his amendment it is the first time that I know of that the tax laws have provided that the taxpayer not only pay no taxes but that he get a

cash subsidy from other taxpayers or from the Treasury, and the distinguished Senator from Louisiana (Mr. LONG) said:

Well, no, this earned income credit is not based on taxes. It is based on the amount of earning.

Well, of course, I suggested that it was based on the amount of the social security paid, and he said, no, that was the original concept, and it was in the bill the first time it passed here in the Senate. But whether it is there or not in so many words it is there in actuality because we know that the employer and the employee under social security paid 5.85 percent, which would make it 11.7 percent, so they paid in 11.7 percent in social security taxes and then they got back 10 percent of what they have paid up to $4,000.

So that a $3,000 couple with child would get back $300, which is just about the amount of social security taxes they had paid. So actually this Kennedy amendment approach that has been agreed to by an overwhelming vote is the first time we have entered upon the concept of paying people for filing tax returns. Never before has that been done, so far as I know, and I feel like we are embarking upon a very dangerous course of mixing social programs with tax laws, and I think this credit we are talking about here, it will not be many days or many sessions of Congress before this credit is made refundable in the form of cash. I feel like we have entered upon a very dangerous precedent here in the Senate if we start letting some people pay taxes and other people file returns who get cash payments from the Treasury.

As I say, if we want social programs of that sort let us have social programs of that sort. Let us not write the tax laws in such a way as to provide for paying people for filing returns, not only wiping out the tax liability, which is done in the earned income credit, whether it is put on that basis or not, because it is there, because it is based on earned income on which social security is paid. So, in effect, it is paying back about nine-tenths of the social security payment made by the employer and employee.

By setting up this credit it will not be long before the argument is made, "Well, this group of taxpayers did not need this credit and, therefore, why should we penalize them for not using it up. Let us pay them in cash."

So it is just one step down the road toward further subsidies out of the tax laws. I do not object to wiping out all taxes for deserving individuals, but not to pay bonuses out of the Treasury. I believe this amendment, which sounds good on its face, is going to lead to another bad precedent.

Mr. HATHAWAY. Mr. President, if the Senator will yield, I would like to point out that we already have the social programs and we already allow the deduction. The point of this amendment is to make the program more equitable. We are already saying to the taxpayer, "Take $750 for every dependent and deduct it from your income." We know that because of the bracket system that is worth more to a person in the upper bracket than in the lower bracket, so we know it is inequitable.

If we were to come on the floor today and advocate a direct appropriation where we were going to give a person in the 60-percent tax bracket $450 for every child, and give a person in the 20-percent tax bracket $150 for every child it would be voted down 100 to 0, but that is just the effect of the $750 deduction.

The trouble is that the general public does not understand it. If they did, they would be out here in front of the Senate with clubs to get us to change it. That is just what I am trying to do here.

The Senator is correct, there may be later on someone who will offer an amendment to make it a refundable credit which will make it more equitable. I am not going to advocate it certainly at this time nor on this bill, but I would like to point out that we already have a social program, and this simply makes it a more equitable social program.

Mr. ALLEN. You do not have a social program to the extent of wiping out tax liability and then paying cash bonuses. That is nowhere in the law.

Mr. HATHAWAY. We do not have it to that extent; that is true.

Mr. ALLEN. Until today. Today is the the very first time that concept has been entered upon.

Mr. HATHAWAY. No; the first time was the earned income credit, which was advocated by the chairman of the Finance Committee.

Mr. ALLEN. But there, as I pointed out though, that is less than the amount the individual has paid in, he and his employer paid in, in social security taxes. So the taxes have been paid in such cases, not income taxes necessarily but social security taxes, in an amount in excess of the earned income credit.

Mr. HATHAWAY. The refund under the earned income credit is not limited to income for social security taxes. I mean, if you only pay $100 in taxes you are entitled to $200, and you are getting more in income tax from social security tax than what the employee paid.

Mr. ALLEN. The Senator is wrong about that. The social security tax of the employer and employee is 11.7 percent, and all he is getting back is 10 percent. So all of this is earned income, and all earned income is subject to social security tax. So for every dollar he has earned somebody has paid 11.7 percent in social security taxes, and all he is getting back is 10 percent. So there is no loss to the Treasury. Today for the first time we have entered upon a program providing for cash loss to the Treasury. Heretofore, it has been the wiping out of taxes or paying a bonus less than the amount paid in.

Mr. HATHAWAY. Well, it is a bonus to the extent of the individual because he has only paid half of that social security tax.

Mr. ALLEN. I understand, but still social security tax has been paid in to his credit by someone.

Mr. HATHAWAY. That is true, but that was not the design of the earned income credit.

Mr. ALLEN. Yes.

Mr. HATHAWAY. But, nevertheless, we get back to the earned income credit. We are just talking about a matter of degree in social programs. It would be more of a social program, and maybe a more equitable social program, if we made it refundable, because we would be sure that everybody got $175 per child, per dependent.

