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Congressional Record

PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, FIRST SESSION

SENATE—Wednesday, April 20, 1977

(Legislative day of Monday, February 21, 1977)

The Senate met at 12:30 p.m., on the expiration of the recess, and was called to order by Hon. GARY HART, a Senator from the State of Oklahoma.

PRAYER

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

Almighty God, Lord of all history, to whom every day is Judgment Day, look upon this Nation in mercy and compassion.

We thank Thee for Thy bountiful gifts to us in nature—for treasures of energy above, beneath, and in the land Thou hast given us. Forgive us for our desecration of natural beauty, for the scars we have left on Thy creation, and for our wanton waste of soil and sea and sky. If our knowledge of ourselves and our world leads to repentance, help us to repent earnestly and honestly and to renew our covenant with Thee for a better stewardship of Thy gifts to us. Be with us this day that we may hear with understanding, say what we have to say with clarity, and act under the guidance of Thy Spirit to set forward Thy kingdom on Earth.

We pray in the name of Him who was servant of all. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., April 20, 1977.

To the Senate:

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

JAMES O. EASTLAND,
President pro tempore.

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

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Tuesday, April 19, 1977, be approved.

CXXIII—713—Part 10

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

COMMITTEE MEETINGS

Mr. ROBERT C. BYRD. Mr. President, consent was given yesterday for all committees to meet today. Perhaps the minority leader and I, after conversing later today, can outline the situation for tomorrow. However, that matter has been taken care of for today.

APPOINTMENT OF COMMITTEE OF SENATORS TO ESCORT THE PRESIDENT INTO THE HOUSE CHAMBER

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President of the Senate be authorized to appoint a committee of Senators on the part of the Senate to join with a like committee on the part of the House of Representatives to escort the President of the United States into the House Chamber tonight.

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

ORDER FOR ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders or their designees have been recognized under the standing order, there be a period for the transaction of routine morning business, of not to exceed 30 minutes, with statements limited therein to 5 minutes each.

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

ORDER OF BUSINESS

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BAKER. Mr. President, I have no requirement for my time, and I have no requests. I yield back my time under the standing order.

Mr. ROBERT C. BYRD. Mr. President, I do the same.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period

for the transaction of routine morning business, not to extend beyond 1 p.m., with statements therein limited to 5 minutes each.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. SASSER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from Tennessee.

RESEARCH AND DEVELOPMENT OF CENTRIFUGE METHOD AT OAK RIDGE NATIONAL LABORATORY

Mr. SASSER. Mr. President, I call to the attention of my colleagues an article which appeared in this morning's Washington Post. The article indicates that President Carter has decided to urge the Congress to approve four new nuclear fuel production plants and that the President will recommend that these new facilities for enriching uranium be constructed within the next 10 years.

The facilities would utilize the gas centrifuge method of enrichment instead of the gaseous diffusion method which is currently in commercial use.

Mr. President, if this story is accurate, and I believe that it is, the decision by the Carter administration to proceed in this manner should be applauded.

This decision will help insure the energy security of this country. It will establish the United States as a reliable supplier of nuclear fuel for conventional powerplants to meet both domestic and international enrichment requirements.

It is estimated that by the year 2000 the demand for nuclear fuel will almost triple the existing capacity at the ERDA diffusion plants at Oak Ridge, Tenn., Portsmouth, Ohio, and Paducah, Ky.

These new facilities will allow this country to meet our needs at home and, at the same time, permit us to capture a large portion of the foreign market. This, I submit, is of great importance in the President's plan of reducing the possibility of the acceleration of worldwide nuclear proliferation.

If the United States becomes a reliable fuel supplier for the foreign nations,

there will be less need for other nations to build enrichment facilities.

I would like to point out, Mr. President, that the Oak Ridge National Laboratory has been at the forefront of development of the gas centrifuge. Currently, ERDA has under construction a gas centrifuge demonstration facility in Oak Ridge. A total of \$25 million will be spent in fiscal year 1977 for this plant and another \$35 million in fiscal year 1978.

On April 8, I wrote President Carter and urged him to make a commitment to proceed with the decision to commercialize the gas centrifuge. I called to his attention the work that has been done at Oak Ridge on this technology and I encouraged him to select Oak Ridge as the site for the expansion of these enrichment facilities.

Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from my letter to President Carter; and also the Washington Post article which appeared in this morning's edition.

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

EXCERPT

We must recognize the need for expanded uranium enrichment capacity. The existing diffusion plants at Oak Ridge, Tennessee; Paducah, Kentucky; and Portsmouth, Ohio, simply are not large enough to provide for this nation's domestic needs and the anticipated requirements of foreign countries which would be willing to purchase the enriched fuel if it were available.

I am aware of the current plans of ERDA to build additional enrichment capacity to the existing facility at Portsmouth. However, it is my understanding that this addition plant will not, alone, provide this country with the capacity we need, and that the utilities in the Portsmouth area have failed to make any commitment to build the electric power plants needed to run the planned add-on facility.

It is my recommendation that you rapidly accelerate the development of the gas centrifuge method of enriching uranium. As you know, this method will be vastly superior to diffusion. The centrifuge process requires only 7% of the electricity needed for diffusion plants.

As you are aware, operation of production-type centrifuges began in 1970. The Centrifuge Process Demonstration Facility is currently under construction at Oak Ridge and \$25 million will be spent in the current year for this facility. Another \$35 million has been included in your budget request for Fiscal Year 1978. I urge you to accelerate the development and operation of this demonstration plant.

It is also requested that you direct ERDA to speed the commitment to commercialization of the gas centrifuge process. Of course, since this process has been primarily developed in Oak Ridge, I urge that the first commercial centrifuge enrichment facility be built there, close to the demonstration facility now under construction.

Mr. President, I hope that you will keep these suggestions in mind as you formulate your final decisions regarding the energy policy for this country.

Sincerely,

JIM SASSER,
U.S. Senator.

CARTER TO SEEK 4 CENTRIFUGE FACILITIES TO
MAKE A-FUEL FOR ELECTRIC PLANTS

(By Thomas O'Toole)

President Carter is expected to ask Congress to construct four enrichment plants that would produce uranium for electricity by a new method that has been secretly developed for almost 20 years at the Oak Ridge National Laboratory in Tennessee.

Administration sources said the President will announce in his energy policy message today his wish to build four gas centrifuge plants that would cost an estimated \$4.4 billion and produce, over 30 years, enough enriched uranium to run 90 atomic power plants of 1 million kilowatts each during that period.

To be built over the next 10 years at locations still not determined, the centrifuge plants would serve to back up Carter's promise that the United States will continue to supply the world's enriched uranium needs in exchange for other nations' waiving their rights to use the plutonium fuel generated in the burned-out uranium.

The indefinite postponement of plutonium use is at the heart of Carter's policy to prevent the spread of nuclear weapons. The uranium that the United States supplies the world from its three enrichment plants cannot be used to make atomic bombs. The plutonium that can be extracted from the burned-out uranium can be used in weapons.

The centrifuge method of uranium enrichment has been under development since 1960 at Oak Ridge. Almost all of its development has been classified, since the centrifuge technique could be tailored to make uranium for weapons as well as electricity.

Since World War II, uranium has been enriched in the United States at factories in Oak Ridge, Paducah, Ky. and Portsmouth, Ohio by a technique called gas diffusion. The same technique is used in the Soviet Union, France and Great Britain, the only other countries of the world with known enrichment plants.

Gas diffusion involves pumping uranium hexafluoride gas through thousands of membrane-like barriers, which trap the heavier isotopes of uranium called U-238 and allow the lighter isotopes called U-235 to pass through. The heavier isotopes do not fission and cannot produce electricity. The lighter ones fission and produce electricity.

The centrifuge method involves the same hexafluoride gas but spins the gas in super-tough steel cylinders that bring the lighter isotopes to the top and settle the heavier ones on the bottom, just like the centrifuges at a dairy separate milk from cream.

The advantage of a centrifuge plant is that it costs much less to operate than a diffusion plant. Centrifuge uses less than 10 percent of the electricity diffusion does, which would mean a saving of hundreds of millions of dollars over a year.

Mr. BAKER. Mr. President, I wish to commend my colleague for his statement. I think it is a wise and accurate statement, and I devoutly hope that the recommendations he has made to the President of the United States will be acted upon favorably.

Tennessee has been in the vanguard of the nuclear age since the first moment of its birth. Those of us who live in Tennessee know firsthand the value and the safety of nuclear power. We know of its important contribution to the economy of our region, to this country and, potentially, to the world.

We know of the dangers and the destructiveness, but we have always understood those realities and, in our own way, have rationalized those problems.

Oak Ridge has been a center for the

production of weapons, for research and development, for medicine and, foremost, has recently been a center for the production of fuel for reactors for peaceful purposes in the development of new technology.

The Senator from Tennessee (Mr. SASSER) rightly points out that the centrifuge technology which, at its present state of development, is uniquely a product of the Oak Ridge effort, is the leading process for future developments of the additional fuel requirements that will be needed for a light water reactor economy as recommended or to be recommended by President Carter.

I hope that future development of the centrifuge process will be undertaken at Oak Ridge. I think it is logical, the most cost-effective, and simply right that it be located at the birthplace of nuclear power where we have accepted and embraced the development of nuclear energy for so long and where the research and development has been undertaken for this new technology.

Parenthetically, Mr. President, I think the President of the United States acted bravely if this program does, in fact, embody the recommendations that I believe it will with respect to the development of light water reactors. I think he was correct, and I think that portion of his energy program is wise and far-sighted.

I very much hope that the President will join my colleague and me in the belief that Oak Ridge, Tenn., should continue to be the center of that research and development, and particularly that the gas centrifuge plant of commercial proportions should be located there.

I take this opportunity to express my appreciation to my colleague for bringing this matter to our attention, and my thanks to him for permitting me to associate myself with him in these remarks.

TRANSFER OF MEASURE TO UNANIMOUS-CONSENT CALENDAR—SENATE RESOLUTION 139

Mr. ROBERT C. BYRD. Mr. President, there is a measure on the calendar which has been cleared for action by unanimous consent. I ask unanimous consent that the clerk transfer that measure, Calendar Order No. 75, Senate Resolution 139, a resolution authorizing the Committee on Human Resources to inspect and receive tax returns, and tax related matters of the Central States, Southeast, and Southwest Areas Pension Fund under sections 6103 and 6104 of the Internal Revenue Code of 1954, to the Unanimous Consent Calendar where it may be disposed of later today, tomorrow, or subsequently.

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

TIME-LIMITATION AGREEMENT—S. 855

Mr. ROBERT C. BYRD. Mr. President, I have a unanimous-consent request that I shall propose, it having been cleared on both sides of the aisle. It has to do with S. 855, a bill to authorize appropriations for the activities of the National Science

Foundation, and for other purposes. That bill is Calendar Order No. 74. There is a House companion bill, Calendar Order No. 73, H.R. 4991, also on the Calendar. It is my understanding that the managers of the bill will wish to proceed to the consideration of S. 855 at some point and that upon that bill's reaching third reading they will likely want to call up H.R. 4991 and substitute the language of the Senate bill for the language of the House bill. I say all that as a premise to the unanimous-consent request which I am about to propound.

I ask unanimous consent that at such time as S. 855 is called up and made the pending business before the Senate there be a time limitation for debate thereon of 1 hour, to be equally divided between Mr. KENNEDY and Mr. JAVITS, that there be a time limitation on any amendment of 30 minutes, that there be a time limitation of 30 minutes on the amendment by Mr. HATCH, that there be a time limitation on any debatable motion, appeal, or point of order, if such is submitted to the Senate for its consideration, of 20 minutes, that the agreement be in the usual form with the understanding, of course, that the amendment by Mr. HATCH is covered by the agreement allowing it in, with the further proviso that once the measure, S. 855, has reached third reading that any motion or request to call up the companion House bill and substitute the Senate language therefor will be in order without any other intervening motion, debate, or amendment.

The PRESIDING OFFICER. Is there objection?

The unanimous-consent agreement reads as follows:

Ordered, That during the consideration of S. 855 (Order No. 74), a bill to authorize appropriations for the activities of the National Science Foundation, and for other purposes, debate on any amendment shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill, and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 20 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: Provided, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the Minority Leader or his designee: Provided further, That no amendment that is not germane to the provisions of the said bill (except one to be offered by the Senator from Utah (Mr. HATCH)) shall be received.

Ordered further, That on the question of the final passage of the said bill, debate shall be limited to 1 hour, to be equally divided and controlled, respectively, by the Senator from Massachusetts (Mr. Kennedy) and the Senator from New York (Mr. Javits): Provided, That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

Ordered further, That following the third reading of S. 855, it shall be in order to proceed to H.R. 4991 and to move to strike all after the enacting clause and insert the language of S. 855, with no further debate or other intervening motion or amendment in order.

(April 20, 1977).

Mr. BAKER. Mr. President, reserving the right to object, and I shall not ob-

ject, I understand that the Hatch amendment is not in the usual form and is eligible under this unanimous-consent proposal regardless of its content.

Mr. ROBERT C. BYRD. Yes. The distinguished minority leader is correct. Even though it may not be germane it will be in order for it to be called up.

Mr. BAKER. Mr. President, it is cleared, and there is no objection.

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, 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 Committee on Armed Services.

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

REPORT OF THE COUNCIL ON WAGE AND PRICE STABILITY—MESSAGE FROM THE PRESIDENT—PM 68

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, which was referred to the Committee on Banking, Housing and Urban Affairs:

To the Congress of the United States:

In accordance with section 5 of the Council on Wage and Price Stability Act, as amended, I hereby transmit to the Congress the ninth quarterly report of the Council on Wage and Price Stability. This report contains a description of the Council activities during the fourth quarter of 1976 in monitoring both prices and wages in the private sector and various Federal Government activities.

JIMMY CARTER.

THE WHITE HOUSE, April 20, 1977.

MESSAGES FROM THE HOUSE

At 12:36 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its clerks, announced that:

The House agrees to the amendment of the Senate to the amendments of the House to the bill (S. 489) to amend the Foreign Assistance Act of 1961.

The House has passed the following bills in which it requests the concurrence of the Senate:

H.R. 4836. An act to extend by seven months

the term of the National Commission on New Technological Uses of Copyrighted Works;

H.R. 5101. An act to authorize appropriations for activities of the Environmental Protection Agency, and for other purposes; and

H.R. 5864. An act to approve with modifications certain proposed amendments to the Federal Rules of Criminal Procedure, to disapprove other such proposed amendments, and for other related purposes.

ENROLLED BILL SIGNED

At 3:10 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its clerks, announced that the Speaker has signed the following enrolled bill:

S. 489. An act to authorize supplemental military assistance to Portugal for the fiscal year 1977, and for other purposes.

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDING OFFICER laid before the Senate the following communications which were referred as indicated:

EC-1177. A letter from the Acting Administrator of the General Services Administration transmitting, pursuant to law, the Stockpile report to Congress for July-September 1976 (with an accompanying report); to the Committee on Armed Services.

EC-1178. A letter from the Chairman of the Interstate Commerce Commission transmitting, pursuant to law, a report of the Interstate Commerce Commission on Rail Transportation Services in the Delmarva Peninsula (with an accompanying report); to the Committee on Commerce, Science, and Transportation.

EC-1179. A letter from the Secretary of Health, Education, and Welfare transmitting, pursuant to law, notice of an approval on November 12, 1976 of a Day Hospital Service in Rehabilitation Medicine (with an accompanying report); to the Committee on Finance.

EC-1180. A letter from the Acting Comptroller General of the United States transmitting, pursuant to law, a report entitled "The Well-Being of Older People in Cleveland, Ohio" (HRD-77-70) (with an accompanying report); to the Committee on Governmental Affairs.

EC-1181. A letter from the Administrator of the Environmental Protection Agency transmitting a draft of proposed legislation to amend title XIV of the Public Health Service (with accompanying papers); to the Committee on Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PROXMIRE, from the Committee on Banking, Housing and Urban Affairs:

A report entitled "Oversight Activities of the Committee on Banking, Housing and Urban Affairs (Rept. No. 95-95).

By Mr. MAGNUSON, from the Committee on Commerce, Science, and Transportation:

With an amendment:

H.R. 735. An act to amend the Federal Aviation Act of 1958 relating to eligibility for aircraft registration (Rept. No. 95-96).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PROXMIRE, from the Committee on Banking, Housing and Urban Affairs:

Chester Crawford McGuire, Jr., of California, to be an Assistant Secretary of Housing and Urban Development.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. JACKSON, from the Committee on Energy and Natural Resources:

David J. Bardin, of New Jersey, to be a Deputy Administrator of the Federal Energy Administration.

Joan Mariarenee Davenport, of New Jersey, to be an Assistant Secretary of the Interior.

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

Mr. JACKSON. Mr. President, the committee on Energy and Natural Resources has reported favorably the nominations of Joan M. Davenport to be Assistant Secretary of the Interior for Energy and Minerals and David J. Bardin as a Deputy Administrator of the Federal Energy Administration.

Ms. Davenport and Mr. Bardin appeared before the committee at a hearing last Monday. I ask unanimous consent that their statements to the committee be printed in the RECORD at this point.

In accordance with the committee's rules, both nominees submitted sworn financial statements to the committee, I ask unanimous consent that these statements also be printed in the RECORD.

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

STATEMENT OF JOAN M. DAVENPORT

Mr. Chairman and distinguished members of the Senate Energy and Natural Resources Committee.

Before making my statement, I would like to express my disappointment and deep regret that the timing of this hearing and the Easter recess were such that I was unable to meet with members of the Committee prior to today. I assure you that this was a matter of logistics, not intent, as I am strongly committed to working with Congress in the many difficult areas involving energy and resource development which face us.

I am deeply honored by the confidence which President Carter and Secretary Andrus have shown in me by nominating me to this important position. Much of my professional career has been directly related to technical and policy problems surrounding development of energy and non-energy minerals. The challenges we face are immense. The solutions will be difficult, but we will find solutions.

We have reached a watershed in our history as a Nation. Two great surges of opinions and problems have emerged in the past decade. On the one hand, citizens all over the Nation are becoming more aware of their environment, are demanding more protection for factors affecting quality of life, and are more vocal in demanding that non-economic criteria be considered in both Government and private resource development decisions. Concurrently, our frontier mentality that there will always be ample and more, more land, more water, and especially more mineral and energy resources to fuel this great industrial economy, has received a devastating blow by events of the past few years.

We are entering an era which requires

active rather than reactive management of natural resources within the public domain. Only through early identification of problem areas and sound planning can competing demands for land and resources be harmonized. I firmly believe that national goals relating to environmental protection and to development of domestic resources can be achieved. Without this conviction, I certainly would not be appearing before you today.

We are both an idealistic and technically ingenious people. From these basic national traits arise competing demands on our land and our natural resources, I come before you as a spokesperson for no vested interest group, for I would sacrifice neither of these basic traits which have made us a great Nation.

Clearly, certain areas need to be set aside to preserve the heritage of natural beauty and open space which our forefathers passed to us and we will pass to our children. But we also need to prudently develop and use our resources to assure the vitality of this Nation.

All too often, problems relating to energy and mineral development and its environmental consequences achieve national attention at a point of high confrontation. This need not be the case. A great number of the issues with which we must deal in developing publicly owned mineral resources relate more to how and where those resources are to be developed rather than whether they should be developed. With early identification of issues and problems, and with adequate channels for inputs from all levels of Government and from competing interest groups, solutions and compromises often can be found and confrontation avoided.