Mr. ALLEN. That is why I was asking the Senator if it contains that feature, and he said it did not now.

Mr. HATHAWAY. It does not contain that feature.

Mr. CURTIS. Mr. President, will the Senator yield further?

Mr. HATHAWAY. Yes.

Mr. CURTIS The Senator's proposal has some advantages, but it disturbs me, and I am thinking of a type of taxpayer who is entitled to a great deal of consideration: a husband and a wife with five children and $15,000 taxable income, which is not high, and they will have an increase of taxes of over $210.

According to my figures, with $15,000 of taxable income, a couple with five children under present law, and using the deduction, would pay $1572.50.

Under the Senator's proposal, they pay $1,785, or about $212.50 more.

We talk about burdens of taxes at various levels, and the burden of taxes is great on all people, but I believe that we would not have to go very far up the line of income and we would be reaching families that are totally self-supporting.

They have enough income, so many of the social benefits are not theirs. Under the Senator's proposal, he would be giving them quite an increase in taxes.

Mr. HATHAWAY. I think, if I may answer the Senator, having different figures, I do not know what the source of the figures are. Our break-even point is about $17,000 in adjusted gross income.

Mr. CURTIS. I am talking about taxable income and a family of five children. Of all the people that should not have a tax increase, it is such a family.

If they have $17,000 taxable income, they are not getting all these social benefits that are extended to a lot of people who have no income, or a very small one.

At that point, we are going to increase the taxes on them.

Now, I hope that if the Senator insists on pursuing his amendment, the Senate vote it down.

Mr. HATHAWAY. To answer the Senator, I do not think those figures are correct. The breaking point would be about $17,000. But I do not think that break-even point is necessarily too relevant here since twice as many tax returns are going to show a decrease in taxes paid as are going to show an increase in taxes paid.

Furthermore, the Senator, I think, would have to admit that it is more equitable to give a credit in a situation like this than to have a deduction.

Mr. CURTIS. No.

Mr. HATHAWAY. This is a subsidy to the individual to take care of the cost of his dependents. Why would we give them in the upper income more than in the lower income bracket?

It seems to me it should be the reverse.

Mr. CURTIS. I am talking about $15,000 taxable income, which means before exemptions. The way it figures out here, at that modest income for a family of seven, it would be a very sizable tax increase.

I do not believe that the distinguished Senator would want to do that, because if it is true at $15,000, it is going to be true up the line. Most of the people are not in the real high brackets.

But the Senator is reaching those people who are totally dependent on their own earnings and are not the recipients of many social benefits, and give them the tax break.

Mr. HATHAWAY. The Senator is giving twice as many a tax break as he is giving a tax increase, so I think from that point of view——

Mr. CURTIS. That does not mean it is just or that all those getting the tax increase are entitled to it.

I do not think we should raise the taxes on a $15,000 family of taxable income before exemptions, particularly if they have——

Mr. HATHAWAY. We cannot examine each family getting the benefit and say, "This one should have it and that one should not," any more than for the investment tax credit we can examine each company that will get the benefit of that and see whether or not each individual company needs it.

But, generally speaking, I think the Senator would agree if——

Mr. CURTIS. The tax credit is not paid to the company, it is paid to the purchaser in each instance.

SEVERAL SENATORS. Vote! Vote!

Mr. HATHAWAY. The tax credit can be subtracted from the company's tax liability.

Mr. CURTIS. No. It reduces the tax liability of the purchaser of equipment.

Mr. HATHAWAY. That is correct.

Mr. CURTIS. Not the producer.

Mr. HATHAWAY. That is what I am saying. He gets that deduction. He would be able to subtract that amount from his tax liability. Some companies may need that, some may not. I do not question that.

Mr. CURTIS. He has to do something particularly to do that. He has to make an expenditure and then get a credit.

I did not support it some years ago. I think it is clearly tax expenditure, but I believe it is one that has worked and I am supporting it.

Mr. HATHAWAY. But would the Senator agree that if we were starting from the beginning, and we had no deduction whatsoever for dependents, and if we were to make an appropriation of so much money to every family for each of their dependents that certainly we would at least make that amount equal per dependent regardless of the family's income and, if anything, we probably would make it a little bigger for the poorer family than the richer family?

Mr. CURTIS. It also gets into a bad theory. The Senator's illustration may imply that all income belongs to the Government and because we are going to tax it all, then appropriate a benefit back to the people.

The purpose and the intent of the personal exemption is based on the fact that here is a certain amount of income that is free of taxation.

As I said a minute ago, there might be a time when we would be in a position to increase the personal exemption, or credit, whichever one we use, where we could shift to this without giving an increase in taxes to so many people.

But I do not want to vote a tax increase on a family of five children with only $15,000 of taxable income prior to an exemption.

Mr. President, I yield the floor.