Perhaps the greatest challenge to the Nation is to change our wasteful ways and to conserve our increasingly scarce natural resources. However, even with a very substantial conservation effort, there will be a need to develop new sources of supply. With many minerals such as coal, many options are still available. We need not mine areas which are uniquely valuable for other reasons. With other minerals, however, our options are not as broad and we will have to make the tough decisions as to what degree of environmental disturbance is acceptable in order to secure needed supplies. Such mining should take place only with foreknowledge of probable environmental impacts and our best efforts for mitigating those impacts.

If the Committee should see fit to confirm me for the position of Assistant Secretary for Energy and Minerals of the Interior Department, I can assure you that the doors to my office will be open to all interests. It is my belief that diversity of views and free exchange of ideas are conducive to optimal decisions in the public interest.

In conclusion, Secretary Andrus in his confirmation hearings told this Committee that we can and must make certain that our natural resources are developed or not developed for the benefit of everyone and, through such use, keeps our Nation strong and our quality of life high. This is the essence of the challenge which faces us in developing the energy and mineral resources of the United States.

Mr. Chairman, I thank you for this opportunity to appear before you and am available to answer any questions which you or members of this Committee may have.

[From the U.S. Senate, Committee on Interior and Insular Affairs, Washington, D.C.]

INFORMATION REQUESTED OF PRESIDENTIAL NOMINEES

Rule 9 of the Rules of the U.S. Senate Committee on Interior and Insular Affairs requires that each Presidential nominee con-

sidered by the Committee shall submit a financial statement sworn to by the nominee as to its completeness and accuracy. Under the rule all such statements must be made public by the Committee unless the Committee in executive session determines that special circumstances necessitate a full or partial exception to this requirement. Rule 9 also provides that at any hearing to confirm a Presidential nomination, the testimony of the nominee and, at the request of any member, any other witness shall be under oath.

In order to assist the Committee in its consideration of nominations, each nominee is requested to complete the attached Financial Statement and Statement For Completion By Presidential Nominees.

The original and twenty (20) copies of the requested information should be made available to Honorable Henry M. Jackson, Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C. 20510 (Attn: Staff Director) as soon as possible.

FINANCIAL STATEMENT OF JOAN M. DAVENPORT

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) and all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS

Cash on hand and in banks, \$2,075.
U.S. Government securities*, \$3,200.
Personal property, \$31,250.
Other assets—itemize: C.D., \$1,000, \$1,700.
Total assets, \$39,225.

LIABILITIES

Notes payable to banks—unsecured, \$756.
Accounts payable, \$300.
Unpaid income tax, \$50.
Other debts—itemize: NDEA Loans, \$1,667, \$2,773.
Total liabilities, \$2,773.
Net worth, \$36,452.

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. None.

2. Are any assets pledged? No.

3. Are you currently a party to any legal action? No.

4. Have you ever declared bankruptcy? No.
JOAN M. DAVENPORT.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Joan Mariarenee Davenport.
Date of birth: January 22, 1943.
Place of birth: New Jersey.
Marital status: Married.
Full name of spouse: Matthew Patrick Daley.

Name and ages of children: Shannon Daley, age 7 (stepdaughter).

Education: O. L. Valley High School, 1957-1960; Georgetown University, 1960-1964, degree BSFC, 1964; Georgetown University, 1966-1968, degree MS, 1968.

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement—Certificate of Superior Service (FEA), 1975; Certificate of Award (EPA), 1973.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations—

* Series E, U.S. Saving Bonds.

Organization: American Economic Association, 1967-74; Audubon Society, 1977; National Wildlife Federation, 1974-77.

Employment record: List below all positions held since college, including the title and description of job, name of employer, location, and dates—

Director, Office of Environmental Assessment, Federal Energy Administration, Wash., DC; March 1975 to present.

Actg Dir., Office of Technical Analysis, Environ. Protection Agency, Wash., DC; May 1974 to March 1975.

Deputy Dir., Office of Technical Analysis, Environ. Protection Agency, Wash., DC; December 1973 to May 1974.

Staff Economist, Office of Technical Analysis, Environ. Protection Agency, Wash., DC; July 1971 to December 1973.

Staff Economist, Div. of Energy & Minerals, Bur. of Land Management, Depart. of Interior, Wash., DC, July 1969 to July 1971.

Economist, Conference on Economic Progress, Wash., DC; January 1966 to July 1968.

Researcher, The Carnegie Corporation, Columbia University, New York; September 1965 to December 1965.

Statistical Clerk, The Conference on Economic Progress, Wash., DC; May 1965 to September 1965.

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions—

Federal Energy Adminis., Director, Office of Environmental Assessment, Wash., DC.

U.S. Environmental Protection Agency, Acting Director, Office of Technical Analysis, Wash., DC.

U.S. Environmental Protection Agency, Deputy Director, Office of Technical Analysis, Wash., DC.

U.S. Environmental Protection Agency, Staff Economist, Office of Technical Analysis, Wash., DC.

U.S. Department of Interior, Staff Economist, Bureau of Land Management, Wash., DC.

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written.—"Offshore Sand and Gravel Production: A Case Study," Marine Technology Society Journal.

Qualifications: State fully your qualifications to serve in the position to which you have been named. (Attach sheet).

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate. I will.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization. No. As a civil servant, I would consider future employment in Federal service, but not with the Federal Energy Administration or the Department of Interior.

3. Has anybody made you a commitment to a job after you leave government? No.

4. Do you expect to serve the full term for which you have been appointed? Yes.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated. None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated. None.

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated. None.

4. List and describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or for the purpose of affecting the administration and execution of national law or public policy. No lobbying activities. Responsibilities undertaken as a Federal employee have included analyses and comment on proposed legislation and regulations.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items. I do not believe I have any conflict of interests.

Development of the energy and non-energy mineral estate of the United States in the late 20th century presents challenges, problems, and opportunities unparalleled in our history. The competing demands for land, for mineral resources to sustain the economy, and for environmental protection can only be harmonized through exposition of relevant data and balancing of all interests.

During Government service, I have been exposed to many aspects of the energy and mineral development question. As an economist in the Bureau of Land Management's Division of Energy and Minerals, I was part of a team charged with revitalizing mineral leasing programs in the early 1970's. Our goal was to foster orderly development of mineral resources while assuring fair return to the public and compliance with the National Environmental Policy Act.

In 1971, I joined the Office of Technical Analysis of the Environmental Protection Agency (EPA). At that time, EPA was a new Agency charged with implementing Federal programs of environmental regulation. The Office of Technical Analysis was formed to be the senior technical advisor to the enforcement arm of the Agency. The overall mission was to assure that adequate data and analyses were available to support both regulations and enforcement actions originating in program offices. During this time, I represented the Office of Enforcement and General Counsel in energy matters and was a member of the EPA Energy Policy Committee.

My responsibilities with the Federal Energy Administration include the weighing of Federal resource development options and environmental considerations associated with such options. Specifically, the Office of Environmental Policy is charged with analyzing the environmental costs of energy initiatives, as well as reviewing the energy costs of environmental regulations.

Having participated in Government activities relating to the development of energy and minerals, the regulation of energy and minerals, and the balancing of development options and environmental considerations, I believe I am well qualified to assume the duties of Assistant Secretary for Energy and Minerals of the Department of the Interior.

JOAN M. DAVENPORT.

STATEMENT OF DAVID J. BARDIN

Nominee to be Deputy Administrator of the Federal Energy Administration, before the U.S. Senate Energy and Natural Resources Committee, April 18, 1977.

Mr. Chairman, Members of the Committee: I feel privileged to appear before you as a nominee to join President Carter's Administration.

This 96th Congress will grapple with energy issues of paramount importance. Pre-

vious Congresses analyzed these complex problems, passed legislation and pointed the way to further solutions.

The Executive Branch must conscientiously implement the law. I feel confident that the leadership and combined efforts of President Carter and the Congress can effectively address the agenda of unresolved issues.

In the last three years, our energy imports rose by 2 quadrillion British thermal units, to about 22% of our total consumption and 42% of our oil consumption. We depend on these imports even more today than we did before the 1973 embargo to meet our domestic energy requirements. Energy imports drained \$35 billion from our economy last year.

As long as domestic consumption exceeds, more and more, domestic production, foreign imports fill the resulting gap and we continue to be vulnerable to world oil price domination and import supply interruption. If we reduce our domestic supply/demand imbalance, we will reduce the associated risks to our economic and political well being.

Our country can alter the trend toward increased imports and begin to achieve a better balance between the energy we consume and the energy we produce. Americans are adaptable. We have repeatedly demonstrated a pioneering spirit. We relish technological challenges, are proud of our technological successes and want to sustain excellent performance.

American society has an extraordinary capacity to innovate—an experimental capacity that profoundly influences other countries. We have the capacity to achieve more coherent national energy policies, in harmony with our objectives for the environment, employment, freedom, international security, and a stable economy.

Today, as a State environmental protection commissioner responsible for making regulatory policy decisions, I am concerned about the energy implications of the choices before me. When I used to recommend energy policy decisions to the Federal Power Commission, I considered the environmental implications. If I am entrusted with responsibilities to assure comprehensive analysis of Federal energy policies, the environmental implications will continue to concern me. The American people do not want us to risk public health or irreparably damage the environment in the name of some supposed energy short-cut.

I do not see energy and environment as either/or propositions. We need energy and environmental policies that fit together. It takes energy to carry out environmental programs. Often energy and environmental programs fortify one another. (For example, we reduce air pollution and save gasoline by New Jersey's regulation of automobiles in use.)

We should strive to optimize on a broad scale rather than to deal with each issue in isolation. Thus, emphasis on conservation now can reduce energy risks, prevent environmental insults, create jobs, and protect the consumer's pocketbook.

The energy consuming public needs facts about energy. Open dealing engenders consumer and business confidence. Business needs timely decisions, clear ground rules and a firm sense of where government is heading.

Abraham Lincoln's insight applies to Americans today: If we could know where we are and whither we are tending, we could better judge what to do and how to do it.

Individual citizens depend upon their Federal government to secure and share the facts: facts about consumption, supply, financial expenditures, competition and profit centers. We need to know what are the trends; what are the timetables for given actions; what is the price of drift and indecision.

There can be a bright energy future for our children and their children. The difficulty and the danger lie in getting from here to there. We can afford neither inaction nor reckless action.

Tonight will mark the anniversary of Paul Revere's celebrated ride. Two hundred and two years ago, Americans were ready for Revere's message that bespoke perils and uncertainties for the future—and also hope for surmounting the crisis.

It seems to me that we have good reason for hope today if we can control our consumption of energy within prudent bounds; if we accelerate the shift to more abundant supply sources; if we employ creatively and meaningfully the human and material resources of our country; and if we move zealously to substitute abundant, renewable energy sources as quickly as possible for inherently circumscribed, dwindling supplies.

President Carter and the Congress are committed to meeting the challenge. I would like to lend a hand.

Thank you Mr. Chairman. I would welcome any questions.

U.S. SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

INFORMATION REQUESTED OF PRESIDENTIAL NOMINEES

Rule 9 of the Rules of the U.S. Senate Committee on Interior and Insular Affairs requires that each Presidential nominee considered by the Committee shall submit a financial statement sworn to by the nominee as to its completeness and accuracy. Under the rule all such statements must be made public by the Committee unless the Committee in executive session determines that special circumstances necessitate a full or partial exception to this requirement. Rule 9 also provides that at any hearing to confirm a Presidential nomination, the testimony of the nominee and, at the request of any member, any other witness shall be under oath.

In order to assist the Committee in its consideration of nominations, each nominee is requested to complete the attached Financial Statement and Statement For Completion By Presidential Nominees.

The original and twenty (20) copies of the requested information should be made available to Honorable Henry M. Jackson, Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C. 20510 (Attn: Staff Director) as soon as possible.

FINANCIAL STATEMENT OF DAVID J. BARDIN

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate securities, trusts, investments, and other financial holdings) and all liabilities including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS

Cash on hand and in banks, \$17,532.
U.S. Government securities—add schedule, \$12,025.
Listed securities, 0.
Unlisted securities, \$16,800.
Real estate interests, including mortgages, \$101,600.
Personal property, \$11,900.
Life insurance—cash value, \$2,800.
Other assets—itemize: U.S. Government and N.J. pension funds, \$17,345.
Total assets, \$180,002.

LIABILITIES

Accounts payable, \$545.
Real estate mortgages payable—add schedule, \$34,133.
Other debts—itemize: Tuition to fall due, \$1,290.

Total liabilities, \$35,968.
Net worth, \$144,034.

FINANCIAL STATEMENT SCHEDULE
(self, wife, four children)

U.S. Government Securities: Treasury notes, \$12,000, U.S. Savings Bond, \$25; total, \$12,025.

Unlisted securities: Certificate of deposit N.J. National Bank, \$13,000, State of Israel Bond, \$3,750, Bank Leumi Bond, \$50; total, \$16,800.

Real estate: Brick house, Trenton, N.J., \$40,000, Two condominium apartments, Jerusalem, Israel, \$16,600; total, \$101,600.

Real estate mortgages payable N.J. National Bank, Trenton, N.J., \$29,103, Bank Adanim, Tel Aviv, \$5,030; total, \$34,133.

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. None.

2. Are any assets pledged? (Add schedule.) None.

3. Are you currently a party to any legal action? As a State official, I have been involved in court cases as either the plaintiff or the defendant on material related to the New Jersey Department of Environmental Protection's constitutional and statutory responsibilities.

4. Have you ever declared bankruptcy? No.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: David Jonas Bardin.
Position to which nominated: Deputy Administrator FEA.

Date of birth: June 2, 1933.
Place of birth: New York, N.Y.
Marital status: Married.

Full name of spouse: Livia Goldeen.
Name and ages of children: Jacob Eli Bardin, 15, Matthew Chaim Bardin, 12, Joseph Raphael Bardin, 9, Sarah Adele Bardin, 6.

Education: Columbia College, 1950-54, degree, A.B., 1954, Columbia University Law School, 1953-56, degree, LL.B. (converted to J.D. 1969), 1956.

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement—Harlan Fiske Stone Scholarship (Columbia Law School); New York State Regents Scholarship; National Merit Scholarship (honorary); Younger Federal Lawyer Award (Federal Bar Association); Special Service Awards (FPC); Outstanding Performance Rating (U.S. Civil Service Commission).

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations—

Organization: American Bar Association; Federal Bar Association; Federal Power Bar Association; District of Columbia Bar Association; Israel Chamber of Advocates; Bar of New York State.

Employment record: List below all positions held since college, including the title and description of job, name of employer, location, and dates—

Student assistant, Professor Walter Gellhorn, Columbia University Law School, New York, New York 1955.

Soldier, U.S. Army, Transportation Research & Engineering Command, Fort Eustis, Virginia 1956-58.

Lecturer, University of Virginia (Extension), Williamsburg, Virginia.

Trial Attorney; assistant general counsel; deputy general counsel, Federal Power Commission, Washington, D.C. 1958-1969.

Assistant, Attorney General of Israel, Jerusalem, Israel, 1970-72.

Counsel, Israel National Council for Research and Development, Jerusalem, Israel, 1972-1973.

Lecturer, Bar-Ilan Law School (Ramat Gan, Israel) and Tel Aviv University Law School (Ramat Aviv, Israel), 1972-1974.

Counsel, Environmental Protection Service of Israel, Jerusalem, Israel, 1973-74.

Self-employed attorney and consultant, Jerusalem, Israel and Washington, D.C. (c/o Spiegel & McDiarmid).

Commissioner, State of New Jersey, Department of Environmental Protection, 1974-date.

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions—

Soldier, U.S. Army Transportation Research & Engineering Command, Fort Eustis, Virginia, 1956-58.

Trial Attorney, assistant general counsel; deputy general counsel, U.S. Federal Power Commission, Washington, D.C. 1958-1969.

Commissioner, State of New Jersey, Department of Environmental Protection, 1974-date.

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written—

Regulatory decisions (mimeo) under N.J. Coastal Areas Facilities Review Act include: Opinion No. 1, Lehigh Construction Company, Toms River Condominium (10 July 1974), affirmed coastal review board, affirmed appellate division.

Opinion No. 20, Public Service Electric & Gas Co., Hope Creek Generating Station (3 September 1975), affirmed coastal review board, appeal pending.

In the matter of Jersey Central Power & Light Co., exemption of Forked River nuclear generating station unit 1 (14 Dec. 1976), subject to appeal.

Report on the Trenton Water Crisis (Bound pamphlet, May 1976).

Ocean Dumping of Sludge—Program through Phase Out in 1981 (Mimeo, January 1977).

Regulations adopted or proposed (published in N.J. Register):

March 1977, adopted, Glass industry particulate emissions.

January 1977, proposed, Spill control.

January 1977, proposed, Non-degradation water quality standards: Pine Barrens ground and surface waters.

January, 1977, proposed, Ban on spray-on asbestos.

December 1976, proposed, Expansion of automotive emissions inspection.

December 1976, adopted, Rules for preservation of the sea clam resource.

October 1976, adopted, Pesticide application qualifications.

June 1976, adopted, Water effluent standards for oil and grease.

May 1976, adopted, Stack testing procedures.

April 1976, adopted, Fees for air pollution permits.

March 1976, adopted, Interim easing of sulfur-in-fuel limits for Cumberland County.

March 1976, adopted, Fees for construction permits.

March 1976, adopted, Increase in state park user fees.

December 1975, adopted, Control of emissions from oil & chemical storage tanks.

October 1975, adopted, Liberalized rules for agricultural open burning.

October 1975, adopted, Rules on sewer connection bans.

July 1975, adopted, Morses Creek surface water quality standards.

May 1975, adopted, Real property tax exemption for non-profit conservation lands.

April 1975, adopted, Flood plain land use controls.

Testimony before committees of U.S. Congress—

Senate Committee on Public Works, Subcommittee on Environmental Pollution (31 January 1977) on Renewed Funding for the Municipal Construction Grants Program.

House of Representatives, Committee on Interior and Insular Affairs, New York City (29 November 1976) on Gateway National Recreation Area.

House of Representatives, Committee on Interstate & Foreign Commerce, Subcommittee on Oversight and Investigations, Newark, N.J. (28 May 1976) on cancer and the environment.

Senate Committee on Public Works, Subcommittee on Environmental Pollution (26 May 1976) on wastewater construction grants.

House of Representatives, Committee on Interstate & Foreign Commerce, Subcommittee on Transportation (7 April 1976). Symposium on Resource Conservation and Recovery.

House of Representatives, Ad Hoc Select Committee on the Outer Continental Shelf, Ocean City, N.J., (25 July 1975), statement of Governor Brendan T. Byrne.

House of Representatives, Small Business Committee, Subcommittee on SBA and SBIC (15 July 1975) on pollution control financing.

Senate Committees on Interior and Insular Affairs and Commerce (joint hearing, 17 March 1975) on OCS legislation.

Testimony before New Jersey state legislature and executive bodies on:

Cancer and environment,
Comprehensive spill control and compensation bill,

Fluoridation of potable water,
Nuclear power,
Air pollution,
Appropriations and budget,
Capital needs.

Speeches:

Opening statement at public hearings on proposed regulations to implement Spill Compensation and Control Act, Trenton, N.J., 9 March 1977.

Association of New Jersey Environmental Commissions, 7th Annual Commissioners Day, Trenton, N.J., 1 March 1977.

Association of Metropolitan Sewerage Agencies' Conference, Anaheim, California, 16 February 1977 on funds for water pollution control in a time of transition.

Public meeting on Wastewater Treatment Facility Grants, Trenton War Memorial, 22 November 1976.

Utility Contractors Association of N.J., Inc., Annual Convention, MacAfee, N.J., 17 September 1976 on the Ocean Pollution Nightmare and the Water Cleanup Dream.