Mr. TALMADGE addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. TALMADGE. Mr. President, this is a prime example of how not to legislate, to suddenly spring an amendment on the floor of the Senate, write and rewrite the entire Tax Code of the United States, in some 10 minutes with Senators not having the slightest idea of how it will affect millions and countless millions of Americans.

In the first instance, the amendment does not even have an effective date. So it would become effective at the time the President signed it.

Also, the amendment does not change withholding rates to make withholding match the new tax liability. Everything done to date on withholding would be out of kilter.

In the past, over all these years, we have had an exemption and we have raised it periodically. It is now $750 per spouse or per dependent. We have recently introduced a credit of $35 per dependent in order to try to do justice to those in the very low-income brackets.

Now, in addition to the $35 credit, this would establish another $175 credit. We would not know how the credits would work, we would not know which would have priority, we would not know how they would mesh together on the withholding taxes.

It would make a jungle of the entire Revenue Code.

Something of this nature should first be proposed and sent to the Finance Committee, hearings ought to be held on the proposal where not only the Internal Revenue Service and the Treasury Department could comment, but also the people throughout the length and breadth of this country.

But we do not have that. We have it suddenly thrust on us on the Senate floor. We do not even have calculators on the Senate floor. They are not permitted on the Senate floor. We have to rely on our experts to make the estimates of the effects of the amendment as best they can in a period of seconds or minutes with tablets and pencils.

Here is what the amendment would do, Mr. President. It would raise taxes on 21,625,000 tax returns.

Here is what it would do further: It would increase taxes on everyone in tax brackets higher than 23 percent.

Here is what it would do for a single individual with an adjusted gross income of $8,450: It would raise his taxes.

Here is what it would do for a couple, a man and wife, with income of $15,600: It would raise their taxes.

The great hue and cry that we hear throughout America at the present time is that the tax burden falls unjustly on middle America, the working people who earn $12,000, $14,000, $15,000, and $18,000 a year.

That is exactly what this amendment would do—it would raise taxes on them.

They are not the people who get the benefit of food stamps. They are not the people who get the benefit of public housing. They are not the people who get the benefit of free scholarships. They are not the people who get the benefit of medicaid. These are the God-fearing, hard-working people who work for a living, pay their taxes, and make this country great. That is exactly the group on whom the Senator's amendment will put an added burden. I hope the amendment will be rejected.

SEVERAL SENATORS. Vote!

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine. 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 North Carolina (Mr. MORGAN), the Senator from Minnesota (Mr. MONDALE), the Senator from Montana (Mr. METCALF), the Senator from California (Mr. TUNNEY), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I also announce that the Senator from Florida (Mr. STONE) is absent because of illness.

I further announce that, if present and voting, the Senator from North Carolina (Mr. MORGAN) would vote "nay."

Mr. TOWER. I announce that the Senator from Utah (Mr. GARN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

I also announce that the Senator from Pennsylvania (Mr. HUGH SCOTT) is absent on official business.

The result was announced—yeas 18, nays 70, as follows:

[Rollcall Vote No. 402 Leg.]

YEAS—18

Abourezk	Culver	McIntyre
Bayh	Durkin	Nelson
Biden	Hart, Philip A.	Pell
Brooke	Haskell	Proxmire
Case	Hathaway	Stevenson
Clark	Mansfield	Williams

NAYS—70

Allen	Dole	Jackson
Baker	Domenici	Javits
Bartlett	Eagleton	Johnston
Beall	Eastland	Kennedy
Bellmon	Fannin	Laxalt
Bentsen	Fong	Leahy
Brock	Ford	Long
Buckley	Glenn	Magnuson
Bumpers	Gravel	Mathias
Burdick	Hansen	McClellan
Byrd, Harry F., Jr.	Hart, Gary	McClure
	Hartke	McGee
Byrd, Robert C.	Hatfield	Montoya
Cannon	Helms	Moss
Chiles	Hollings	Muskie
Church	Hruska	Nunn
Cranston	Huddleston	Pastore
Curtis	Inouye	Pearson

Percy	Sparkman	Thurmond
Randolph	Stafford	Tower
Ribicoff	Stennis	Weicker
Roth	Stevens	Young
Schweiker	Symington	
Scott, William L.	Taft	
	Talmadge	

NOT VOTING—12

Garn	McGovern	Packwood
Goldwater	Metcalf	Scott, Hugh
Griffin	Mondale	Stone
Humphrey	Morgan	Tunney

So Mr. HATHAWAY's amendment (No. 1922) was rejected.

Mr. JAVITS. Mr. President, are we at title VIII of the bill now?

The PRESIDING OFFICER (Mr. HUDDLESTON). The Senator is correct. We are on title VIII.

AMENDMENT NO. 1901

Mr. JAVITS. Mr. President, I send to the desk an amendment on behalf of myself and Senators RIBICOFF, PELL, HUMPHREY, MAGNUSON, and DURKIN.