N.J. Water Pollution Control Association, 61st Annual Meeting, Atlantic City, N.J., 12 May 1976 on managing the water cycle.

N.J. Builders Association Annual Convention, Cherry Hill, N.J., 8 April 1976 on water conservation plumbing.

South Jersey Chamber of Commerce, Cherry Hill, N.J., 25 March 1976 on jobs and the environment.

N.J. Paint and Coatings Association, Legislative Up-date Dinner, Hasbrouck Heights, N.J., 11 February 1976 on greater attention to carcinogens and other toxics.

Greater Newark Chamber of Commerce's Questions and Answers '76 Series, Newark, N.J., 14 June 1976 on What does the future hold for environmental quality in N.J. cities?

Texas Coastal Zone Management Program, Advisory Committee, General Land Office, State of Texas, Houston, Texas, 13 January 1976 on "Coastal Zone Management in New Jersey in 1976."

Vice President's Public Forum on Domestic Policy, Philadelphia, Pa., 18 November 1975 on local garbage as a national asset.

Mercer County Chamber of Commerce "Salute to Volunteers" of the Water Crisis, Trenton War Memorial, Trenton, N.J., 11 November 1975.

"The Clean Water Referendum" to Labor leaders, Cherry Hill, N.J., 24 October 1975.

N.J. State AFL-CIO, 14th Annual Convention, Atlantic City, N.J., 11 June 1975 on environment is not a frill: good news and bad news.

3rd Annual National Coastal Zone Management Conference, Asilomar, CA., 29 May 1975 on "Coastal Zone Management in N.J. Today: From Action to Planning to More Action."

N.J. Clean Air Council Annual Hearing, Newark, N.J., 22 May 1975 on Air Quality Maintenance.

N.J. Water Pollution Control Association, 60th Annual Meeting, Atlantic City, N.J., 7 May 1975 on "The Byrne Administration and Water Pollution Control."

N.J. Mosquito Control Association, 62nd Annual Meeting, Atlantic City, N.J., 12 March 1975, welcoming address.

N.J. State Agricultural Convention, Trenton, N.J., 28 January 1975, address at Farmers' Week Dinner.

N.J. Concrete Pipe Association, Queens Campus, Rutgers, 24 October 1974, "Environmental Considerations in Drainage Design and Construction."

Association of American Feed, Pesticide and Fertilizer Control Officials, Inc., 28th Annual Meeting, Atlantic City, N.J., 6 August 1974, on the role of State regulators.

Author:

"Organization, responsibilities and authority within the Government of Israel respecting environmental quality and protection" in "Government Organization for Dealing with the Environment." Advanced Technology Ltd., Tel-Aviv, 1973.

"Materials on Accounting for Lawyers" (Hebrew). Law Faculty of Bar-Ilan University, Ramat-Gan, 1973 (mimeograph).

Bulletin—Energy in Israel, Environmental Protection Service, Jerusalem, 1973.

"The Control of Electric Utilities in Israel" in Public Administration in Israel & Abroad 1971, Jerusalem, 1972.

"Law and Administration" in Air Pollution in Israel (Hebrew), Israel National Committee on the Biosphere, Jerusalem, 1972.

How to Survey Israeli Law (pamphlet). Jerusalem, 1971.

Sundry short articles on energy, environmental law in BIOSHERA (Hebrew). Jerusalem, 1971-1974.

Editor:

Israel Rules of Court (English translation). Jerusalem, 1972.

Safety of Interstate Natural Gas Pipelines (a report prepared by the Federal Power Commission for the Senate Committee on Commerce). Committee Print, Washington, 1966.

Federal Regulation of the Electric Power Industry Under Parts II and III of the Federal Power Act. Federal Power Commission, Washington, 1965.

Contributor:

Sundry legal briefs to courts and agencies in cases including:

Permian Basin Area Rate Cases, 390 U.S. 747.

F.P.C. v. Transcontinental Gas Pipeline Corporation, 365 U.S. 1.

City of Seattle v Beezer, 376 U.S. 224.

Ravne Field Case (Round I), 287, F. 2d 143 (CADC).

Bastian Bay Case, 30 FPC 1477 (sustained 381 U.S. 762 and 950).

Washington/Baltimore Helicopter Service Investigation, C.A.B. Docket No. 17665.

Michigan Gas & Electric Company v. F.P.C., 290 F. 2d 374 (CADC) cert. den. 368 U.S. 897.

Placid Oil Company, 30 FPC 283 (sustained 382 U.S. 223).

American Louisiana Pipeline Company, 27 FPC 792.

Sundry Federal Power Commission statements to Congressional committees including:

House Committee on Interstate & Foreign Commerce:

Agency Hearings. Serial 90-1, 1967.

Northeast Power Failure, November 9 & 10, 1965. Serial 89-40, 1966.

Authority of FPC to License and Take Over Hydroelectric Projects. Serial 90-40.

House Committee on Merchant Marine & Fisheries: Fisheries Legislation. Serial 89-24, 1966.

House Committee on Ways & Means: Tax Reform, 1969. Part 10 of 15, 1969.

Senate Committee on Commerce:

United States Relicensing or Recapture of Hydroelectric Projects. Serial 90-62.

Electric Power Reliability. Serial 90-30, 1967.

FPC Jurisdiction. Serial 90-23, 1967.

Safety of Interstate Natural Gas Pipelines. Serial 89-83, 1966.

Extra-high-voltage Electric Transmission Lines. Serial 89-72, 1966.

Amendment to Federal Power Act (Anti-trust Review). Serial 89-71, 1966.

Overhead and Underground Transmission Lines. Serial 89-63, 1966.

Exemption of Certain Public Utilities. Serial 89-38, 1965.

Nonprofit Rural Electric Cooperatives. Serial 89-15, 1965.

Senate Committees on Commerce and Public Works: Electric Vehicles and Other Alternatives to the Internal Combustion Engine. 1967.

Senate Committee on Finance: Treatment of Tax Benefits under Consolidated Returns.

Senate Committee on the Judiciary: Administrative Procedure Act. 1967.

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet).

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate. Yes.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization. No.

3. Has anybody made you a commitment to a job after you leave government? No.

4. Do you expect to serve the full term for which you have been appointed? Yes.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated. None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated. None.

Qualifications: Background of public service in federal and state government, and experience abroad, is detailed in the attached biographical statement. In my present position I supervise a department of over 1500 employees engaged in all aspects of environmental regulations and resource management. That position demands integrity, candor, hardwork, judgment and leadership.

3. Describe any business relationship, dealing or financial transaction (other than tax-

paying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated. None.

4. List and describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or for the purpose of affecting the administration and execution of national law or public policy. On behalf of the State of New Jersey, I have testified before Congressional Committees, communicated with their Chairmen, members and staff, and have advised the New Jersey delegation.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items. I anticipate no conflicts. If situations arise that raise a question, I shall abide by the dictates of conscience and advice of the Attorney General or agency general counsel.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that today, April 20, 1977, he presented to the President of the United States the enrolled bill (S. 489) to authorize supplemental military assistance to Portugal for the fiscal year 1977, and for other purposes.

HOUSE BILLS REFERRED

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

H.R. 4836. An act to extend by seven months of the term of the National Commission on New Technological Uses of Copyrighted Works; to the Committee on the Judiciary.

H.R. 5101. An act to authorize appropriations for activities of the Environmental Protection Agency, and for other purposes; to the Committee on Environment and Public Works.

H.R. 5864. An act to approve with modifications certain proposed amendments to the Federal Rules of Criminal Procedure, to disapprove other such proposed amendments, and for other related purposes; to the Committee on the Judiciary.

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. PROXMIRE:

S. 1312. A bill to amend the Truth in Lending Act to facilitate compliance with requirements proposed under that Act by simplifying such requirements, and for other purposes; to the Committee on Banking, Housing and Urban Affairs.

S. 1313. A bill to require the enactment of special legislation to continue the expenditure or obligation of funds on any major military or civil acquisition whenever the cost of such acquisition has increased or, on the basis of estimates, will increase by 50 percent or more; to the Committee on Governmental Affairs.

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

S. 1314. A bill to amend title 28, United States Code, to provide that State prisoners and Federal prisoners shall not be denied

Federal habeas corpus relief on the ground that such prisoners were previously afforded a full and fair opportunity to litigate their claims, and for other purposes; to the Committee on the Judiciary.

By Mr. DECONCINI (for himself, Mr. ALLEN, Mr. BAYH, and Mr. KENNEDY):

S. 1315. A bill to amend title 28, United States Code, to provide more effectively for bilingual proceedings in all district courts of the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. CULVER:

S. 1316. A bill to authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973; to the Committee on Environment and Public Works.

By Mr. RANDOLPH:

S. 1317. A bill for the relief of Marietta Dizon Pamintuan; to the Committee on the Judiciary.

By Mr. MATSUNAGA:

S. 1318. A bill to permit the State of Hawaii to use the proceeds from the sale, lease, or other disposition of certain real property for any public purpose; to the Committee on Armed Services.

S. 1319. A bill for the relief of certain natives of the Philippines who served in the U.S. Armed Forces during World War II; to the Committee on the Judiciary.

By Mr. STONE:

S. 1320. A bill to amend the Federal Election Campaign Act of 1971 with respect to the filing of reports with State officers; to the Committee on Rules and Administration.

By Mr. EAGLETON:

S. 1321. A bill to extend the deadline for transmittal of U.S. Commission on Civil Rights report on unreasonable discrimination based on age in programs and activities receiving Federal financial assistance, and for other purposes; to the Committee on Human Resources.

S. 1322. A bill to revise the basis for estimating the annual Federal payment to the District of Columbia for water and water services and sanitary sewer services furnished to the United States; to the Committee on Governmental Affairs.

S. 1323. A bill for the relief of Mr. and Mrs. Harold H. Vollmer; to the Committee on the Judiciary.

By Mr. LONG (for himself, Mr. MAGNUSON, Mr. BAYH, and Mr. CASE):

S. 1324. A bill to amend the Regional Rail Reorganization Act of 1973 to require Conrail to make premium payments under certain medical and life insurance policies, to provide that Conrail shall be entitled to a loan under section 211(h) of such act in an amount required for such premium payments, and to provide that such premium payments shall be deemed to be expenses of administration of the respective railroads in reorganization; to the Committee on Commerce, Science, and Transportation.

By Mr. PEARSON:

S. 1325. A bill to amend section 406(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1376) to provide explicit statutory authority for the payment of "flow-through" subsidy pursuant to an experimental program administered by the Civil Aeronautics Board during the period August 1, 1973 through July 31, 1975; to the Committee on Commerce, Science, and Transportation.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PROXMIRE:

S. 1312. A bill to amend the Truth in Lending Act to facilitate compliance with requirements proposed under that act by simplifying such requirements, and for

other purposes; to the Committee on Banking, Housing and Urban Affairs.

TRUTH IN LENDING SIMPLIFICATION AND REFORM ACT

Mr. PROXMIRE. Mr. President, I am today introducing the Truth in Lending Simplification and Reform Act, legislation to amend the Truth in Lending Act.

As you know, I was the sponsor of the original Truth in Lending Act and worked long and hard for its passage. I still believe that the guiding principal of truth in lending—disclosure to the consumer—is as important today as it was in 1968 when the act was signed into law. But truth in lending has gone amiss.

The Federal Reserve Board has written a regulation which is so complex and technical that, frankly, I often wonder if even they understand it. Disclosure statements have grown increasingly detailed to the point where, instead of being concise and understandable, they are liable to be 2 feet long. My office files are bulging with letters from creditors who have struggled in good faith to comply with the act but nonetheless found that they were in violation. On top of this, some consumers and their attorneys have seized upon technicalities and recovered statutory damages in the tens of thousands of dollars. All of this, of course, means greater costs for creditors which in turn are passed along to all consumers.

I am also sad to say that administrative enforcement by the Federal bank regulatory agencies has been woefully inadequate. Oversight hearings before the Committee on Banking, Housing and Urban Affairs last summer revealed a shocking laxity on their part in terms of both attitude and resources. All three agencies conceded that their enforcement activities had been deficient, leading to what the Comptroller of the Currency called "an alarming degree of substantial noncompliance" with the act. In light of this admission, overeager consumers by no means deserve all the blame for the mountain of truth in lending litigation.

I believe that now, 9 years after the act's passage, we must take a comprehensive second look. This is by no means a retreat from strong consumer credit legislation. On the contrary, I regard this as an important opportunity to strengthen the act by stripping away the bureaucratic technicalities and making the disclosures more meaningful to consumers and easier for creditors to provide.

I am determined to reduce the complexity of truth in lending, but not at the cost of depriving consumers of the types of information they want and need. In addition, we must strengthen administrative enforcement of the act, as well as provide additional aids for the consumer so that the cost of credit is even more readily available.

This legislation, then, has five objectives: First, to eliminate unnecessary disclosures which detract from key credit information; second, to limit a creditor's civil liability so that damages attach only to violations of a meaningful nature; third, to make compliance easier for creditors and more understandable to consumers by requiring the Federal Reserve Board to issue simple, easily

understood model forms and clauses, like Citibank's, the proper use of which would guarantee compliance; fourth, to provide increased credit information to consumers through "shopper's guides to credit"; and finally, to strengthen administrative enforcement of the act by granting enforcement authority to certain State officials and by providing for restitution to borrowers and publication of the names of violating creditors when serious violations have occurred.

I realize that truth in lending streamlining means different things to different people. To me, it means making truth in lending work better by making it less complex, easier to comply with, and—above all else—an even more useful tool for consumers who are shopping for credit.

Mr. President, I ask unanimous consent that the text of the bill, a section-by-section analysis, and copies of Citibank's old and newly revised disclosure statements be printed at this point in the RECORD.

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

S. 1312

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 "Truth in Lending Simplification and Reform Act".

AGRICULTURAL CREDIT

SEC. 2. (a) Section 103(h) of the Truth in Lending Act is amended by striking out "household, or agricultural" and inserting in lieu thereof "or household".

(b) Section 104 (1) of such Act is amended by striking out "or commercial" and inserting in lieu thereof a comma and "commercial, or agricultural".

(c) Section 104 of such Act is amended by striking out paragraph (5).

ADMINISTRATIVE ENFORCEMENT

SEC. 3. Section 108 of the Truth in Lending Act is amended by adding at the end thereof the following:

"(e) In any case where a State has granted an exemption pursuant to section 123, 171, or 186, compliance with the requirements imposed under the applicable law of such State shall be enforced under that law by the appropriate agency or official of that State with respect to the activities within that State of any creditor or lessor doing business in that State, including any creditor or lessor which is subject to the jurisdiction of a Federal department or agency specifically referred to in subsection (a), but only as to those classes of transactions exempted by the Board."

RESTITUTION TO BORROWERS

SEC. 4. Section 108 of the Truth in Lending Act is amended by adding at the end thereof the following:

"(f) In carrying out its enforcement activities under this section, each agency referred to in subsection (a) or (c) shall take the following actions to obtain voluntary compliance with the requirements of this title:

"(1) In cases where an annual percentage rate or finance charge was inaccurately disclosed, the agency shall require the creditor to make an adjustment to the account of the person to whom credit is extended, except where the agency finds the result of such a requirement would be unreasonably burdensome, to insure that such person will not be required to pay a finance charge in excess of the finance charge actually dis-

closed or the dollar equivalent of the annual percentage rate, whichever is lower.

"(2) In the event a creditor fails or refuses to comply with any requirement issued in accordance with this subsection within a reasonable period, the agency shall in writing notify the person to whom credit is extended of the facts known to the agency and of the rights accruing to that person under this title.

"(g) When an agency referred to in subsection (a) or (c) finds that a creditor has engaged in repeated and substantial violations of this title or regulations of the Board, the agency shall make information available to the public which, in accordance with regulations of the Board, may include the name of the creditor involved, the number of violations discovered, the percentage of transactions inspected and found to be in violation, the nature of the violations found, the amount of monetary adjustments, if any, made by the creditor, and any other information deemed appropriate by the agency."

LIMITATION ON CIVIL ACTIONS

SEC. 5. Section 130(e) of the Truth in Lending Act is amended to read as follows:

"(e) An action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation, except where the consumer has received notice of a violation pursuant to section 108(e), in which case the action may be brought within 90 days thereafter, but in no event more than three years from the date of the transaction."

ANNUAL REPORTS

SEC. 6. Section 114 of the Truth in Lending Act is amended by striking out "Not later than January 3 of each year after 1969" and inserting in lieu thereof "Each year".

(b) Section 18(f)(5) of the Federal Trade Commission Act (15 U.S.C. 58a(f)(5)) is amended by striking out "not later than March 15 of each year".

(c) Section 707 of the Equal Credit Opportunity Act is amended by striking out "Not later than February 1 of each year 1976" and inserting in lieu thereof "Each year".

MODEL FORMS AND CLAUSES

SEC. 7. (a)(1) Chapter 1 of the Truth in Lending Act is amended by adding at the end thereof the following new section: "§ 116. Model forms and clauses.

"(a) The Board shall issue model forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this title and to aid the borrower in understanding the transaction by utilizing readily understood language to simplify the technical nature of the disclosures.

"(b) Such forms and clauses shall be adopted by the Board after notice duly given in the Federal Register and opportunity for public comment in accordance with section 553 of title 5, United States Code."

(2) The table of sections of chapter 1 of the Truth in Lending Act is amended by adding at the end thereof the following: "16. Model forms and clauses."

(b) Section 130(f) of the Truth in Lending Act is amended to read as follows:

"(f) No provision of this section or section 112 imposing any liability shall apply to—

"(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor; or

"(2) any failure to make disclosures in proper form if the creditor utilized any appropriate model form or clause issued by the Board,

notwithstanding that after such act, omission has occurred, or after the use of such form or clause, such rule, regulation, approval, or model form or clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason."

RECESSION RIGHTS

SEC. 8. The first sentence of section 125(a) of the Truth in Lending Act is amended by striking out "residence" and inserting in lieu thereof "dwelling".

OPEN END CREDIT PLANS

SEC. 9. (a) Section 127(a) of the Truth in Lending Act is amended by striking out paragraph (5).

(b) Section 127(b) of the Truth in Lending Act is amended by striking out paragraph (7).

FINANCE CHARGE ITEMIZATION

SEC. 10. (a) Section 128(a)(6) of the Truth in Lending Act is amended to read as follows:

"(6) Except in the case of a sale of a dwelling, the amount of the finance charge, which shall be itemized if it contains more than one charge."

(b) Section 129(a)(4) of such Act is amended to read as follows:

"(4) Except in the case of a loan secured by a first lien on a dwelling and made to finance the purchase of that dwelling, the amount of the finance charge, which shall be itemized if it contains more than one charge."

(c) Section 106 of such Act is amended by striking out paragraph (d).

DEFAULT CHARGES

SEC. 11. (a) Section 128(a)(9) of the Truth in Lending Act is amended to read as follows:

"(9) Any monetary charge payable in the event of a late payment or delinquency."

(b) Section 129(a)(7) of such Act is amended to read as follows:

"(7) Any monetary charge payable in the event of a late payment or delinquency."

SECURITY INTERESTS

SEC. 12. (a) Section 128(a)(10) of the Truth in Lending Act is amended to read as follows:

"(10) A statement indicating that a security interest is taken in any property which is the subject of the extension of credit and a clear identification of any other property in which a security interest is held or is to be retained or acquired by the creditor in connection with the extension of credit."

(b) Section 129(a)(8) of such Act is amended to read as follows:

"(8) A statement indicating that a security interest is taken in any property which is acquired with the proceeds of the extension of credit and a clear identification of any other property in which a security interest is held or is to be retained or acquired by the creditor in connection with the extension of credit."