I ask that it be made the pending business.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) for himself and Mr. RIBICOFF, Mr. PELL, Mr. HUMPHREY, Mr. MAGNUSON, and Mr. DURKIN, proposes amendment numbered 1901.

The amendment is as follows:

On page 846, after line 21, insert the following:

SEC. 1326. DONATIONS OF WORKS OF ART BY ARTISTS TO CHARITABLE ORGANIZATIONS.

(a) IN GENERAL.—Section 170(e) (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end thereof the following new paragraphs:

"(3) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF LITERARY, MUSICAL, OR ARTISTIC COMPOSITIONS.—In the case of a charitable contribution of a literary, musical, or artistic composition by a taxpayer described in paragraph (3)(A) of section 1221 to an organization described in section 501(c)(3), paragraph (1) shall not apply, except to the extent that the total amount of such contributions by the taxpayer for the taxable year exceeds the smaller of—

"(A) $25,000, or

"(B) the gross income for the taxable year of the taxpayer attributable to the sale of literary, musical, or artistic compositions in that taxable year and in previous taxable years.

"(4) The special rule of paragraph (3) shall only apply if the taxpayer receives from the donee a written statement that the donated property represents material of historical, artistic, musical, or literary significance and that the use by the donee will be related to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)(2)(B)), and shall not apply in the case of charitable contribution of any letter, memorandum, or similar property which was written, prepared, or produced by or for an individual while he held an office under the Government of the United States or of any State or political subdivision thereof if the writing, preparations, or production of such property was related to, or arose out of, the performance of the duties of such office."

(b) CONFORMING AMENDMENT.—Section 170(d) (relating to carryovers of excess contributions) is amended by adding at the end thereof the following new subparagraph:

"(C) SPECIAL FOR AMOUNTS DETERMINED UNDER SUBSECTION (e)(3).—In applying subparagraph (A), of paragraph (3), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reflects amounts determined by reference to subsection (e)(3)."

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

Mr. JAVITS. Mr. President, the reason for proposing this amendment to this particular title of the bill is that of the feeling that it is not necessary to ask unanimous consent to include it in title VI, where it belongs, it would be more convenient to the manager of the bill, and so I have proposed it for title VIII, and I understand it is satisfactory to the manager.

Mr. HATHAWAY. Mr. President, in light of the vote on the last amendment, which I offered, I am not going to offer two other amendments, one of which would change the interest deduction on all personal interest to a credit of 19 percent of that deduction, and the other of which, if that had failed, would change the mortgage interest deduction to a credit of 19 percent of that.

Both of these I think have the same basic argument that was offered in favor of the amendment which was just defeated.

Obviously, the Senate is not ready at this time to change these deductions which have for a long time been in the law to credits which I feel would be more equitable.

Hopefully, hearings can be held on these particular measures in the not too distant future, and perhaps more Members will be persuaded that the credit route for nonbusiness deductions is certainly much more equitable than the deduction route.

Mr. HATFIELD. Mr. President, I am pleased to express support for the amendment offered by my colleague from Kentucky, Senator HUDDLESTON and agreed to by the Senate yesterday. The amendment provides a specific time frame for the study of tax simplification. While a great many weighty issues have been dealt with in connection with H.R. 10612, the bill does not take significant steps toward simplification. It is my hope that the Joint Committee on Taxation will view this assignment very seriously.

In offering my bill, S. 802, to the Senate early this session, I put forward a plan for tax simplification and reform which is of the type which is to be considered by the joint committee. I understand that the Treasury Department has been giving consideration to a similar proposal to broaden greatly the tax base by eliminating all or most tax deductions and credits. Hopefully, there will be other options which will be considered in this study.

Virtually every "tax reform" bill which has been carried through the tax committees and to the floor of each body quickly has lost its characteristics of reform and simplification. Unless and until we are willing to wipe the slate clean of the myriad of tax expenditures and begin again with a fair and understandable tax code, we will make little progress toward tax reform. I welcome the study to be undertaken by the joint committee and I commend my colleague, Senator HUDDLESTON, for offering his amendment.

TAX SIMPLIFICATION

Mr. ROTH. Mr. President, I would like to call to the attention of the Senate the provisions in the tax reform bill dealing with simplification of the individual income tax laws. Tax simplification is one of my major goals, and despite the many difficulties involved in simplifying the tax laws, the tax reform bill does contain a number of significant simplification provisions. The committee bill simplifies and reduces the number of tax tables taxpayers must use to compute their taxes. This provision will reduce the number of tax tables from 12 to 4, and it is estimated that more than 90 percent of taxpayers will be able to benefit from the new simplified tax tables. The committee amendment also repeals and simplifies a number of "deadwood" provisions in the law, those provisions which are no longer used or of little importance. This provision would repeal almost 150 sections of the code and amend about 850 other provisions.

In addition, the committee amendment would make important changes in the law which amend and simplify the deduction for alimony payments, the retirement income credit, the child care credit, the sick pay exclusion, and moving expense deductions.