LIMITED CIVIL LIABILITY

SEC. 13. The text preceding clause (1) of section 130(a) of the Truth in Lending Act is amended to read as follows:

"Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this chapter (other than under section 128); any requirement imposed under section 128 of this chapter with respect to disclosure of the total of the amount to be financed, the finance charge, the annual percentage rate, the number, amount, and due dates of payments scheduled to repay the indebtedness, any monetary charge payable in the event of a late payment or delinquency, the existence of and identification of property subject to

a security interest, or the borrower's right to rescission; or any requirement imposed under chapter 4 or 5 of this title, with respect to any person is liable to such person in an amount equal to the sum of—

SET-OFF RIGHTS

SEC. 14. Section 130(h) of the Truth in Lending Act is amended by adding at the end thereof the following new sentence: "This subsection may not be construed to prohibit such person from raising a creditor's violation of this title by way of recoupment, offset, or counterclaim in an action before a court of competent jurisdiction where permitted by law."

DISSEMINATION OF ANNUAL PERCENTAGE RATES

SEC. 15. (a) Chapter 2 of the Truth in Lending Act is amended by adding at the end thereof the following new section:

"§ 136. Dissemination of annual percentage rates

"(a) The Board shall semiannually collect, publish, and disseminate to the public the annual percentage rates charged for credit, other than open end credit, by all creditors extending or offering to extend such credit in each standard metropolitan statistical area with populations in excess of 500,000.

"(b) The Board is authorized to enter into contracts or other arrangements with appropriate local consumer or public interest organizations to carry out its functions, under subsection (a), and to furnish financial assistance in support thereof."

(b) The analysis of such chapter is amended by adding at the end thereof the following new item:

"136. Dissemination of annual percentage rates."

EFFECTIVE DATE

SEC. 16. The amendments made by this Act take effect upon the expiration of 1 year after the date of enactment of this Act.

FIRST NATIONAL CITY BANK, PERSONAL FINANCE DEPARTMENT—NEW YORK

Application Number _____
 Annual percentage rate _____ %
 Total of payments (4)+(7) \$ _____
 Proceeds to Borrower (1) \$ _____
 Property Ins. Premium (2) \$ _____
 Filing fee (3) \$ _____
 Amount financed (1)+(2)+(3) (4) \$ _____
 Prepaid finance charge (5) \$ _____
 Group credit Life Ins. premium (6) \$ _____
 Finance Charge (5)+(6) (7) \$ _____
 PI. NO. and date loan made _____

For value received, the undersigned (jointly and severally) hereby promise(s) to pay to First National City Bank (the "Bank") at its office at 399 Park Avenue, New York, New York 10022 (1) the sum of _____ (\$____) (Total of Payments)

() in _____ equal consecutive monthly instalments of \$_____ each on the same day of each month, commencing _____ days from the date the loan is made; or () in _____ equal consecutive weekly instalments of \$_____ each on the same day of each week, commencing not earlier than 5 days nor later than 45 days from the date the loan is made; or () in _____ equal consecutive bi-weekly instalments of \$_____ each, commencing not earlier than 10 days nor later than 45 days from the date the loan is made, and on the same day of each second week thereafter; or () in _____ equal consecutive semi-monthly instalments of \$_____ each, commencing not earlier than 10 days nor later than 45 days from the date the loan is made, and on the same day of each semi-monthly period thereafter, (iii) a fine computed at the rate of 5c per \$1 on any instalment which has become due and remained unpaid for a period in excess of 10 days, provided (A) if the proceeds to the borrower are \$10,000 or less, no such fine shall exceed \$5 and the aggregate of all

such fines shall not exceed the lesser of 2% of the amount of this note or \$25, or (B) if the annual percentage rate stated above is 7.50% or less, the limitations provided in (A) shall not apply and no such fine shall exceed \$25 and the aggregate of all such fines shall not exceed 2% of the amount of this note, and such fine(s) shall be deemed liquidated damages occasioned by the late payment(s); (iii) in the event of this note maturing, subject to an allowance for unearned interest attributable to the matured amount, interest at a rate equal to 1% per month and (iv) if this note is referred to an attorney for collection, a sum equal to all costs and expenses thereof, including an attorney's fee equal to 15% of the amount owing on this note at the time of such reference, for necessary court costs. The acceptance by the bank of any payment(s) even if marked payment in full or similar wording, or if made after any default hereunder, shall not operate to extend the time of payment of or to waive any amount(s) then remaining unpaid or constitute a waiver of any rights of the bank hereunder.

In the event this note is prepaid in full or refinanced, the borrower shall receive a refund of the unearned portion of the prepaid finance charge computed in accordance with the rule of 78 (the "sum of the digits" method). Provided that the bank may retain a minimum finance charge of \$10, whether or not earned, and, except in the case of a refinancing, no refund shall be made if it amounts to less than \$1. In addition, upon any such prepayment or refinancing, the borrower shall receive a refund of the charge, if any, for group credit life insurance included in the loan equal to the unearned portion of the premium paid or payable by the holder of the obligation (computed in accordance with the rule of 78), provided that no refund shall be made of amounts less than \$1.

As collateral security for the payment of the indebtedness of the undersigned hereunder and all other indebtedness or liabilities of the undersigned to the bank, whether joint, several, absolute, contingent, secured, unsecured, matured or unmatured, under any present or future note or contract or agreement with the bank (all such indebtedness and liabilities being hereinafter collectively called the "obligations"), the bank shall have, and is hereby granted, a security interest and/or right of set-off in and to (a) all monies, securities and other property of the undersigned now or hereafter on deposit with or otherwise held by or coming to the possession or under the control of the bank, whether held for safekeeping, collection, transmission or otherwise or as custodian, including the proceeds thereof, and any and all claims of the undersigned against the bank, whether now or hereafter existing, and (b) the following described personal property (all such monies, securities, property, proceeds, claims and personal property being hereinafter collectively called the "collateral"): () Motor Vehicle () Boat () Stocks, () Bonds, () Savings, and/or _____ see customer's copy of security agreement(s) or collateral receipt(s) relative to this loan for full description.

If this note is secured by a motor vehicle, boat or aircraft, property insurance on the collateral is required, and the borrower may obtain the same through a person of his own choice.

If this note is not fully secured by the collateral specified above, as further security for the payment of this note, the bank has taken an assignment of 10% of the undersigned borrower's wages in accordance with the wage assignment attached to this note.

In the event of default in the payment of this or any other Obligation or the performance or observance of any term or covenant contained herein or in any note or other contract or agreement evidencing or

relating to any Obligation or any Collateral on the Borrower's part to be performed or observed; or the undersigned Borrower shall die; or any of the undersigned become insolvent or make an assignment for the benefit of creditors; or a petition shall be filed by or against any of the undersigned under any provision of the Bankruptcy Act; or any money, securities or property of the undersigned now or hereafter on deposit with or in the possession or under the control of the Bank shall be attached or become subject to distraint proceedings or any order or process of any court; or the Bank shall deem itself to be insecure, then and in any such event, the Bank shall have the right (at its option), without demand or notice of any kind, to declare all or any part of the Obligations to be immediately due and payable, whereupon such Obligations shall become and be immediately due and payable, and the Bank shall have the right to exercise all the rights and remedies available to a secured party upon default under the Uniform Commercial Code (the "Code") in effect in New York at the time, and such other rights and remedies as may otherwise be provided by law. Each of the undersigned agrees (for purposes of the "Code") that written notice of any proposed sale of, or of the Bank's election to retain, Collateral mailed to the undersigned Borrower (who is hereby appointed agent of each of the undersigned for such purpose) by first class mail, postage prepaid, at the address of the undersigned Borrower indicated below three business days prior to such sale or election shall be deemed reasonable notification thereof. The remedies of the Bank hereunder are cumulative and may be exercised concurrently or separately. If any provision of this paragraph shall conflict with any remedial provision contained in any security agreement of collateral receipt covering any Collateral, the provisions of such security agreement or collateral receipt shall control.

Acceptance by the Bank of payments in arrears shall not constitute a waiver of or otherwise affect any acceleration of payment hereunder or other right or remedy exercisable hereunder. No failure or delay on the part of the Bank in exercising, and no failure to file or otherwise perfect or enforce the Bank's security interest in or with respect to any Collateral, shall operate as a waiver of any right or remedy hereunder or release any of the undersigned, and the Obligations of the undersigned may be extended or waived by the Bank, any contract or other agreement evidencing or relating to any Obligation or any Collateral may be amended and any Collateral exchanged, surrendered or otherwise dealt with in accordance with any agreement relative thereto, all without affecting the liability of any of the undersigned. In any litigation (whether or not arising out of or relating to any Obligation or Collateral or other matter connected herewith) in which the Bank and any of the undersigned may be adverse parties, the Bank and each such undersigned hereby waives their respective right to demand trial by jury and, additionally, each such undersigned waives his right to interpose in any such litigation any counterclaim of any nature or description which he may have against the Bank. In addition, the Bank shall not be deemed to have obtained knowledge of any fact or notice with respect to any matter relating to this note or any Collateral unless contained in a written notice mailed, postage prepaid, or personally delivered to the Personal Finance Department of the Bank at its address set forth above. Each of the undersigned, by his signature hereto, hereby waives presentation for payment, demand, notice of non-payment, protest and notice of protest with respect to the indebtedness evidenced by this note, and each such undersigned hereby agrees that this note shall be deemed to have been made

under and shall be construed in accordance with the laws of the State of New York.

Each of the undersigned hereby authorizes the Bank to date this note as of the day the loan evidenced hereby is made, to correct patent errors herein and, at its option, to cause the signatures of one or more co-makers to be added without notice to any prior obligor.

Receipt of a copy of this note, appropriately filled in, is hereby acknowledged by the borrower:

Full signature, and complete addresses
 Borrower _____
 Wife or husband of borrower as co-maker _____
 Co-maker _____
 Co-maker _____

ASSIGNMENT OF WAGES, SALARY, COMMISSIONS OR OTHER COMPENSATION FOR SERVICES

This Assignment is executed as security for, or as a manner or method of repayment of, money advanced by a bank, trust company or credit union doing business in New York.

To: First National City Bank—as assignee, Personal Finance Department, 810 Seventh Avenue, New York, New York 10019.

Date _____, 19____.

I, the undersigned, being the "Borrower" indicated on the promissory note which appears above, in consideration of your making the loan evidenced by said note, do hereby assign to you, as collateral security for the payment of the indebtedness evidenced thereby, any and all monies which may hereafter become due or owing to me a salary, wages, commissions or other compensation for services from any present or future employer of mine (herein referred to as my "Employer"), to the extent of an amount equal to 10% thereof, computed at the time when such salary, wage(s), commission(s), or other compensation is (are) payable, and you are hereby authorized to apply the same, as and when received by you, to the satisfaction of all such indebtedness as shall then be due and owing by the undersigned on account of said note until all such indebtedness shall be fully paid.

I hereby authorize my Employer to give full force and effect hereto, he being hereby released and discharged from any and all liability to me for or on account of any and all monies which may be paid you hereunder.

I hereby acknowledge receipt of a copy hereof.

This is an assignment of wages, salary, commissions or other compensation for services.

Signature of assignor: _____
 Sign full name _____
 (Signature of complete name of assignor)

NOTICE OF PROPOSED GROUP INSURANCE

Credit life insurance on the life of the "Borrower" obligated under the Note on the reverse side hereof may be taken out by the Bank under a group life insurance policy issued to the Bank by The Prudential Insurance Company of America, having its home office in Newark, New Jersey. Such insurance, if effected on the life of the Borrower, will be effective from the date of said Note until the Note is repaid, or said group policy terminates, or the final maturity date of the Note, whichever first occurs, in an amount necessary to reduce or extinguish the Borrowers indebtedness under said Note, but not to exceed \$20,000 in respect of all indebtedness of the Borrower to the Bank for which the life of the Borrower may have been insured under said group life insurance policy, the proceeds of which insurance shall be paid to the Bank for application to the discharge of such indebtedness. If an identifiable charge is to be made to the Borrower for such insurance, the amount thereof will be set forth at Item (6) of the Note on the reverse

side hereof. If any such insurance for which an identifiable charge has been made to the Borrower is declined by the insurer or otherwise does not become effective, the Borrower will be given immediate notice thereof and any such charge paid by the Borrower will be promptly refunded. The Borrower will receive a certificate of insurance relative to any insurance effected on his life within 30 days of the date of the Note.

Borrower to sign if identifiable charge is made.

The application for credit evidenced by the note on the reverse side of this form has been:

Withdrawn—the accommodation requested cannot be granted at this time except on the terms or conditions offered to you. This decision was based in part:

Declined—The decisions not to grant the accommodation requested at this time was based in part:

On information, not necessarily of a derogatory nature, contained in a consumer report from the consumer reporting agency(s) listed below.

On information, not necessarily of a derogatory nature, obtained from sources other than a consumer reporting agency, you may, within sixty days of the receipt of this disclosure, submit a written request for the reasons for our decision.

Signature: _____ Date _____

SUMMARY OF CERTAIN SECTIONS OF ARTICLE 3-A OF THE PERSONAL PROPERTY LAW OF THE STATE OF NEW YORK

§ 46-c—An assignment of earnings (Assignment) shall be contained in a separate written instrument, and at its top and just above the place reserved for the signature of the assignor, must be described in at least 10 point bold type, as an assignment of wages, etc.; it must contain the name and address of the assignee and, in its text or in a writing permanently attached, identify specifically and describe fully the transaction to which it relates, the amount of the indebtedness, the dates on which and place at which payments are to be made, and that it secures only the transaction or series of transactions described in such assignment.

§ 46-e—The Assignment must be personally executed by the assignor and a copy of it, and of any papers attached thereto, together with a copy of any papers executed by the assignor pertaining to the transaction described in the Assignment, must be delivered to the assignor before the same is filed with the employer.

§ 46-f—Except as provided by Article 9 of the New York Banking Law, the charges made by the assignee must not exceed a greater sum than 18% per annum on the amount of the loan or advance, except as permitted by Section 5-531 of the General Law of New York.

§ 48—Before an Assignment (except assignments given security for money actually advanced to or at the request of the assignor by any bank, trust company or credit union doing business in the State of New York) shall be filed with an employer:

(a) the assignor must be at least 21 days in default on a payment, and after such default the assignee must have mailed to the assignor by certified mail, return receipt requested, a copy of the Assignment and any attached papers with a written notice that, unless the amount in default shall be paid within 20 days from the date of the mailing, the Assignment will be served on the assignor's employer, and advising assignor of his right to a hearing on the validity of the Assignment (pursuant to § 47-e, below) and any defense to the underlying debt;

(b) if the assignor notifies the assignee of a defense, the assignee cannot file the Assignment until it obtains a court order;

(c) the written notice given the assignor must instruct him to bring the notice with him and have any payment endorsed thereon and, if a payment is so endorsed, or if the assignor receives, a written receipt referring to the notice, the Assignment cannot be served on the employer until subsequent default and similar notice.

(d) if the notice is returned undelivered, it may then be served the same as a summons or mailed to the Assignee by certified mail, return receipt requested, where he works.

§ 47-e—With the exception of an order made by a family court or in a matrimonial proceeding, the assignor, his employer or any other interested party may commence a special proceeding to vacate the Assignment in the county where assignee or assignor resides or where the Assignment is filed. The court may consider any defense to the Assignment and underlying debt, with burden of proof on each to be on the Assignee, and may grant appropriate interim relief. If vacated by a judgment it may be presented to the county clerk.

§ 48-a—No amount is deductible from the assignor's future earnings until at least 10 days have elapsed after a true and authenticated copy of the Assignment together with an itemized statement of the amount then due the assignee, has been filed with the employer, and, if the assignment relates to indebtedness of less than \$1,000: (a) the amount collectible in any month can be not more than 10% of the assignor's earnings in that month; (b) it is subordinate to any prior assignment, income execution or order under Section 5226 of the Civil Practice Law and Rules of New York.

§ 48-b—No amount is deductible from the assignor's future earnings unless the same exceed \$85 per week.

§ 48-c—Unemployment by the assignor at the time of or subsequent to the Assignment does not prevent the Assignment from becoming effective later.

§ 49—Banks, Trust Companies and Credit Unions doing business in the state of New York are not required to file such an Assignment with any public office or officer.

**FIRST NATIONAL CITY BANK
 CONSUMER LOAN NOTE**

Date _____, 19____.

(In this note, the words I, me, mine and my mean each and all of those who signed it. The words you, your and yours mean First National City Bank.)

Terms of Repayment: To repay my loan, I promise to pay you _____ Dollars (\$_____). I'll pay this sum at one of your branches in _____ uninterrupted _____ installments of \$_____ each. Payments will be due _____, starting from the date the loan is made.

Here's the breakdown of my payments:

1. Amount of the Loan \$ _____
 2. Property Insurance Premium \$ _____
 3. Filing Fee for Security Interest \$ _____
 4. Amount Financed (1+2+3) \$ _____
 5. Finance Charge \$ _____
 6. Total of Payments (4+5) \$ _____
- Annual Percentage Rate _____%

Prepayment of Whole Note: Even though I needn't pay more than the fixed installments, I have the right to prepay the whole outstanding amount of this note at any time. If I do, or if this loan is refinanced—that is, replaced by a new note—you will refund the unearned finance charge, figured by the rule of 78—a commonly used formula for figuring rebates on installment loans. However, you can charge a minimum finance charge of \$10.

Late Charge: If I fall more than 10 days behind in paying an installment, I promise to pay a late charge of 5% of the overdue

installment, but no more than \$5. However, the sum total of late charges on all installments can't be more than 2% of the total of payments or \$25, whichever is less.

Security: To protect you if I default on this or any other debt to you, I give you what is known as a security interest in my Motor Vehicle and /or _____ (see the Security Agreement I have given you for a full description of this property), Stocks, Bonds, Savings Account (more fully described in the receipt you gave me today) and any account or other property of mine coming into your possession.

Insurance: I understand I must maintain property insurance on the property covered by the Security Agreement for its full insurable value, but I can buy this insurance through a person of my own choosing.

Default: I'll be in default:

1. If I don't pay an installment on time; or
2. If any other creditor tries by legal process to take any money of mine in your possession.

You can then demand immediate payment of the balance of this note, minus the part of the finance charge which hasn't been earned figured by the rule of 78. You will also have other legal rights, for instance, the right to repossess, sell and apply security to the payments under this note and any other debts I may then owe you.

Irregular Payments: You can accept late payments or partial payments, even though marked "payment in full," without losing any of your rights under this note.

Delay in Enforcement: You can delay enforcing any of your rights under this note without losing them.

Collection Costs: If I'm in default under this note and you demand full payment, I agree to pay you interest on the unpaid balance at the rate of 1 percent per month, after an allowance for the unearned finance charge. If you have to sue me, I also agree to pay your attorney's fees equal to 15 percent of the amount due, and court costs. But if I defend and the court decides I am right, I understand that you will pay my reasonable attorney's fees and the court costs.

Comakers: If I'm signing this note as a comaker, I agree to be equally responsible with the borrower. You don't have to notify me that this note hasn't been paid. You can change the terms of payment and release any security without notifying or releasing me from responsibility on this note.

Copy Received: The borrower acknowledges receipt of a completely filled-in copy of this note.

Signatures, and addresses

Borrower: _____
Comaker: _____
Comaker: _____
Comaker: _____

Hot Line: If something should happen and you can't pay on time, please call us immediately at (212) 559-3061.

Personal Finance Department, First National City Bank.

TRUTH IN LENDING SIMPLIFICATION AND REFORM ACT SECTION-BY-SECTION ANALYSIS

Sec. 1. The Act is cited as the Truth in Lending Simplification and Reform Act.

Sec. 2. Agricultural credit.—Would amend sections 103(h), 104(1), and 104(5) to exempt credit transactions which are primarily for agricultural purposes. The Federal Reserve Board has pointed out that inclusion of agricultural credit in Truth in Lending has resulted in numerous complexities in Regulation Z. In addition, the Board believes that Truth in Lending has been of little value in such transactions because they are primarily commercial in nature.

Sec. 3. Administrative enforcement.—Would amend section 108 to grant authority to state officials in exempted states to enforce state Truth in Lending laws with re-

gard to national banks and federal savings and loan associations within such states. Banking officials in exempted states are presently unable to examine these institutions to assure that they are in compliance with state law. Substantial evidence exists that there is widespread noncompliance, and the effectiveness of the Act would be enhanced by providing for this added enforcement.

Sec. 4. Restitution to borrowers.—Would amend section 108 to require enforcement agencies to request restitution to borrowers in those cases where the annual percentage rate or finance charge in a transaction was inaccurately disclosed. In such a case, the borrower's account would be adjusted, except where the agency finds it would be unreasonably burdensome, so that the borrower will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate, whichever is lower. If a creditor refuses to provide restitution, the enforcement agency shall notify the borrower of the facts discovered and of the borrower's rights under the Act.

Statistics recently compiled by the Federal Deposit Insurance Corporation indicate that errors in the finance charge and annual percentage rate—the two most important disclosures—are the most frequent Truth in Lending violations. The States of Connecticut, Maine, and Wisconsin currently utilize a similar enforcement scheme with regard to their Truth in Lending laws, and officials of these states believe this has led to a dramatic increase in creditor compliance. Strengthened enforcement techniques are essential if greater compliance is to be achieved.

The amendment further provides that where an agency finds that a creditor has engaged in repeated and substantial violations of the Act, it is authorized to publicize the name of the creditor and other information regarding the frequency and nature of the violations. This is currently the practice of officials in Connecticut and has led to increased creditor compliance.

Sec. 5. Limitation on civil actions.—Would amend section 130(e) to provide that a consumer who receives notification of a Truth in Lending violation from an enforcement agency pursuant to section 4, above, may file a civil action for damages within 90 days after such notification, notwithstanding that more than one year has elapsed since the violation. No such action may be commenced, however, more than three years from the date of the transaction. This section complements the previous section under which enforcement agencies are required to notify borrowers of certain violations when a creditor refuses to provide restitution.

Sec. 6. Annual reports.—Would amend section 114 of the Truth in Lending Act, section 18(f) (5) of the Federal Trade Commission Act, and section 707 of the Equal Credit Opportunity Act in order to permit the Federal Reserve Board to submit its annual reports for these statutes as part of the Board's general annual report. This has been recommended by the Federal Reserve Board.

Sec. 7. Model forms and clauses.—Would amend Chapter 1 of the Truth in Lending Act to require the Federal Reserve Board to issue model forms and clauses for common consumer credit transactions. The forms should be written in readily understood language designed to simplify the technical nature of the disclosures. Prior to adopting these forms, the Board shall provide notice through the Federal Register and obtain the comments of all interested parties. In addition, section 130(f) is amended to provide that proper use of these model forms would constitute a defense as to the form of disclosures in civil actions.

Issuance of model forms and clauses will greatly aid creditors by eliminating uncertainty as to compliance, lessening creditor costs, and reducing the amount of civil liti-

gation. Credit industry representatives have long sought such forms from the Federal Reserve Board.

Sec. 8. Recission rights.—Would amend section 125(a) to substitute "dwelling" for "residence" thereby making clear that recission rights apply only to transactions in which the creditor is taking a security interest in real property containing the borrower's home, and not to security interests covering vacant lots. This amendment has been recommended by the Federal Reserve Board.

Sec. 9. Open end credit plans.—Would strike out section 127(a)(5) and section 127(b)(7) which call for disclosure of an "average effective annual percentage rate of return" in certain open end plans. This amendment has been recommended by the Federal Reserve Board on the ground that these sections have rarely, if ever, been used and have accounted for an entire section of Regulation Z.

Sec. 10. Finance charge itemization.—Would amend sections 128(a)(6) and 129(a)(4) to affirm the Federal Reserve Board's interpretation of these sections to the effect that finance charges which consist of only one element need not be itemized. Enactment of these amendments would substantially reduce litigation.

In addition, would strike out section 106(d) which permits certain types of charges, such as taxes, to be excluded from the finance charge if separately itemized. These charges are imposed on cash and credit customers alike, so inclusion in the finance charge is inappropriate. The amendment, recommended by the Federal Reserve Board, will conceptually simplify the Act.

Sec. 11. Default charges.—Would amend sections 128(a)(9) and 129(a)(7) to make clear that these provisions do not require disclosure of a creditor's right of acceleration upon default or other charges which are not monetary fees payable directly upon default. These amendments have been recommended by the Federal Reserve Board and should substantially reduce litigation.

Sec. 12. Security interests.—Would amend sections 128(a)(10) and 129(a)(8) to eliminate the need for creditors to disclose the type of security interest taken by a creditor. This information is of little, if any, benefit to borrowers, but has resulted in considerable litigation. In addition, these amendments would limit the requirement for a clear identification of property taken as security in a closed-end transaction to make it inapplicable to those items which are being purchased. While a creditor need not clearly identify the property subject to a security interest if it is the item purchased, the creditor still must state that purchased items are subject to a security interest. These amendments, which have been recommended by the Federal Reserve Board, would reduce the complexity of disclosure statements without limiting information to borrowers.

Sec. 13. Limited civil liability.—Would amend section 130(a) to limit civil liability in closed-end transactions to seven types of disclosure violations: (1) the amount to be financed; (2) the finance charge; (3) the annual percentage rate; (4) the number, amount, and due dates of payments scheduled to repay the indebtedness; (5) any monetary charge payable in the event of a late payment or delinquency; (6) the existence of and identification of property subject to a security interest; and (7) the borrower's right of recission.

Creditors currently face civil liability for improperly disclosing a host of closed-end credit terms which often are already known to the borrower or are of only secondary importance in shopping for credit. This amendment will reduce by more than half the number of disclosures for which creditors will be civilly liable. Creditors will no longer be liable for improperly disclosing the following: the name of the creditor; the cash price; the

downpayment; the unpaid balance of the cash price; other itemized charges comprising the amount financed; the unpaid balance; the deferred payment price; the total of payments; any prepayment penalty; the method of rebating unearned interest upon prepayment; the date on which the finance charge begins to accrue; and the sequence of disclosures.

This amendment will limit civil liability to only those disclosures of primary importance and will thereby sharply reduce litigation.

SEC. 14. Set-off rights.—Would amend section 130(h) of the Truth in Lending Act to make clear that this section, which prohibits a borrower from offsetting Truth in Lending damages against a debt owed unless a court has found a Truth in Lending violation, does not prohibit a borrower from raising a creditor's violation by way of recoupment or similar doctrine where permitted by State law. It was Congress' intent in enacting this section in 1974 to prohibit a debtor from unilaterally offsetting alleged damages, but not to prohibit the borrower from seeking an offset in a legal action. This amendment will supersede an erroneous court decision on this subject.

SEC. 15. Dissemination of annual percentage rates.—Would amend chapter 2 of the Truth in Lending Act to require the Federal Reserve Board to publish semiannually the annual percentage rates charged by creditors for various types of closed-end credit in standard metropolitan statistical areas with populations in excess of 500,000. These "Shopper's Guides to Credit" would make credit information even more readily available for more than half of the nation and would also enhance competition between creditors. The Board is authorized to contract with consumer or public interest groups to carry out this activity.

SEC. 16. Effective date.—The Act would take effect one year after its enactment.

By Mr. PROXMIRE:

S. 1313. A bill to require the enactment of special legislation to continue the expenditure or obligation of funds on any major military or civil acquisition whenever the cost of such acquisition has increased or, on the basis of estimates, will increase by 50 per centum or more; to the Committee on Governmental Affairs.

COST OVERRUN CONTROL BILL

Mr. PROXMIRE. Mr. President, today I am introducing a bill to automatically cut off Federal funding for any civilian or military project that has a cost overrun of 50 percent or more.

We all know that cost overruns are a fact of life in Government. Alarming statistics of massive overspending are reported every day in the newspapers and by the electronic media.

The real question is what can the Government do about it? This bill provides an answer to that question.

It would automatically cut off Federal funding to any major military or civilian project after it increases in price by more than 50 percent. Inflation would not be counted in determining this 50-percent threshold.

Funding for any program interrupted by this bill could be reinstated only by passing a special act of Congress and then only for a period of 1 year at a time.

This would have several beneficial effects. First, it would highlight the problem areas in HEW, DOD, NASA, or any other governmental agency. Second, it

would force the Congress to deal with each program as it became a problem. Third, it would put all Government agencies on alert that their pet projects would be interrupted if they were mismanaged and that Congress would then have to step in.

The Comptroller General of the United States would be responsible for collecting cost data, as he does now, and reporting to the Congress and the relevant agency each time a project went over the 50 percent mark. At that point no further Federal funds could be spent on that project until Congress specifically said it was proper to continue.

In order not to tie up the Comptroller General or the Congress in small projects, only those programs with a research and development cost of over \$50 million or a procurement cost of over \$200 million would be reviewed.

For the first time, if this bill is passed, every major Corps of Engineers, Department of Defense, HEW, or Transportation project that gets in financial trouble will be assured of a tough congressional review. And the agency heads will know that if their projects start showing a trend toward cost overruns, the automatic funding cutoff could go into effect.

This will force discipline on the program managers and the Congress.

Why do we need such a cutoff? The latest General Accounting Office report indicates that 753 civil and military projects currently in research and development or construction have cost increases of \$176 billion or 64 percent over the original estimated costs.

A special audit of 201 of the worst offenders showed that they increased in cost by \$150 billion of which 47 percent or \$71 billion was for inflation.

The biggest overrun was in the Department of Defense with an increase of \$74 billion followed closely by the Federal Highway Administration with an increase of \$60 billion. The Corps of Engineers had the most projects with a cost overrun of 100 percent or more—83 out of 178.

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

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

S. 1313

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That as used in this Act—

(1) The term "major military acquisition" means any construction, acquisition, or procurement financed with funds appropriated to or for the use of the Department of Defense the estimated cost of which, including research, development, testing, and evaluation costs, exceeds \$200,000,000, or any such construction, acquisition, or procurement with respect to which the research, development, testing, and evaluation costs are estimated to be in excess of \$50,000,000.

(2) The term "major civil acquisition" means any construction, acquisition, or procurement not included in paragraph (1) of this section financed in whole or in part with Federal funds (not including any funds allocated to a State under a revenue sharing program), the estimated cost of which, including research, development, testing, and evaluation costs, in terms of Federal funds,

exceeds \$200,000,000, or any such construction, acquisition, or procurement with respect to which the research, development, testing, and evaluation costs are estimated to be in excess of \$50,000,000.

(3) The term "baseline cost" means a planning or development cost as determined by the Comptroller General.

(4) The term "Comptroller General" means the Comptroller General of the United States.

SEC. 2. (a) The Comptroller General twice each year shall be responsible for determining the cost growth statistics on all major military acquisitions and on all major civil acquisitions. Such statistics shall be determined on the basis of data furnished to him by the appropriate departments and agencies of the Government and on the basis of independent audits and reviews conducted by him under authority of law. All departments and agencies of the Government are hereby required to furnish the Comptroller General with any data or information he might determine to be required for compiling cost growth statistics.

(b) Whenever the Comptroller General determines in the case of any major military acquisition or major civil acquisition that the actual cost or estimated projected cost of such acquisition has resulted or will result in a cost growth of 50 per centum or more compared to an established baseline cost, he shall promptly notify the Congress and the head of the department or agency concerned of his finding. In determining the cost growth with respect to any major military acquisition or any major civil acquisition the Comptroller General shall exclude any amount from such cost growth attributable to inflation.

(c) After the date on which the head of a department or agency receives a notice from the Comptroller General described in subsection (b) relating to any major military acquisition or any major civil acquisition, no additional funds may be obligated or expended with respect to such acquisition unless authorizing legislation as described in subsection (d) is enacted by the Congress after the date of such notice.

(d) Legislation referred to in subsection (c) means a bill or joint resolution which (1) pertains only to the continuation of the authority to obligate and expend funds for a major military acquisition or major civil acquisition with respect to which the authority to obligate and expend funds has been terminated as the result of a notice issued by the Comptroller General under subsection (b), and (2) continues for a period of not more than one year from the date of enactment of such bill or joint resolution the authority to obligate and expend funds for such acquisition.

SEC. 3. The provisions of this Act shall not apply to any major military acquisition or major civil acquisition for which funds have been appropriated prior to the date of enactment of this Act.

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

S. 1314. A bill to amend title 28, United States Code, to provide that State prisoners and Federal prisoners shall not be denied Federal habeas corpus relief on the ground that such prisoners were previously afforded a full and fair opportunity to litigate their claims, and for other purposes; to the Committee on the Judiciary.

Mr. NELSON. Mr. President, I am introducing today, for myself and Senator MATHIAS, legislation amending the Federal habeas corpus statute, 28 U.S.C. section 2241 et seq. This legislation is a direct response to two Supreme Court decisions last year which departed rad-

ically from longstanding precedent and seriously curtailed the rights of those in custody to petition the Federal courts for a writ of habeas corpus. The legislation represents an improved version of S. 3886, which I introduced on this subject at the end of the last Congress.

In *Francis v. Henderson*, 425 U.S. 536 (1976), the Supreme Court held that a State prisoner who failed to make a timely challenge to the composition of the grand jury that indicted him could not, after his conviction, bring that challenge in a Federal habeas corpus proceeding. In reaching this decision, the Court rejected the existing law that, absent a deliberate bypass of State procedures, a procedural default by a State prisoner will not foreclose him from making a constitutional challenge through a habeas petition. The Court had reached a similar conclusion 3 years earlier for Federal prisoners, holding that constitutional claims might be waived for the purpose of 28 U.S.C. section 2255, which is analogous to habeas corpus, if the prisoners had not raised them within the time limits spelled out by the Federal Rules of Criminal Procedure. *Davis v. United States*, 411 U.S. 233 (1973).

In *Stone v. Powell*, 96 S. Ct. 3037 (1976), the Court held that when a State has provided an opportunity for a full and fair litigation of a fourth amendment claim of illegal search and seizure, a State prisoner may not be granted habeas relief on the ground that evidence illegally seized from him was used against him at trial. In reaching this decision, the Court reached the unprecedented conclusion that certain constitutional rights cannot be vindicated through a habeas corpus petition.

The legislation I am proposing today would overrule *Francis* and *Stone*. It would amend 28 U.S.C. section 2254 to provide that when a person in State custody applies to a Federal court for a writ of habeas corpus, first, the application cannot be denied on the ground that the applicant did not raise the claim at trial or in a pretrial proceeding in the State court unless the court finds that the applicant understandingly and knowingly decided not to raise the claim, and second, that an otherwise valid claim for a writ of habeas corpus cannot be denied simply because the State courts furnished the applicant a full and fair opportunity to litigate his claim. This legislation would also amend section 2255 to provide the same protections for those in Federal custody.

Legislation overruling Supreme Court decisions is a major step which should be taken only after careful consideration and under narrow circumstances. In support of the legislation there are four points which the Senate should consider:

First, habeas corpus is one of our most cherished constitutional rights. Its diminution reduces the freedom of all Americans.

Second, habeas corpus in this country has been liberally granted and construed, by Congress and the courts, particularly in the last 50 years. The *Francis* and *Stone* decisions reverse that historical trend, without justification, and without

a willingness to acknowledge the scope of the departure.

Third, these decisions represent a significant incursion on the constitutional power and obligation of Congress, under article III of the Constitution, to define the jurisdiction of the Federal courts.

Finally, these decisions convey the impression of being justified, at least in part, by the Supreme Court's desire to cope with the increased caseload of the Federal courts. However serious this problem may be, the remedy must come from Congress, and not from the Court in the guise of decisions on the merits.

When I introduced S. 3886 at the end of the last Congress, I recognized, of course, that no legislative action was possible at that time. However, it was my hope that the legislation would help to generate discussion, not only about the Supreme Court's handling of the habeas corpus issue, but also about the Court's increasing general tendency to render decisions restricting access to the Federal courts. As Justice Brennan wrote, dissenting in *Stone* against Powell, the decision was "in keeping with the regrettable recent trend of barring the Federal courthouse door to individuals with meritorious claims."

Most of these troubling decisions have involved restrictive interpretations of title 42, United States Code, section 1983, the Civil Rights Act of 1971, the principal statute which permits aggrieved individuals to challenge Government actions which they believe to be violative of their constitutional rights. In the statement which accompanied the introduction of S. 3886 last year, I discussed at length a number of these decisions which have ignored the intent and undermined the effect of section 1983. (CONGRESSIONAL RECORD, October 1, 1976, pages 34689-34695). I am encouraged that public attention has begun to focus on these regressive decisions. A large measure of the credit for this increased concern belongs to Senators MATHIAS and BROOKE, who introduced S. 35, the Civil Rights Improvement Act, legislation to overrule the major restrictive interpretations of section 1983 by the Supreme Court. My concern about these decisions weakening 1983, the Civil Rights Act of 1971, the objectives of S. 35. For the purposes of this statement, I will confine my analysis to the legislation we are proposing today and its vital objective: Restoring the "great writ" of habeas corpus to the exalted place it occupied in our constitutional framework before *Francis* against *Henderson* and *Stone* against *Powell*.

I

The "province" of habeas corpus, "shaped to guarantee the most fundamental of all rights, is to provide an effective and speedy instrument by which judicial inquiry may be had into the legality of the detention of a person. It allows restraints contrary to our fundamental law, the constitution, to be challenged, even when the conviction has been imposed by a court of competent jurisdiction." *Carafas v. LaVallee*, 391 U.S. 233, 238 (1968). As Justice Holmes once wrote, "Habeas corpus cuts through

all forms and goes to the very tissue of the structure. It comes in from the outside, not in subordination to the proceedings." *Frank v. Mangum*, 237 U.S. 309, 346-347 (1915).

Title 28, United States Code, section 2241 et seq. is the Federal law governing petitions for habeas corpus; 2241(a) provides that "writs of habeas corpus may be granted by the Supreme Court, any Justice thereof, the district courts and any circuit judge within their respective jurisdictions." Section 2254 sets forth the grounds for a motion for habeas by a State prisoner; section 2255 is the counterpart for Federal prisoners. Although the Federal prisoner has wider grounds on which to base a motion, the crucial aspect of both sections is that a State or Federal prisoner can seek habeas or post-conviction relief on the grounds that the prisoner is "in custody in violation of the Constitution or laws or treaties of the United States."

Throughout our history, habeas corpus has been known as the Great Writ, a cornerstone of individual freedom. It is "the most celebrated writ in the English law." 3 Blackstone Commentaries 129. It is "a writ antecedent to statute, and throwing its root deep into the genius of our common law. It is perhaps the most important writ known to the constitutional law of England, affording as it does an imperative remedy in all cases of illegal restraint and confinement. It is of immemorial antiquity, an instance of its use occurring in the 33d year of Edward I." *Secretary of the State for Home Affairs v. O'Brien*, (1923) A.C. 603, 609 (H.C.)