I would also like to call to every Senator's attention a little-noticed but significant provision approved by the Finance Committee. This provision is an amendment which I proposed instructing the staff of the Joint Committee on Taxation to conduct a comprehensive study of ways to simplify the income tax system.

Under this amendment, the bipartisan joint committee staff, which in my opinion is the most professional and highly respected staff in Congress, will conduct a study to determine how our tax laws can be simplified and tax rates reduced by repealing or simplifying deductions, exemptions, and credits.

There is a growing discontent about our Nation's tax laws and despite years of promises for tax reform, the tax laws have become more complex and less equitable. It must be a top priority to make the tax laws fairer and more understandable for the general public.

Our goal should be a tax system that can be understood by the average taxpayer and not just by the tax specialist. The only way this can be accomplished is to reduce the hundreds of deduction, exceptions and credits to a minimum number of deductions for personal exemptions and charitable and religious deductions, and to combine this action with a substantial reduction in the tax rates.

I am hopeful that this study will lead to the same type of reforms that the Joint Budget Study Committee accomplished 2 years ago. That study led to the enactment of the Budget Reform Act, which has been hailed as the most significant congressional reform in years. As a member of that study committee, I recognize the important contributions a comprehensive study can have in accomplishing reforms, and I am hopeful this tax simplification study will also result in significant reforms.

COMMITTEE STUDY INDICATES POSSIBILITY THAT 1 MILLION JOBS WERE SAVED AS A RESULT OF SMALL BUSINESS TAX REDUCTIONS OF 1975

Mr. NELSON. Mr. President, since the Senate will shortly be called upon to consider the extension of the tax reductions for small business enacted by the emergency Tax Reduction Act of 1975 (P.L. 94-12), I would like to report some preliminary results of a survey conducted by the Select Committee on Small Business which suggests that between one-half million and 1 million jobs may have been saved last year because of congressional recognition of smaller firms in that legislation.

STATUS OF THE SMALL BUSINESS PROVISIONS

The present parliamentary situation is that the Senate Finance Committee has recommended that the small business rate reductions be made permanent as a part of the Tax Reform Act of 1975 (H.R. 10612). The House of Representatives, in contrast, has voted to extend them only through 1977. The impact of the small business provisions would thus also be relevant to the drafting and consideration of a conference report by both Houses.

The question of the shape of the emergency tax cuts first arose early last year as a response to the worst U.S. recession since the Great Depression of the 1930's. Under the administrational proposal, which was limited to increasing the investment tax credit, the small business community would have received approximately 25 percent of the $4 billion in proposed business tax cuts—or $1 billion—but with the following drawbacks: This tax benefit applies only after purchase of equipment so it is the least valuable to firms that are labor-intensive, a hallmark of small business. Also at that time the credit further restricted to include only $50,000 worth of used machinery, the kind that new and small enterprises typically purchase.

The Select Committee on Small Business, of which I am chairman, questioned that approach to stimulating the economy, pointing out further that the benefits of investment credit are highly concentrated, and, in fact, about 350 of the largest American companies would receive over 40 percent of the entire credit. In opening hearings on February 2, 1975, we raised the question of distribution of benefits between large and small businesses in the following terms:

> The gross national product figures tell us that approximately 65 percent of all spending in the economy is by consumers. This provides a rough rule of thumb of how tax and other stimulative measures should be divided between consumers and businesses.
>
> As to the remaining 35 percent, the best Government statistics we have tell us that small business accounts for about 97 percent of the number of businesses, one-half of all the employment, and one-third of the gross national product. These figures seem to argue for a substantial fraction of the business tax benefits to go to the small business sector—perhaps one-third, if our objective is to stimulate the economy generally, or closer to one-half if we are most interested in expanding employment.

These hearings brought about changes to the business provisions to provide for a tax reduction from 22 to 20 percent on the first $25,000 of corporate earnings; and an additional reduction from 48 to 22 percent on the next $25,000 of corporate earnings; and an increase to $100,000 in the amount of used machinery eligible for the increased investment credit.

As a consequence of this congressional action, smaller businesses ultimately received about $1.323 billion in benefits, or 37.54 percent of the $3.572 billion in business reductions contained in the bill.* This would constitute a proportion about 50 percent higher than under the administration proposal.

EXAMINING THE EFFECTS OF THESE DECISIONS

Did this strategy work? Did it help small business and did it help the economy? The select committee has sought, through hearings and related research, to find out.

As a part of this effort, a questionnaire was formulated, with the advice and assistance of the Joint Committee on Internal Revenue Taxation. It asked small businessmen for their actual decisions based upon the 1975 tax reductions in terms of jobs saved or added, new investment, reduction of indebtedness, compensation, and so forth.

This questionnaire was subsequently distributed to a sampling of about 15,000 small and independent businessmen in each of the major types of commerce, including: retailing, wholesaling, manufacturing, construction, and services.