In the United States, habeas corpus was received into our law during the colonial period, explicitly recognized in article I, section 9, clause 2 of the Constitution and incorporated into the first grant of Federal court jurisdiction, act of September 24, 1789 c. 20 section 14, 1 Stat. 81-82. Chief Justice John Marshall recognized habeas corpus to be a "great constitutional privilege." Ex parte Bollman and Swartout, 4 Cranch 75, 95. Nearly 150 years later, the Supreme Court reaffirmed the importance of habeas corpus, writing:

We repeat what has been so truly said of the federal writ: "there is no higher duty than to maintain it unimpaired." *Boman v. Johnston*, 306 U.S. 19, 26 (1939) and unsuspending, save only in the cases specified in our Constitution. *Smith v. Bennett*, 365 U.S. 708, 713 (1968). *Fay v. Noia*, 372 U.S. 391, 399-400 (1963).

Although no body of law developed over 150 years can ever be completely consistent, it is fair to say that the Supreme Court has accorded great respect to the writ of habeas corpus. Moreover, in the past half century, the Court in a series of decisions has greatly expanded the concept of habeas corpus. The early concept of habeas was that it guaranteed only that proper legal processes had been followed. The stated doctrine was that the writ would issue only if the court which committed the prisoner had lacked jurisdiction to do so. However, in *Moore v. Dempsey*, 261 U.S. 86 (1923), the court held that a prisoner could attack his

conviction by habeas corpus, even if the court proceedings were formally proper, if those proceedings were under the sway of a mob, making the trial a mere sham. In *Mooney v. Holohan*, 294 U.S. 103 (1935), the court extended habeas to a prisoner whose conviction rested on perjured testimony; in *Johnson v. Zerbst*, 304 U.S. 458 (1938), the court concluded habeas was appropriate because although the trial court originally had "jurisdiction," it relinquished it by not providing the petitioner with counsel. Finally in 1942, the court completely discarded the jurisdictional fiction and stated that—

The use of the writ in federal courts to test the constitutional validity of a conviction for crime is not restricted to those cases where the judgment of conviction is void for want of jurisdiction of the trial court to render it. It extends also to those exceptional cases where the conviction has been in disregard of the Constitutional rights of the accused, and where the writ is the only effective means of preserving his rights. *Waley v. Johnston*, 316 U.S. 101, 104-105 (1942).

ii

In 1963, the Court decided *Fay v. Noia*, 372 U.S. 391 (1963). The issue before the Court was whether Federal habeas corpus relief could be granted to a State prisoner who had been denied State post-conviction remedies, because a coerced confession claim had been decided against him and the prisoner had allowed the time for a direct appeal to lapse without seeking State appellate review. In a painstaking review of the history of the Great Writ, the majority of the Court, per Justice Brennan, concluded that the lower Federal courts had erred in denying the writ. The essence of the court's conclusion was that the Great Writ was the remedy for incarcerations in violation of fundamental rights. Therefore, if Noia was in prison in violation of his constitutional rights, Federal habeas corpus was an available remedy for him to challenge that incarceration, despite his procedural default. In reaching that decision, the Court considered at great length its effect on the relationship between State and Federal courts, but concluded that the State's interest would be adequately protected by a deliberate bypass standard, and that no stricter standard could be accepted given the overriding importance of habeas corpus:

We fully grant . . . that the exigencies of federalism warrant a limitation whereby the federal judge has the discretion to deny relief to one who has deliberately sought to subvert or evade the orderly adjudication of his federal defense in the state courts. Surely no stricter rule is a realistic necessity. . . . [I]f because of inadvertence or neglect he runs afoul of a state procedural requirement, and thereby forfeits his state remedies, appellate and collateral, as well as direct review thereof in this Court, those consequences should be sufficient to vindicate the State's valid interest in orderly procedure. Whatever residuum of state interest there may be under such circumstances is manifestly insufficient in the face of the federal policy, drawn from the ancient principles of the writ of habeas corpus, embodied both in the Federal Constitution and in the habeas corpus provisions of the Judicial Code, and consistently upheld by this Court, of affording an effective remedy for restraints contrary to the Constitution.

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Although we hold that the jurisdiction of the federal courts on habeas corpus is not affected by procedural defaults incurred by the applicant during the state court proceedings, we recognize a limited discretion in the federal judge to deny relief to an applicant under certain circumstances. . . . narrowly circumscribed, in conformity to the historic role of the writ of habeas corpus as an effective and imperative remedy for detentions contrary to fundamental law, the principle is unexceptionable. We therefore hold that the federal habeas judge may in his discretion deny relief to an applicant who has deliberately by-passed the orderly procedure of the state courts and in so doing has forfeited his state court remedies.

But we wish to make very clear that this grant of discretion is not to be interpreted as a permission to introduce legal fictions into federal habeas corpus. The classic definition of waiver enunciated in *Johnson v. Zerbst*, 304 U.S. 458, 464—"an intentional relinquishment or abandonment of a known right or privilege"—furnishes the controlling standard. If a habeas applicant, after consultation with competent counsel or otherwise, understandingly and knowingly forewent the privilege of seeking to vindicate his federal claims in the state courts, whether for strategic, tactical, or any other reasons that can fairly be described as the deliberate by-passing of state procedures, then it is open to the federal courts on habeas to deny him all relief if the state courts refused to entertain his federal claims on the merits—though of course only after the federal court has satisfied itself, by holding a hearing or by some other means, of the facts bearing upon the applicant's default. 372 U.S. at 433-434, 438-439.

In my view, this statement reflects a profound understanding of priorities in a free society dedicated to constitutional rights. The Court decided that the States' interest in orderly procedure could not prevail over the constitutional rights of a person wrongfully incarcerated. Until this term, the Supreme Court had repeatedly reaffirmed the holding of *Fay*. See, for example, *Henry v. Mississippi*, 379 U.S. 443, 452 (1965); *Camp v. Arkansas*, 404 U.S. 69 (1971); *Lefkowitz v. Newsome*, 429 U.S. 283, 290 n. 6 (1975).

At the same time, a series of court decisions has established that the notion of being "in custody" should be construed liberally. Originally habeas was appropriate only in those cases in which petitioner's claim, if upheld, would result in an immediate release from prison. *McNally v. Hill*, 293 U.S. 131 (1934). Subsequently, the Court concluded that a person on parole was "in custody" for the purpose of raising a habeas claim. *Jones v. Cunningham*, 371 U.S. 236 (1963). Similarly, later court decisions established that habeas claims could be raised by individuals at large on their own recognizance, but subject to several conditions pending execution of sentence. *Hensley v. Municipal Court*, 411 U.S. 345 (1973) and those released on bail after conviction pending final disposition of their cases. *Lefkowitz v. Newsome*, 429 U.S. 283 (1975). These decisions underscore the view that habeas "is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose—the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty. Besides physical imprisonment, there are other re-

straints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus." *Hammond v. Lefjest*, 398 F. 2d 705, 710-11 (2d Cir. 1968), quoting *Jones v. Cunningham*, 371 U.S. 236, 240, 243 (1963).

Against this background, *Francis v. Henderson*, 425 U.S. 536 (1976) was a startling, regrettable departure. In *Davis v. United States*, 411 U.S. 233 (1973), the Court had held that a Federal prisoner who had failed to make a timely challenge to the allegedly unconstitutional composition of the grand jury which indicted him could not subsequently attack his conviction under 28 U.S.C. 2255. In *Francis*, the Court extended the *Davis* ruling to bar a state prisoner from a habeas challenge to the allegedly unconstitutional composition of the grand jury which indicted him. The majority of the court concluded that since *Davis* held that the Federal courts must give effect to the legitimate rules and time limitations imposed by F.R. Crim. P. 12(b)(2):

Then surely considerations of comity and federalism require that they give no less effect to the same clear interests when asked to overturn state criminal proceedings." *Francis v. Henderson*, 425 U.S. at 541.

The Court concluded that applying the *Davis* rule with "equal force" meant that petitioner must show not only "cause" for the untimely challenge, but also actual prejudice resulting from the failure to comply.

This holding obviously departs sharply from *Fay* against *Noia*. After summarizing the holding of *Fay*, Mr. Justice Brennan wrote in his dissent:

Yet the Court, invoking "comity and federalism," would now essentially preclude federal habeas relief for state defendants deprived of their constitutional rights, so long as the State required that they assert those rights within a certain time period; this absolute and automatic "waiver" of the underlying constitutional claim would apparently take effect whether or not the defendant knew of his rights, whether or not the "untimely" challenge was nevertheless made at a time when no legitimate state interest would be upset by an adjudication of the claim on the merits, and whether or not mere inadvertence or actual incompetence of counsel accounted for the untimely challenge. *Francis v. Henderson*, 425 U.S. at 450 (dissenting opinion of Brennan).

The dissent was particularly critical of the Court's willingness to undercut *Fay* against *Noia* without confronting the case's precedential impact:

It is particularly distressing . . . [that] . . . the Court exposes its hostility towards and makes substantial inroads into the precedential force of *Fay* without directly confronting its underlying premises, continuing validity, or the possibility of distinguishing the failure to raise different constitutional rights in a timely manner in the state courts. Such "oversights" are especially ironical in light of the Court's recent admonition that "[o]ur institutional duty is to follow until changed the law as it now is, not as some members of the Court might wish it to be." *Hudgens v. NLRB*, 424 U.S. (1976). If the Court believes that *Fay* is no longer good law, and if the Court has the "institutional duty" to develop and explicate the law in a reasoned and consistent manner, then it has the duty to face squarely our

prior cases interpreting the federal habeas statutes and honestly state the reasons, if any, for its altered perceptions of federal habeas jurisdiction. *Francis v. Henderson*, 425 U.S. at 546-47 (dissenting opinion of Brennan).

Underlying both Francis and Davis is apparently the view that defendants must be deterred from raising procedural claims after the Court, witnesses, and the parties have gone to the burden and expense of a trial. However, as the Court recognized in *Fay*, deterrence is only an effective policy for prisoners who act knowingly and intentionally. Prisoners who because of inexperience, poor counsel, or other reasons are unaware of their rights will not be deterred by the Court's new standard; they will simply be trapped in "an airtight system of forfeitures." (*Fay v. Noia*, 372 U.S. at 432.) In *Davis* and *Francis* the Court has thereby elevated the State and Federal interests in efficiency above the rights of individuals to have their constitutional claims heard. My legislation recognizes these considerations and puts the Federal court's focus on whether the prisoner has deliberately relinquished his right to raise a conditional claim.

The holding of *Stone* against *Powell* was equally disturbing, and the reasoning no more compelling. *Powell* had been convicted of murder in State court because of crucial testimony concerning a revolver which had been taken from him when he was arrested for violating a vagrancy statute. On appeal, the State courts rejected *Powell's* claim that the vagrancy statute was unconstitutional and, therefore, the resulting search was invalid. The Federal court of appeals, however, concluded that the statute was unconstitutional and the search unlawful. The Supreme Court reversed, holding that when the State has provided an opportunity for full and fair litigation of a fourth amendment claim, a State prisoner may not be granted habeas corpus relief on the ground that evidence obtained through an unconstitutional search and seizure was introduced at trial. In reaching the decision, the Court distinguished away *Kaufman v. United States* 397 U.S. 217 (1969), which held squarely that a Federal prisoner could raise search and seizure claims in a motion to vacate sentence based on 28 U.S.C. section 2255.

The Court's majority reached its result by arguing first, that the exclusionary rule, made applicable to the states in *Mapp v. Ohio*, 376 U.S. 643 (1960) was not constitutionally required, but a "judicially created remedy designed to safeguard fourth amendment rights generally through its deterrent effect * * *". The Court went on to note that the exclusionary rule did not establish an absolute bar against the use of illegally seized evidence; such evidence can be used in a grand jury proceeding, *United States v. Calandra*, 414 U.S. 338 (1974), or in a trial court to impeach a defendant, *Walder v. United States* 347 U.S. 62 (1954). Since the purpose of the rule is deterrence and the extension of the rule to habeas corpus would not greatly add to its deterrent effect below,

the Court chose not to extend it to habeas corpus. The Court buttressed its holding by distinguishing the exclusionary rule which "deflects the truth-finding process and often frees the guilty" from others constitutional rights, such as the fifth amendment right to be free from self-incrimination, the violation of which could distort the search for guilt or innocence, *Stone v. Powell*, 96 S. Ct. at 3050.

The dissent's scorn for this reasoning was stated plainly. Mapp was obviously constitutionally based "or there would be no basis for applying the exclusionary rule in State criminal proceedings." Cases like *Walder* and *Calandra* cut back on the substance of the exclusionary rule, but they were constitutional decisions, rather than judicial interpretations of the habeas statute to foreclose the prisoner from seeking habeas. Most important, 28 U.S.C. section 2254 provides that habeas corpus will be granted if a prisoner "is in custody in violation of the Constitution." There is nothing in the statute or its legislative history leading to the conclusion that some constitutional rights are subordinate to others.

The effect of these decisions is a severe curtailment of the right of habeas corpus. Moreover, in Justice Brennan's words, the premises underlying the decisions, particularly *Stone*, mark the cases "as a harbinger of future eviscerations of the habeas statutes * * *". *Stone*, 96 S. Ct. at 3062. For a major premise in the court's decision is reflected in the observation that—

Resort to habeas corpus, especially for purposes other than to assure that no innocent person suffers an unconstitutional loss of liberty, results in serious intrusions on values important to our system of government. They include (i) the most effective utilization of limited judicial resources, (ii) the necessity of finality in criminal trials, (iii) the minimization of friction between our federal and state systems of justice and (iv) the maintenance of the constitutional balance upon which the doctrine of federalism is founded. *Stone*, 96 S. Ct. at 3050 n. 31.

These considerations will be no less important in future habeas cases. They will inevitably be balanced against the right to habeas, to which the court majority does not accord the exalted position that history does. In the eyes of the court, habeas has been reduced to the level of just another appeal. As Justice Rehnquist, writing for the court in *Davis*, noted—

We find it difficult to conceptualize the application of one waiver rule for purposes of Federal appeal and another for purposes of Federal habeas corpus. 411 U.S. 213, 233.

Yet this reasoning disregards two centuries of history concerning the Great Writ. The Court was more accurate in *Townsend v. Sain*, 372 U.S. 293, 311-12 (1963) writing:

The whole history of the writ—its unique developments—refutes a construction of the federal courts' habeas corpus powers that would assimilate their tasks to that of courts of appellate review. The function on habeas is different. It's to test by way of an original civil proceeding, independent of the normal channels of review of criminal judgments, the very gravest allegations.

iii

The analysis so far explains why I believe the Francis and Stone decisions to be unjustified departures from precedent and serious denigrations of the habeas writ. But these feelings alone would not prompt me to offer this legislation. I have never accepted the view of our esteemed former colleague, Sam Ervin, that the Constitution had a meaning apart from the Supreme Court decisions expounding it. In my view, what the Supreme Court says interpreting the Constitution is the law, no matter how adamantly I might disagree with a decision. Decisions representing constitutional interpretations cannot be overruled legislatively.

However, not all Supreme Court decisions are equally sacrosanct. When the Court interprets a Federal statute, and Congress disagrees with its interpretation, Congress can work its will through additional legislation. Moreover, under article III of the Constitution, Congress which had the power to create the lower Federal courts, also defines the jurisdiction of those courts. When decisions by the Court affect these issues, Congress can and should consider whether the decisions are desirable or wise and accurately reflect congressional intent.

History makes it obvious that the operation of the habeas corpus statutes is a proper concern of Congress. In the Judiciary Act of 1789, Congress granted the Federal courts authority to issue the writs in cases of prisoners in custody of the United States. In 1867, Congress expanded the writ to State prisoners, giving relief in "all cases where any person may be restrained of his or her liberty in violation of the Constitution or any treaty or law of the United States." Act of February 5, 1867, c. 28 s. 1, Stat. 385. In that act:

Congress was enlarging the habeas remedy . . . not only in extending its coverage to state prisoners, but also in making its procedures more efficient.

The Supreme Court, shortly after the passage of the act, described it in equally broad terms:

This legislation is of the most comprehensive character. It brings within the habeas corpus jurisdiction of every writ and of every judge every possible case of privation of liberty contrary to the National Constitution, treaties or laws. It is impossible to widen this jurisdiction. *Ex Parte McCordie*, 6 Wall. 318, 325-26 (1868); *Fay v. Noia*, 372 U.S. at 415-17.

In *Johnson v. Zerbst*, 304 U.S. 458, 465 (1938), the Court noted:

The scope of inquiry in habeas corpus proceedings has been broadened—not narrowed—since the adoption of the Sixth Amendment . . . Congress has expanded the rights of a petitioner for habeas corpus . . . There [is] no doubt of the authority of the Congress to thus liberalize the common law procedure on habeas corpus. . . . *Walter v. Johnston*, 312 U.S. 275, 285 (1941)

Evaluating the relationship between Congress and the Supreme Court on habeas corpus, Justice Frankfurter wrote: Congress could have left the enforcement of federal constitutional rights governing the administration of criminal justice in the

States exclusively to the State courts. These tribunals are under the same duty as the federal courts to respect rights under the United States Constitution. . . . It is not for us to determine whether this power should have been vested in the federal courts. . . . [T]he wisdom of such a modification in the law is for Congress to consider, particularly in view of the effect of the expanding concept of due process upon enforcement by the State of their criminal laws. It is for this Court to give fair effect to the habeas corpus jurisdiction as enacted by Congress. By giving the federal courts that jurisdiction, Congress imbedded into federal legislation the historic function of habeas corpus adapted to reaching an enlarged area of claims. *Brown v. Allen*, 344 U.S. 443, 499-500 (1953) (emphasis added)

The division of responsibility is relatively straightforward: It is the responsibility of the court to define the substantive scope of constitutional rights but "it is for Congress to decide what the most efficacious method is for enforcing Federal constitutional rights and asserting the primacy of Federal law." *Stone v. Powell* 96 S. Ct. at 30360, (dissenting opinion of Brennan).

Once the congressional interest is clear, the need for corrective legislation becomes obvious. Section 2254 provides that—

A state prisoner can seek a writ of habeas corpus . . . on the ground that he is in custody in violation of the Constitution. . . .

Since the fourth amendment is violated by the use of evidence illegally seized against a petitioner, it is clear that in those circumstances, petitioner would have the right to petition the district court of a writ of habeas corpus. To my knowledge, there is not a shred of legislative history to suggest that Congress somehow intended to exclude fourth amendment rights from the plain language of the habeas status, and the majority in *Stone* does not produce any. As Justice Brennan pointed out:

There remains, as noted before, no basis whatsoever in the language or legislative history of the habeas statutes for establishing such a hierarchy of federal rights, certainly there is no constitutional warrant in this Court to override a Congressional determination respecting federal court review of decisions of state judges determining constitutional claims of state prisoners. *Stone* 96 S. Ct. at 30368

Francis is an equally disturbing derogative of congressional intent. Federal habeas for State prisoners has been a controversial subject for years, and Congress has not been oblivious to the furor. The tension created in relations between State and Federal courts prompted congressional enactment of 2254 (b) and (c), a codification of the case law rule requiring that State prisoners exhaust State court remedies before applying for Federal habeas. But the consideration of comity embodied in the exhaustion requirement dictates only that Federal habeas can be delayed until after the State court determination, not foreclosed. In *Fay*, the court concluded that to rule otherwise would convert "a rule of timing . . . [into] a rule circumscribing the power of the Federal courts on habeas, in defiance of unmistakable, congressional intent." *Fay v. Noia*, 372 U.S. 391, 420 (1963); *Stone v. Powell*, 96 S. Ct. at 3060 n. 10 (Brennan dissenting).