Over 2,000 enterprises took the time and trouble to reply to the questions, and the results of this questionnaire are just beginning to be evaluated. Because of the potential importance of these matters to small business and to the pending legislation, I would like to give the Senate a preview of one aspect of the survey dealing with employment.

NUMBER OF JOBS PRESERVED

The survey asked the following question: "If there had been no tax reduction for 1975, how many employees would your business have been required to lay off?" In response to this question, 2,130 respondents, with a total employment of approximately 57,000, stated that 1,580 jobs were saved in their companies. This amounted to three jobs saved per company, or 2.77 percent of the work force in these businesses.

At first glance, 1,580 jobs may appear to be rather insignificant, compared to a potential work force of 93 million people. However, if only medium-sized corporations—which can be generally defined as having over $25,000 in net income, and which made up over two-thirds of the survey respondents—are used as a base, the total would be about 225,000 medium-sized companies. If half of these reacted to the emergency tax cuts, as the survey also indicates, the result would be 112,500 multiplied by 3 positions, or almost 350,000 jobs saved in this sector of the economy. Since 90 percent of U.S. corporations earn less than $25,000, it is likely that the remaining 1.8 million small companies would add substantially to that total, making an estimate of one-half million jobs save an estimate of one-half million jobs saved quite conservative.

If the retention ratio of 2.77 percent is related to the fact that small business accounts for over half the private employment in this country, a simple arithmetical projection—2.77 percent times 36.7 million—would give a total of 1 million jobs retained. But since the 36.7 million includes both corporate and noncorporate business, this may be a little on the high side. What the figures should be will be addressed, and I hope resolved, by experts inside and outside of Government, to whom we will send the findings of the survey when they are published.

We certainly do not claim that a straight-line projection is necessarily a preferred method of analysis, and we do not wish to overinflate our claims in this area. The committee will assure that the statistical results will be subjected to thorough examination by trained experienced economists in all walks of life. We do contend that the size and the distribution of the sample and the care in drafting and testing the questionnaire invite such serious consideration and that our calculations are suggestive.

But, to the extent that this study reflects reality, it seems to show very significant benefits resulting to the economy as a whole from the decisions of the Congress to distribute about $1.323 billion in rate reductions of the total $22.8 billion of benefits in the emergency tax bill to the small business sector.

Relating these figures, rough as they admittedly are, to overall unemployment would place the unemployment rate for the third quarter of 1975 from one-half point to a full point higher than it otherwise would have been. In other words, the national unemployment rate might have been 9 or 9.5 percent rather than 8.5 percent.

Several scholars have observed that concentrating the same tax reductions in the investment credit would not have had these effects on employment, because buying new machinery may not automatically tend to increase employment. It may tend to reduce the number of jobs somewhat. For example, a recent study of the possible use of the investment credit to foster rural development came to the following conclusion:

> * * * in general, capital-tied incentives increase the substitution of capital for labor * * * and to this extent such subsidies act counter to stated program purposes (and) discriminate against labor intensive firms, placing at a competitive disadvantage the very businesses intensive in the productive factor for which the tax subsidy is theoretically designed.*

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* Estimate of the Joint Committee on Internal Revenue Taxation; defining "small business" as firms with less than $50,000 in net income, except as to the surtax, where corporations with between $50,000 and $100,000 net income are included. If the $50,000 limit is adhered to throughout, the comparable figures are $1.259 billion in benefits and 35.24 percent of the total for smaller firms.

*See "Alternative Tax Subsidies for the Training and Employment of the Unemployed," by Kenneth R. Biederman, in "The Economics of Federal Subsidy Programs," a Compendium of Papers submitted to the Joint Economic Committee, Part 4—Higher Education and Manpower Subsidies. Aug. 28, 1975, p. 541 et seq., p. 547.

Further, if the half-million or 1 million jobs were in fact saved, and this figure were multiplied by the average yearly wage for 1975—which was about $8,500—the amount of wages saved would amount to $4¼ billion to $8½ billion, and the Federal taxes—assuming an average-sized family of four—would amount to between $292.5 million and $585 million.

Among the fascinating possible implications of such figures for study would be:

First, the direct return of somewhere between 22 and 44 percent of small business tax cuts in income taxes in the first year alone, with additional revenues from income, sales, and other taxes thereafter. These revenue savings, in my view, should be savings on unemployment, welfare, food stamps, and other combined with estimates of further such benefits to assess the total return of this investment; and

Second, the surprisingly small amount of tax dollars that were apparently needed per each job retained. To the extent that these indications might turn out to be valid guides, the cost seemed to be in the neighborhood of $1,500 to $3,000 per job.

This would be in marked contrast to estimates by other authorities of $9,090 to directly finance a public service job and $66,667 in general tax cuts to finance a job indirectly.[1] On previous occasions, the committee has referred to conference board studies showing that the average capital invested per job approximates $30,000 with a low of about $10,000 in such industries as apparel, furniture, and leather and approximately $15,000 in miscellaneous manufacturing.[2]

The hypotheses arising from our survey, for that is all they are at this point, surely needed to be rigorously analyzed and tested. The next step will be publication of the survey results later this year and we intend to circulate them widely so that all who are interested may have an opportunity to apply their own methods and their own computers, and so that they may come to their own conclusions.

But, if the final results are anything like the preliminary ones, they signal a great benefit from distributing tax benefits fairly and equitably between small, medium, and large businesses. The indications from the data constitute a strong argument for retaining the three-tiered tax structure ushered in by Public Law 94–12 which makes the essential distinctions between small, medium-sized, and large businesses. I would hope that Congress will act to make this structure permanent for the well-being of 13 million smaller and medium-sized businesses, their employees, and the entire American economy.

[1] Summary Table 1, "Temporary Measures to Stimulate Employment: An Evaluation of Some Alternative," Congressional Budget Office, Sept. 2, 1975, p. v.

[2] Capital Invested per Employee," Road Maps of Industry No. 1749, The Conference Board, Nov. 1, 1974; reprinted in Hearings, "Small Business Tax Reform, June 17, 18, and 19, 1975, p. 548.

ORDER FOR A PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS, CONSIDERATION OF S. 2212, AND RESUMPTION OF H.R. 10612

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders or their designees have been recognized under the standing order, there be a brief period for the transaction of routine morning business, not to extend beyond 30 minutes, with statements therein limited to 5 minutes each, at the conclusion of which the Senate will proceed to the consideration of Calendar Order No. 804, S. 2212, the LEAA bill, and that if action is not completed on that bill prior to the hour of 2 p.m. tomorrow the Senate no later than the hour of 2 p.m. tomorrow resume consideration of the unfinished business, the tax reform bill.

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

TRIBUTE TO SENATOR STONE

Mr. ROBERT C. BYRD. Mr. President, Senator STONE could not be present for the votes today subsequent to the vote to override the President's veto of S. 3201, the antirecessionary public works employment bill. He has a very high temperature and is confined to his home, but he, nevertheless, came to the floor at the request of the leadership and voted to override the veto. He manifested a desire, notwithstanding his physical condition, to remain near the floor for the remainder of today's votes, but both the majority leader and I insisted that he return home immediately following the override vote. Senator STONE's willingness to come to the floor today, in spite of a very severe cold, indicates a high sense of responsibility and dedication to duty worthy of recognition and emulation.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, if the House of Representatives overrides the Presidential veto of the military construction bill tomorrow, it is the intention of the leadership to bring that matter to a vote in the area of 3:30 p.m. to 4 p.m. I am in no position at the moment to state exactly what hour, but that would be the approximate time for the vote to override the President's veto of the military construction bill, in the event the House of Representatives overrides that bill prior to that time.

There will be rollcall votes on amendments to the omnibus crime control and safe streets bill, and it is possible that final passage of that measure could occur by the hour of 2 p.m. tomorrow.

However, in the event action is not completed on that bill by 2 p.m., the Senate will resume consideration of the unfinished business, the tax reform bill, and rollcall votes will continue thereon.

Mr. President, it is the present understanding, as indicated earlier, that there will be a vote on the attempted override of the President's veto of the military construction bill tomorrow afternoon, in the event the other body overrides that veto tomorrow.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

VETO OF MILITARY CONSTRUCTION AUTHORIZATION, 1977—UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that in the event the House of Representatives votes to override the President's veto of the military construction bill tomorrow, the Senate proceed, at 3:30 p.m., to debate the override, with a vote on the override to occur no later than 4 p.m. tomorrow.

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

Mr. ROBERT C. BYRD. I ask unanimous consent that such time as may be consumed for debate between 3:30 p.m. and 4 p.m. tomorrow be equally divided between the majority leader and the minority leader or their designees.

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

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

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 9:30 tomorrow morning.

The motion was agreed to; and at 6:51 p.m., the Senate adjourned until tomorrow, Thursday, July 22, 1976, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate July 21, 1976:

DEPARTMENT OF STATE

Stanley E. Shirk, of Connecticut, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to El Salvador.

DEPARTMENT OF THE TREASURY

Stanley E. Shirk, of Connecticut, to be Comptroller of the Currency, vice James E. Smith, resigned.

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

H. Guyford Stever, of the District of Columbia, to be Director of the Office of Science and Technology Policy (new position).

FEDERAL COMMUNICATIONS COMMISSION

Joseph R. Fogarty, of Rhode Island, to be a member of the Federal Communications Commission for the unexpired term of 7 years from July 1, 1971, vice Charlotte T. Reid, resigned.

SECURITIES AND EXCHANGE COMMISSION

Patrick J. Delaney, of New York, to be a member of the Securities and Exchange Commission for the term expiring June 5, 1981, vice A. A. Sommer, Jr.