The "unmistakable congressional intent" perceived by the Court in *Fay* has not changed in the last 13 years. "Indeed," as Justice Brennan points out, "subsequent congressional efforts to amend those jurisdictional statutes to effectuate the result that [the Court] accomplish[es] by judicial fiat have consistently proved unsuccessful." *Stone*, 96 S. Ct. at 3068. In 1968, for example, a provision in the Omnibus Crime Control and Safe Streets Act, as reported by the Senate Judiciary Committee, would have abolished Federal habeas for State court prisoners. Despite the passions of that particular year, that section was deleted from the bill by the Senate overwhelmingly. The Senate apparently agreed with the views expressed by the minority of the Judiciary Committee that—

A hundred years of experience under the federal habeas corpus provisions forcefully demonstrate that absolute reliance on state courts to protect federal rights does not adequately protect those rights. To abolish this jurisdiction would roll back a century of progress in American constitutional law and restore American criminal procedure to the dark ages of the early 1900's. S. Rep. 1097, 90th Cong. 2nd Sess., 159-160.

Because of this background Justice Brennan charged the majority with "nothing less than an attempt to provide a veneer of respectability for an obvious usurpation of Congress' article III, power to delineate the jurisdiction of the Federal courts." *Stone*, 96 S. Ct. at 3061. I believe this harsh judgment is unfortunately accurate, and I am introducing this legislation as a vehicle for the reassertion of congressional authority.

IV

There is a related, disturbing point. It is no secret that the Federal courts are seriously clogged. In fiscal year 1970, 127,280 cases were filed throughout the country in Federal court, an average of 317 per district court judge. Only 5 years later in fiscal year 1975, there were 160,603 cases filed, 402 per each judge. The appellate workload has increased even more dramatically, rising from 282 appeals per judge to 515 in the years from 1968 to 1975.

Congress has responded to the burden on the Federal courts slowly and incompletely. Four years after the Judicial Conference documented the pressing need for new judges, the Senate finally passed legislation creating an additional 45 district court judgeships. Legislation to split the fifth and ninth circuits to deal with the unique problems there has been reported by the Judiciary Committee. The creation of a national court of appeals to occupy an intermediate position between the existing circuits and the Supreme Court continues to be considered. Other significant steps—such as the elimination of diversity jurisdiction or raising the \$10,000 requirement for such claims—are frequently talked about, but as yet there has been no serious legislative movement on these issues.

It is troubling that the Federal courts are backlogged and that the Congress has responded insufficiently. But it is more disturbing that the recent series of cases cutting off access to the Federal courts conveys the impression of being

prompted at least as much by concern about the judicial caseload as by concern for the merits of the cases.

The effect of particular Supreme Court decisions on the judicial workload is never discussed at length in the majority opinions. It is confined to occasional references to "scarce judicial resources" and the "plethora of cases" in the Federal system. However, the issue has been addressed several times explicitly in the dissenting opinions, indicating the dissenters' belief that it is motivating the majority or that they are thinking about it themselves.

For example, in 1971, the Court held that a person whose fourth amendment rights were violated by a Federal agent had a cause of action for damages against that agent, grounded directly on the fourth amendment, even though there was no Federal statute creating such a cause of action. *Bivens v. Six Unknown Named Police Agents*, 403 U.S. 388 (1971). In dissent, Justice Black argued that the creation of a new cause of action was a legislative function. He then pointed out that even if the Court viewed it as a judicial function, there were "many reasons why we should decline to create a cause of action":

The courts of the United States as well as those of the States are choked with lawsuits. The number of cases on the docket of this Court have reached an unprecedented volume in recent years. A majority of these cases are brought by citizens with substantial complaints—persons who are physically or economically injured by torts or frauds or governmental infringement of their rights; persons who have been unjustly deprived of their liberty or their property; and persons who have not yet received the equal opportunity in education, employment, and pursuit of happiness that was the dream of our forefathers. Unfortunately, there have also been a growing number of frivolous lawsuits, particularly actions for damages against law enforcement officers whose conduct has been judicially sanctioned by state trial and appellate courts and in many instances even by this Court. My fellow Justices on this Court and our brethren throughout the federal judiciary know only too well the time-consuming task of conscientiously pouring over hundreds of thousands of pages of factual allegations of misconduct by police, judicial, and corrections officials. 403 U.S. at 428 (dissenting opinion of Black).

More recently, dissenting in *Warth*, Justice Douglas noted:

The mounting caseloads of the federal courts is well-known. But cases such as this one reflect festering sores in our society . . . I would lower the technical barriers and let the courts serve that ancient need. They can in time be curbed by legislative or constitutional restraints if an emergency arises. We are today far from facing an emergency. 422 U.S. at 519.

The judicial backlog problem is particularly sensitive where habeas corpus is involved. There is no doubt that prisoners' petitions comprise a substantial percentage of the Federal courts' docket, or that over 90 percent of these petitions lack merit. But this predicament is not new. In reporting the 1968 legislation, the Senate Judiciary Committee noted:

This title also adds a new section . . . designed to relieve our overburdened federal courts from the growing practice of convicted persons using the habeas corpus procedure as a substitute for direct appeal . . . The

extent to which this process has increased the business of the federal courts is appalling. . . . Applications by state prisoners for writs of habeas corpus in the federal courts grew from 127 in 1941 to 981 in 1961 and 4,664 in 1965. The proportion of increase was 675% from 1941 to 1961 and 3,750% from 1941 to 1965. S. Rep. 107, 90th Congress, 2nd Sess., at 64.

In 1959, Professor Hart of Harvard Law School wrote about a Supreme Court decision on habeas corpus:

The question is one of large import not only for the liberty of Americans under law but for the just and expeditious dispatch of federal judicial business. The federal courts are flooded with these petitions, and taken, together with cases involving cognate questions on direct review of judgments of conviction in state courts, they constitute one of the most important categories of business on the Supreme Court's own dockets. Hart, *Forward: The Time Chart for the Justices*, 73 *Harv. L. Rev.* 84, 102-103 (1959).

Ten years earlier, Chief Justice Vinson wrote that—

In each of the past three years, a little less than one-half of the matters received by the Court were applications from prisoners seeking post-conviction relief. Vinson, *Work of the Federal Courts*, 60 *S. Ct v. vii*, (1949).

Yet despite these statistics, the Federal courts have continued to function. Some evidence suggests that while the burden on the courts is plainly serious, it is less crushing than unvarnished statistics would suggest. In a comprehensive study of habeas corpus, the Harvard Law Review observed:

Yet it is all too easy to overstate the strain that an expanded habeas jurisdiction and expanded federal constitutional rights put on the judicial system. Most of the petitions were quickly dismissed: less than 500 reached the hearing state, and most of those hearings lasted less than one day. Nor was the burden on the states staggering: many petitions do not even require a response; less than ten percent of the state convictions attacked had to be defended in a hearing, and so few prisoners were released that the burden of retrial must be small. Developments in the Law: *Federal Habeas Corpus*, 83 *Harv. L. Rev.* 1038, 1041 (1970).

An empirical study of the handling and effect of habeas petitions in the Federal district court in Massachusetts points to the same conclusion. That study termed the effect of *Fay* against *Noia* "slight," and concluded that more than 50 percent of all habeas petitions were disposed of within 50 days after they had been filed. Shapiro, *Federal Habeas Corpus: A Study in Massachusetts*, 87 *Harv. L. Rev.* 321, 333, 346-49 (1973).

Moreover, Congress has helped ease the burden by passage of the Federal Magistrates Act, 28 U.S.C. section 636, in 1968. Section 636(b) provides that magistrates may conduct "preliminary review of applications for posttrial relief made by individuals convicted of criminal offenses, and submission of a report and recommendations to facilitate the decision of the district judge . . ." The performance of this function was explicitly intended "to afford some degree of relief to district judges and their law clerks, who are presently burdened with burgeoning numbers of habeas corpus petitions and applications under 28

U.S.C. section 2255. S. Rept. 371, 90th Cong., 1st Sess., 26 (1967).

It is not my intention to minimize the burden placed on the Federal courts by habeas applications or to imply that Congress has taken all necessary steps to respond to the rising caseload. But the problem is not new, it has been recognized and Congress has chosen not to ease the judicial caseload by making radical changes in the habeas corpus statute. What is different now from the past is that the Supreme Court has apparently taken matters into its own hands, alleviating the judicial backlog by striking sharply at the premises underlying habeas jurisdiction. The strong sense which emerges from the majority opinions in *Davis*, *Francis*, and *Stone* is that habeas corpus is not particularly important.

There is a great advantage to approaching the problems of Federal court jurisdiction comprehensively. We need to create additional judgeships; pay Federal judges salaries needed to attract and keep our finest lawyers on the bench; reduce or eliminate diversity of citizenship as a basis for Federal jurisdiction; and generally focus more attention on the impact that our legislation will have on the operation of the courts—perhaps by incorporating a sort of "court impact statement" in committee reports dealing with relevant legislation. If the caseload crisis can be defused, public support for legislation facilitating access to the Federal courts will be enhanced.

But if comprehensive reform cannot be accomplished, decisions like *Stone* and *Francis* should still be overruled swiftly and unequivocally. The assertion of constitutional rights—and the existence of a Federal forum to review those claims—is vitally important for the society, as well as for the petitioner. Our willingness to use scarce judicial resources in this way reflects again the high priority this society places on constitutional liberties and individual freedom.

We must not be blinded by caseload statistics. When the Supreme Court restricts access to the lower courts, the impact falls disproportionately on the poor, minorities, and those seeking to challenge the political, economic, and social status quo. Most often, those who find the courthouse door closed are precisely those individuals and groups most in need of "heightened judicial solicitude," in the words of Justice *Stone's* famous footnote in *Carolene Products*.

Moreover, in a society committed to peaceful change through the rule of law full and direct access to the courts is a necessity. ACLU Director Arveh Neier has expressed the importance of the Federal courts in the 1950's and 1960's in this way:

It was a turbulent period in American history; there were wide-ranging pressures for social change; many groups of people previously disenfranchised by reasons of race, sex, status, dependency or youth sought the full protections of citizenship. The federal courts were a forum open to them to accommodate those pressures. While the federal courts did not always side with the people who were seeking changes, the very openness

of the federal courts and their willingness to hear the claims for full citizenship, had a profound impact. This produced very substantial and very beneficial social changes. The courts channeled the activities of people seeking redress of their grievances into orderly and lawful paths in which claims for benefits became claims for rights. Grievances were adjudicated in the context of the U.S. Constitution.

These principles may seem farfetched when juxtaposed with some frivolous habeas corpus petition by a convicted felon. But these are constitutional rights that we deal with. We balance them away—by whatever rationalizations—at our peril. As Justice, *Frankfurter* wrote in the landmark habeas corpus case, *Brown against Allen*:

The meritorious claims are few, but our procedures must ensure that those few claims are not stifled by discriminating generalities. . . . For surely it is an abuse to deal too casually and too lightly with rights guaranteed by the Federal Constitution, even though they invoke limitations upon state power and may be invoked by those morally unworthy.

Too often in the past, politicians have conveyed the message that full respect for the constitutional rights of those who commit crimes frustrates effective law enforcement. The inference is that we could somehow reduce the constitutional rights of "bad" people, while leaving intact the rights of law abiding Americans. Surely this is a dangerous delusion. When constitutional rights are short-changed in the name of the law and order or judicial efficiency, the rights of the innocent will be lost as surely as the rights of the guilty. We maintain a constitutional system only by protesting infringements on constitutional rights—whatever the source, and whoever the target.

We can have a judicial system that accords full respect to constitutional rights and operates efficiently. But to the extent we must choose, I would not dilute the "great writ" of habeas corpus, or other individual rights guaranteed by the Constitution. As the Supreme Court wrote in a 1971 decision:

This basic law and the values that it represents may appear unrealistic or extravagant to some. But the values were those of the authors of our fundamental constitutional concepts. If times have changed, reducing every man's scope to do as he pleases in an urban and industrial world, the changes have made the values served by (the Constitution) more, not less, important.

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

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

S. 1314

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2254 of title 28, United States Code, is amended—

(1) by redesignating subsections (b), (c), (d), (e), and (f) as subsections (c), (d), (e), (f), and (g), respectively;

(2) by adding immediately after subsection (a) the following new subsection:

"(b) No application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall

be denied on the ground that such State afforded the applicant a full and fair opportunity to raise and have decided his claim that his rights, privileges, or immunities under the Constitution or laws or treaties of the United States were violated by officers of such State, or any agency or political subdivision thereof, in connection with the investigation, apprehension, processing, or conviction of such person or any appeal relating to the judgment of such State court.”;

(3) by inserting “(1)” immediately before “An” in subsection (d), as redesignated by paragraph (1) of this section; and

(4) by adding at the end of subsection (d), as redesignated in paragraph (1) of this section, the following:

“(2) No application for a writ of habeas corpus shall be denied under this section on the ground that the applicant did not raise the claim at trial or in any pretrial proceeding unless after a hearing the court finds that such applicant, after consultation with competent counsel or after a knowing and understanding waiver of the right to counsel, understandingly and knowingly forwent the privilege of seeking to vindicate his claim in the State courts.”

Sec. 2. Section 2255 of title 28, United States Code, is amended—

(1) by adding immediately after the second paragraph the following:

“No motion for such relief shall be denied on the ground that such prisoner was afforded a full and fair opportunity to raise and have decided his claim that his rights, privileges, or immunities under the Constitution or laws or treaties of the United States were violated by officers of the Federal Government or any agency or political subdivision thereof, in connection with the investigation, apprehension, processing, or conviction of such prisoner or any appeal relating to the sentence of such court.”; and

(2) by adding after the fifth paragraph of such section, taking into account the new paragraph added by paragraph (1) of this section, the following:

“No such motion shall be denied on the ground that the prisoner did not raise the claim at trial or in any pretrial proceeding unless after a hearing the court finds that such applicant, after consultation with competent counsel or after a knowing and understanding waiver of the right to counsel, understandingly and knowingly forwent the privilege of seeking to vindicate his claim in such trial court or in such pretrial proceedings.”

Mr. NELSON. Mr. President, I ask unanimous consent that a statement by Senator MATHIAS, together with other material, be printed in the RECORD.

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

STATEMENT BY SENATOR MATHIAS

I join my distinguished colleague from Wisconsin (Mr. NELSON), in offering this bill to amend the Federal habeas corpus statute. Specifically, this bill would provide that:

Federal habeas relief shall not be denied to State or Federal prisoners on the ground that the applicant was afforded the opportunity for a full and fair hearing on his claim at the State or Federal trial, and

A defendant, who had not raised a Federal constitutional or statutory claim at his State or Federal trial, shall not be precluded from raising it on Federal habeas unless he had deliberately bypassed his State or Federal remedies.

The purpose of this bill is to insure the continued vitality of the writ of habeas corpus—the great writ—which has long been a cornerstone of both English and American jurisprudence. Regrettably, in a series of recent decisions the United States

Supreme Court has significantly curtailed the availability of the great writ.

The legislation which we now offer would reverse this disturbing trend by offsetting two of these recent decisions, *Stone v. Powell*, 96 S. Ct. 1037 (1976) and *Francis v. Henderson*, 425 U.S. 536 (1976).

In *Stone*, the court, disregarding years of precedent and practice and without even advertent to the text of the habeas statute to support its conclusions, held that Federal habeas relief is not available to State prisoners to challenge the admissibility of evidence that was alleged to have been seized in violation of the Constitution, if the State had afforded the defendant an opportunity for a full and fair litigation of the claim.

In *Francis*, the court ruled that State prisoners, who did not raise their Federal claims at the State trials, may not subsequently assert them in Federal habeas petitions, unless they show good cause for their failure and actual prejudice resulting from the claimed violation. In so ruling, the court brushed aside its earlier holding in *Fay v. Noia*, 372 U.S. 391 (1963), a decision which had been substantially codified by Congress in statute. *Noia* held that a defendant, who had not raised a constitutional issue at his State trial, was precluded from raising it on Federal Habeas only if the court determined that he had deliberately bypassed his State remedy.

In both *Stone* and *Francis* the Court took it upon itself to rewrite significant portions of the Habeas statute. In doing so, it clearly usurped the authority of Congress under article III of the Constitution to delineate the jurisdiction of the inferior Federal courts. The late Justice Frankfurter, in his cogent opinion in *Brown v. Allen*, 344 U.S. 443 (1953), set forth the constitutional principle that supports Congress' authority to review Habeas Corpus claims. He wrote:

“Congress could have left the Enforcement of Federal Constitutional Rights governing the Administration of Criminal Justice in the States exclusively to the State courts. These tribunals are under the same duty as the Federal courts to respect rights under the United States Constitution . . . Is it not for us to determine whether this power should have been vested in the Federal courts . . . (T)he wisdom of such a modification in the law is for Congress to consider, particularly in view of the effect of the expanding concept of due process upon enforcement by the States of their Criminal laws. It is for this court to give fair effect to the Habeas Corpus jurisdiction as enacted by Congress . . . by giving the Federal courts that jurisdiction, Congress has imbedded into Federal legislation the historic function of Habeas Corpus adapted to reaching an enlarged area of claims . . . The prior State determination of a claim under the United States Constitution cannot foreclose consideration of such a claim, else the State court would have the final say which the Congress, by the Act of 1867, provided it should not have . . . Congress has the power to distribute among the courts of the States and of the United States jurisdiction to determine Federal claims. It has seen fit to give this court power to review errors of Federal law in State determinations, and in addition to give to the lower Federal courts power to inquire into Federal claims, by way of Habeas Corpus . . . but it would be in disregard of what Congress has expressly required to deny State prisoners access to the Federal courts.”

Furthermore, the court in both *Stone* and *Francis* ignored the fact that in the past Congress had considered and consistently rejected legislative efforts which would have watered down the scope of the “great writ.” Most recently, in the 93rd Congress, both the House and Senate refused to pass bills which

would have limited the availability of the writ of Habeas Corpus by limiting the constitutional claims that could be raised on collateral attack in Federal court by State prisoners.

Equally disturbing is the Court's overruling the longstanding principle that all Constitutional claims are cognizable on Federal Habeas Corpus and that there are no second class Constitutional Rights for purposes of Federal Habeas Corpus. As Justice Brennan aptly noted in his dissent in *Stone*:

“(T)here is no foundation in the language or the history of the Habeas statute for discriminating between types of Constitutional transgressions, and efforts to relegate certain categories of claims to the status of “second class rights” by excluding them from that jurisdiction have been repulsed. Today's opinion, however, marks the triumph of those who have sought to establish a hierarchy of Constitutional Rights, and to deny for all practical purposes a Federal forum for review of those rights that this Court deems less worthy or important.”

As an attorney and as a member of a co-equal branch of Government, I am naturally reluctant to support legislation which overrules certain decisions of the Supreme Court. Such action must be taken only after the most deliberate and careful consideration, and only in the most compelling cases. I am convinced, however, that the importance of insuring the vitality of the Habeas Corpus statute is such a case.

The Congress should move promptly to enact the legislation which we now offer and to reassert the strong Federal interest in broad Federal Habeas Corpus review of State court convictions. For, unless the Congress takes such action, the Court's majority may well defeat “the manifest Federal policy that Federal Constitutional Rights of personal liberty shall not be denied without the fullest opportunity for plenary Federal review.” (Justice Brennan dissenting in *Stone*)

Regrettably, the Court's recent decisions limiting the availability of the writ of Habeas Corpus, appear to be part of an effort by the Court's majority to severely limit access to the Federal Courts for both civil and criminal litigants. Earlier this year, I introduced S. 35, “The Civil Rights Improvements Act of 1977,” which is primarily aimed at offsetting several recent court decisions which have substantially narrowed the scope of “The Civil Rights Act of 1871” (42 U.S.C. 1983)—our most important civil rights statute. I urge my colleagues to support both the bill we now offer and S. 35.