CONFIRMATIONS

Executive nominations confirmed by the Senate July 21, 1976:

NATIONAL MEDIATION BOARD

David H. Stowe, of Maryland, to be a member of the National Mediation Board for the term expiring July 1, 1979.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

The following-named persons to be members of the National Commission on Libraries and Information Science for the terms indicated:

For the remainder of the term expiring July 19, 1977.

Ralph A. Renick, of Florida.

For terms expiring July 19, 1980.

Frederick H. Burkhardt, of Vermont.

Marian Pollensky Leith, of North Carolina.

Mildred E. Younger, of California.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

HOUSE OF REPRESENTATIVES—*Wednesday, July 21, 1976*

The House met at 10 o'clock a.m.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Humble yourselves in the sight of the Lord and He will lift you up.—James 4: 10.

O God, our Father, whose love never lets us go, whose strength never lets us down, and whose justice never lets us off, with the dawn of a new day we come to Thee praying for courage, understanding, and wisdom as we face the tasks that await us.

In these trying times when crucial decisions are to be made, let not discouragements depress us, nor defeats disillusion us, nor disappointments make us desolate, but may Thy spirit lift us up, hold us steady and keep us steadfast that we may now and always do justly, love mercy, and walk humbly with Thee.

"To serve the present age,
My calling to fulfill;
O may it all my powers engage
To do my Father's will."

Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment a bill and concurrent resolution of the House of the following titles:

H.R. 13308. An act to amend the Federal Aviation Act of 1958 to extend the authority of the Secretary of Transportation with respect to war risk insurance; and

H. Con. Res. 678. Concurrent resolution directing the Clerk of the House to make a correction in the enrollment of H.R. 11504.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3295) entitled "An act to extend the authorization for annual contributions under the United States Housing Act of 1937, to extend certain housing programs under the National Housing Act, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 14231) entitled "An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1977, and for other purposes," and that the Senate agreed to the House amendments to the Senate amendments numbered 2, 3, 4, 12, 22, 28, 31, 40, 48, 53, 54, 55, 60, 65, and 72 to the foregoing bill.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 366. An act to amend the Omnibus Crime Control and Safe Streets Act of 1968, as amended, to provide benefits to survivors of certain public safety officers who die in the performance of duty;

H.R. 5465. An act to allow Federal employment preference to certain employees of the Bureau of Indian Affairs, and to certain employees of the Indian Health Service, who are not entitled to the benefits of, or who have been adversely affected by the application of, certain Federal laws allowing employment preference to Indians, and for other purposes;

H.R. 9460. An act to provide for the establishment of a constitution for the Virgin Islands; and

H.R. 9491. An act to provide for the establishment of a constitution for Guam.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 366) entitled "An act to amend the Omnibus Crime Control and Safe Streets Act of 1968, as amended, to provide benefits to survivors of certain public safety officers who die in the performance of duty," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. McCLELLAN, Mr. PHILIP A. HART, Mr. KENNEDY, Mr. HRUSKA, and Mr. THURMOND to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 972. An act to provide scholarships for the dependent children of public safety officers who are the victims of homicide while performing their official duties, and for other purposes.

APPOINTMENT AS MEMBERS OF COMMISSION ON ADMINISTRATIVE REVIEW

The SPEAKER. Pursuant to the provisions of House Resolution 1368, 94th Congress, the Chair appoints as members of the Commission on Administrative Review the following Members of the House:

The gentleman from Wisconsin, Mr. OBEY, Chairman;

The gentleman from Illinois, Mr. PRICE;

The gentleman from Washington, Mr. MEEDS;

The gentleman from Indiana, Mr. HAMILTON;

The gentleman from New Hampshire, Mr. D'AMOURS;

The gentleman from Minnesota, Mr. FRENZEL;

The gentleman from Colorado, Mr. ARMSTRONG; and

The gentleman from Maryland, Mr. BAUMAN.

And the following members from private life:

Mr. Ralph Huitt, Washington, D.C.;

Dr. Charles U. Daly, Cambridge, Mass.;

Ms. Lucy Benson, Amherst, Mass.;

Mr. William DuChessi, Amsterdam, N.Y.;

Mr. William Hamilton, Washington, D.C.;

Mr. Robert W. Galvin, Schaumberg, Ill.; and

Mr. Roscoe Egger, Washington, D.C.

CONFERENCE REPORT ON H.R. 13655, AUTOMOTIVE TRANSPORT RESEARCH AND DEVELOPMENT ACT OF 1976

Mr. McCORMACK submitted the following conference report and statement on the bill (H.R. 13655) to establish a 5-year research and development program leading to advanced automobile propulsion systems, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 94–1351)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the text of the bill (H.R. 13655) to establish a five-year research and development program leading to advanced automobile propulsion systems, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

That this Act may be cited as the "Automotive Transport Research and Development Act of 1976".