I submit for the RECORD a short section-by-section analysis of this bill, together with a memorandum prepared by the American Law Division of the Congressional Research Service, entitled “Possible Legislative Revision of *Stone v. Powell*,” and a recent article on *Stone v. Powell* from the Harvard Journal on legislation.

SECTION BY SECTION ANALYSIS WITH SUPPORTING COMMENTS OF PROPOSED BILL TO AMEND HABEAS CORPUS STATUTES

The first section would amend 28 U.S.C. § 2254 and restore the law governing federal habeas corpus rights of state prisoners to what it was prior to *Stone v. Powell*, 96 Sup. Ct. 3037 (1976). In that case, the Court held that persons convicted of offenses in state courts who were allegedly subjected to illegal and unconstitutional searches and seizures in the obtaining of evidence leading to their convictions could not present their search and seizure claims in federal courts upon petitions for habeas, if the state court has provided them with a full and fair opportunity to litigate the claims in the state trials. The rationale of the Court is not logically limitable to search and seizure cases but it must extend as well to all cases where-

in the federal constitutional claim does not go a violation of rights which relates directly to the possibility of an innocent person being convicted, as in the case of a denial of the right to counsel with the defendant thus being compelled to stand trial unsupported by legal assistance. Thus, confessions and out-of-court identifications are prime candidates for similar exclusions from habeas litigation as are allegations of race and sex discrimination in the selection of grand and petit juries.

This section simply reiterates what the law has always been until it was judicially amended in *Powell* and it spells out that habeas relief shall not be denied on the ground that the applicant was afforded the opportunity for a full and fair hearing on his claim at the state trial.

The section does not, of course, provide any substantive rights; it does not spell out what is an unconstitutional search and seizure. Substantive rights are to be determined in line with judicial interpretations of the Constitution and with other congressional enactments of a substantive nature.

The second section would amend 28 U.S.C. § 2254 to restore the law of habeas as explicated in *Fay v. Noia* 372 U.S. 391 (1963), and accepted by Congress in subsequent amendments. *Noia* held that a defendant who had not raised a federal constitutional issue at his state trial was to be precluded from raising it on federal habeas only if the court determined that he had deliberately bypassed his state remedies; that is, if he had, after consultation with competent counsel, or otherwise, understandingly and knowingly forewent the privilege of seeking to vindicate his federal claims in the state courts, perhaps for strategic, tactical, or other reasons, that could be described as a deliberate by-pass, the federal habeas court could refuse to hear his federal claims.

In effect this provision would reverse recent cases in which the Court has held that state prisoners who did not raise their federal claims at the state trials may not subsequently assert them in federal habeas petitions unless they show good cause for their failure and actual prejudice resulting from the claimed violation. *Francis v. Henderson* 425 U.S. 536 (1976) and *Estelle v. Williams* 425 U.S. 501 (1976).

The final section of the bill amends the statute relating to habeas for federal prisoners (28 U.S.C. § 2255), the substitute motion to vacate a sentence, to make clear that *Stone v. Powell* does not apply in such actions, that *Kaufman v. United States* 394 U.S. 217 (1969) remains good law, and to preserve the deliberate by-pass standards as well. The process of cutting back was begun in *Davis v. United States*, 411 U.S. 233 (1973).

CONGRESSIONAL RESEARCH SERVICE,
July 13, 1976.

To: Hon. Charles Mathias.
From: American Law Division.
Subject: Possible legislative revision of *Stone v. Powell*.

This is in response to your request for an analysis of *Stone v. Powell*, No. 74-1055 (July 6, 1976), in which the Supreme Court held that the lower federal courts were no longer to hear on habeas corpus petitions the contentions of convicted state prisoners that evidence obtained by unconstitutional searches and seizures had been introduced at their trials where the state courts afford the defendants the opportunity for a full and adequate hearing on the Fourth Amendment claim. You were particularly interested in the question whether Congress could alter the decision legislatively and the manner in which this might be accomplished.

The analysis included herein will be directed to the specific question of congressional revision. For additional background,

we would refer you to The Constitution of the United States of America—Analysis and Interpretation (Constitution Annotated), S. Doc. 92-82 (1972), 1074-1086 (exclusionary rule), and 334-365, 615-623, 778-780 (habeas corpus). Habeas is treated extensively in P. Bator et al., Hart and Wechsler's The Federal Courts and the Federal System (2d ed. 1973), 1424-1538; in addition, there is a substantial body of law review material, some of which will be referred to herein.

I. THE HISTORICAL DEVELOPMENT

The writ of habeas corpus that we know is considerably changed from the common law writ known to the framers and protected from all but a limited class of suspension by Article I, § 9, cl. 2. That writ was the "Great Writ", the habeas corpus ad subjiciendum, by which a court would inquire into the lawfulness of a detention of a petitioner. The Court early adopted the common law understanding that the writ was unavailable to one convicted of crime by a court of competent jurisdiction. Ex parte Watkins, 3 Pet (28 U.S.) 193, 209 (1830). The only exceptions to the strict jurisdictional standard were claims grounded on illegality in sentencing, Ex parte Lange, 18 Wall. (85 U.S.) 163 (1873), and on conviction under an unconstitutional statute. Ex parte Siebold, 100 U.S. 371, 376 (1879). See *McNally v. Hill*, 293 U.S. 131, 136-137 (1934).¹

Watkins and the cases following upon it interpreted the unilluminating grant of power in the Judiciary Act of 1789, § 14, 1 Stat. 81, to courts of the United States to issue writs of habeas corpus for prisoners in jail under or by color of authority of the United States. Thus, federal habeas jurisdiction over state prisoners did not exist except to summon them as witnesses. Ex parte Dorr, 3 How. (44 U.S.) 103, 105 (1845).² But by the Habeas Corpus Act of 1867, § 1, 14 Stat. 385, Congress empowered the "courts of the United States . . . to grant writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States . . ." Justice Brennan, in *Fay v. Noia*, *supra*, 415-417, read this broad language as evincing a congressional intent to enlarge the habeas remedy to provide a collateral method additional to and independent of direct Supreme Court review of state court decisions for the vindication of the new constitutional guarantees incorporated in the 13th and 14th Amendments. Accord: *Brown v. Allen*, *supra*, 488 (Justice Frankfurter concurring).³ Whatever the Act was intended to mean by Congress, the courts did not immediately begin to expand the scope of the writ, according it pretty much the scope and meaning previously given it when the 1789 Act was being construed. In re Wood, 140 U.S. 278 (1891); In re Jugro, 140 U.S. 291 (1891); *Andrews v. Swartz*, 156 U.S. 272 (1895); *Bergemann v. Backer*, 157 U.S. 655 (1895).

The modern expansion of the writ may be said to have started with *Frank v. Mangum*, 237 U.S. 309 (1915), although as viewed from today's perspective the judgment in *Frank* may seem restrictive. But the law of habeas prior to *Frank* was, as we stated above, that "if a court of competent jurisdiction adjudicated a federal question in a criminal case, its decision of that question was final, subject only to appeal, and not subject to redetermination on habeas corpus." Bator, *op. cit.*, 483. The expansion that had occurred previously had consisted of enlargements of the concept of jurisdiction. The *Frank* case work a different expansion.

Frank contended that his conviction had been obtained through mob intimidation of the trial. The state appellate court had made an independent inquiry into the issue and

concluded that the evidence did not support the claim. The Supreme Court affirmed a federal district court's refusal to issue a habeas writ, laying down as law this proposition: if it is found that the state tribunals have failed to provide corrective process (in the sense of giving a petitioner a fair opportunity to raise and litigate his constitutional claim) in the state courts, then the federal habeas corpus court may proceed to adjudicate the merits of that claim, but if it is found that a state court of competent jurisdiction has fully and fairly adjudicated the merits of the federal question should be claim, then that decision is immune from collateral attack and alleged error on the merits of the federal question should be reviewed by the Supreme Court on direct review. The lawfulness of the detention to be inquired into by the habeas court is to be determined not by whether, as in *Frank*, the conviction was procured by mob domination but whether the State's process afforded the defendant adequate opportunity to raise and have passed upon adequately the question of mob domination; mob domination was not the issue on collateral review but the fairness of the corrective process.⁴

It is possible that in the case of *Moore v. Dempsey*, 261 U.S. 86 (1923), the Court "discredited" or "repudiated" *Frank's* limitation on the habeas power of the federal courts and settled the power of those courts to determine a convicted defendant's constitutional claims on the merits, giving to state court judgments weight but not conclusive weight.⁵ In any event, *Moore* arose as did *Frank* in a situation in which it was alleged that mob domination of a trial had procured the conviction unfairly; the appellate court in *Moore*, unlike the *Frank* court, conducted no independent inquiry of its own but perfunctorily rejected the claim of mob domination. In an opinion by Justice Holmes, who had dissented from the denial of habeas in *Frank*, the Court reversed and held that the federal district court was under a "duty" to examine the facts for itself and determine if the allegations of mob domination were true. The brief, ambiguous Holmes opinion will admit of either the interpretation that all federal constitutional claims are cognizable on habeas, regardless of the State's previous consideration of the issues or the interpretation that, consistent with *Frank*, the consideration by the state courts of the federal constitutional claims was so inadequate that federal court collateral review was appropriate.⁶ When read in the context of Holmes' *Frank* dissent, however, the *Moore* opinion does seem, at the least, to be saying that, regardless of state corrective process, some federal constitutional claims are so fundamental that they are collaterally reviewable on habeas. See Hart & Wechsler, *op. cit.*, 1469. That the opinion did not go as far as *Brown v. Allen*, *supra*, did is true, but that it went further than *Frank* appears also to be reasonably clear.

No clear rule of law emerged from the cases between *Moore* and *Brown v. Allen* in 1953. On the one hand, the Court expanded the "lack of jurisdiction" basis of habeas in several cases, *Mooney v. Holohan*, 294 U.S. 103 (1935) (use of perjured testimony to procure conviction would deny due process and oust trial court of jurisdiction and is cognizable on habeas); *Johnson v. Zerbst*, 304 U.S. 458 (1938) (denial of effective assistance of counsel in federal court ousts jurisdiction and is cognizable on habeas), before holding in *Waley v. Johnston*, 316 U.S. 101 (1942), that the use of the writ was not restricted to those cases where the judgment of conviction is void for jurisdiction of the trial court to render it but extends also to those exceptional cases where the conviction has been in disregard of the constitutional rights of the accused and

Footnotes at end of article.

where the writ is the only effective means of preserving the defendant's rights. Other cases during the period contain expressions broadening and narrowing the interpretations of Frank and Moore and the scholarly commentary is divided.⁷

In any event, in *Brown v. Allen*, supra, eight of the nine Justices either held or assumed that on habeas corpus federal district courts must provide review of the merits of constitutional claims fully litigated in the state court system.⁸ Basis of the decision, in Professor Hart's words, op. cit., 106, is "that due process of law in the case of state prisoners is not primarily concerned with the adequacy of the state's corrective process or of the prisoner's personal opportunity to avail himself of this process . . . but relates essentially to the avoidance in the end of any underlying constitutional error. . . ." In Justice Frankfurter's view, the result in *Brown* was required by the congressional enactment of the Habeas Corpus Act of 1867 by which Congress had determined not to leave the enforcement of federal constitutional rights governing the administration of criminal justice in the States exclusively to the state courts. While state courts are under the same obligation as federal courts to respect federal constitutional rights, Congress may well have considered, and continued to consider, that the enlargement of federal constitutional rights in the imposition of an expanding due process clause upon the States called for access to the federal courts as another assurance of those guarantees. *Brown v. Allen*, supra, 499-500, 507-508.⁹

Ten years after *Brown v. Allen*, the Court in its famous trilogy, *Fay v. Noia*, supra, *Townsend v. Sain*, 372 U.S. 293 (1963), and *Sanders v. United States*, 373 U.S. 1 (1963), again considerably expanded the availability of the writ. *Noia* was the principal case, construing the "exhaustion" requirement in habeas and developing standards for determining when a prisoner could be said to have forfeited his right to seek the writ by failing to present his constitutional challenge to state consideration. The point of the "exhaustion" doctrine is to avoid the disruption of federal-state comity that would inhere in upsetting state court convictions without first allowing the States an opportunity to correct constitutional defects. *Darr v. Buford*, 339 U.S. 200 (1950).¹⁰

And it is not good enough that a petitioner has been to the state courts; he must have there presented the same claim he seeks to advance in his federal habeas petition. Id., 203. But once having presented the claims to a state court, as on appeal, he is not required to seek state collateral relief. *Brown v. Allen*, supra, 447.

Fay v. Noia dealt with the conceptually different but related concept of state procedural default by a prisoner; that is, whether a federal collateral attack can be made on a detention based on a state court judgment resting on an "independent and adequate state ground", i.e., on a ruling that, because of noncompliance with a fair and reasonable state procedural rule, the defendant has forfeited his right to a decision on the merits of a federal constitutional claim. *Noia* resolved the issues by holding that the requirement of "exhaustion" refers only to remedies still available when habeas is sought and has nothing to do with the effect of a past procedural default in the state courts. Only if it is found that a defendant deliberately by-passed state procedures in the federal courts to hold him to his choice and deny him habeas relief.¹¹

Townsend v. Sain, supra, dealt with the issue of holding evidentiary hearings by habeas courts and propounded the rule that where the facts are in dispute, the habeas court must hold an evidentiary hearing if the ha-

beas applicant did not receive a full and fair evidentiary hearing in a state court, either at the time of the trial or in a collateral proceeding. *Sanders* dealt with the question of the deference owed to a previous federal habeas proceeding and broadened the possibility of the prisoner obtaining a new hearing.

Basically, then, from this review, we can observe that the rule of the Court limited in *Stone v. Powell* was not a recent innovation but rather traces in full flower back to *Brown v. Allen* in 1953 and in substantial part back through consistent broadening of the scope of the writ in the 1930's and 1940's to the Moore decision in 1923. The history of the doctrine thus limited may therefore be quite relevant in any congressional determination to legislate with respect to Powell.

II. CONGRESSIONAL ACTIONS

The Court's decision in *Stone v. Powell* must also be evaluated in the context of congressional responses to the judicial interpretations of the scope of the writ of habeas corpus over the years. It is important to note that the scope of the writ, insofar as the statutory language is concerned, has not been altered since 1867.¹²

In 1948, title 23 of the U.S. Code was revised and codified. Judge John J. Parker of the Fourth Circuit was Chairman of the Judicial Conference Committee that drafted the revisions of the Habeas Corpus Act. According to Judge Parker, the object of the revisions was to "put an end to the abuse that has arisen because, under recent decisions of the Supreme Court, it has been possible for prisoners to use the writ to attack the procedure of the courts under whose judgments they are imprisoned. . . . [The decisions] opened wide the door to review by way of federal habeas corpus of every criminal proceeding, state or federal, in which a person convicted of crime was willing to make oath that he had been denied a fair trial." Parker, "Limiting the Abuse of Habeas Corpus," 8 F.R.D. 171 (1948).¹³

The changes were, however, modest. A new proceeding was instituted for persons convicted in federal courts, 28 U.S.C. § 2255, requiring such persons to move to vacate their sentences. See *United States v. Hayman*, 342 U.S. 205 (1952). So far as state prisoners were concerned, the revision codified the court holdings requiring exhaustion of state remedies and the absence of an adequate remedy available in the state courts. *Brown v. Allen*, supra 447-450.¹⁴

Following *Brown v. Allen*, the Judicial Conference of the United States, again under the leadership of Judge Parker, sought to restrict the scope of the writ. Reporting that the expansion of habeas jurisdiction had "greatly interfered with the procedure of the State courts," the Conference recommended that "[w]here adequate procedure is provided by State law for the handling of such matters, it is clear that the remedy should be sought in the State courts with any review . . . only by the Supreme Court. . . ." The recommended bill received the support of the Conference of State Chief Justices, the Association of Attorneys General, the American Bar Association, and the Department of Justice. Twice it passed the House of Representatives (in 1956 and 1958), but the Senate never approved it.¹⁵

Finally, in 1966, Congress did amend the Habeas Corpus Act, largely to incorporate therein the standards established by the Court in its *Noia*-*Townsend*-*Sanders* trilogy, 80 Stat. 1104. See S. Rept. No. 1797 and H. Rept. No. 1892, 89th Cong., 2d sess. (1966). The amendments principally did three things. (1) They dealt with the problem of repetitious and meritless habeas petitions by prescribing, in line with *Sanders*, the circumstances under which district judges should exercise their discretion to decline to entertain such applications. (2) They provided that when a prisoner has had his case before the United States Supreme Court on

appeal or certiorari, the Court's disposition of the case is conclusive on all legal and factual issues actually adjudicated by the Court; only when a habeas court finds a new and controlling fact which could not have been placed in the record by the exercise of reasonable diligence is the rule of conclusiveness inapplicable. (3) They enumerated and restated the Court's Townsend principles to guide the federal courts in the exercise of their discretion in determining whether to hold an evidentiary hearing.

Again, in 1968, an effort was made to restrict the availability of habeas for state prisoners, as the Senate Judiciary Committee included § 702 in S. 917, 90th Cong., 2d sess., the Omnibus Crime Control and Safe Streets Act, giving to judgments of state courts in criminal cases conclusive effect with respect to all questions of law or fact which were determined or which could have been determined in the action leading to the judgment, except for direct appeals of those judgments. After a spirited floor debate, this section was struck from the bill by a vote of 54 to 27 114 Cong. Rec. 14183 (1968).

The most recent efforts to curb the use of the writ by state prisoners was initiated by then Assistant Attorney General Rehnquist in testimony on the proposed speedy trial bill.¹⁶ He proposed that habeas claims by state prisoners be restricted to claims involving the basic fairness of trial and suggested that petitioners be required to show that a violation of the constitutional right claimed had a substantive effect on the outcome of his trial. These proposals and several others were incorporated into a bill drafted by the Justice Department and introduced as S. 567 in the 93d Congress.¹⁷

The bill is interesting when read in the light of *Stone v. Powell*. First, the bill would have limited the constitutional claims that could be raised on collateral attack in federal court by state prisoners to those (1) which were not theretofore raised and determined in a state court, and (2) which there was no fair and adequate opportunity theretofore to have raised and determined in a state court, and (3) which could not thereafter be raised and determined in a state court. The object of these provisions, Attorney General Kleindienst said, "would be to add a significant degree of finality" to state court judgments and overturn the contrary holdings of *Brown v. Allen* and *Fay v. Noia*, 119 Cong. Rec. 2224 (1973). Once a state court had ruled on the merits of an issue, either on direct appeal or collateral attack, the only possible remedy would have been direct review by the Supreme Court. The second and third provisions would have altered the waiver and exhaustion standards previously set out in such decisions as *Noia* so as to treat failure to utilize an available state remedy as a deliberate bypass barring federal habeas relief.

Second, the bill set out another test that a prisoner who had gotten past the first series must meet. That is, the convicted defendant would be limited to raising constitutional claims to violations of any right "which has as its primary purpose the protection of the reliability of either the factfinding process at the trial or the appellate process on appeal from the judgment of conviction". S. 567 proposed § 2254(a)(1)(iii). The Attorney General explained that this "reliability" test was derived from the standards employed by the Supreme Court to determine whether to accord retroactive effect to its constitutional decisions. If the constitutional right goes to safeguarding the reliability of the trial and appellate process, it is generally accorded retroactive effect. Those types of claims that would be barred by this provision, said the Attorney General, would be (1) claims objecting to the admissibility of voluntary confessions because of failure to comply with *Miranda*, (2) claims objecting to the admis-

Footnotes at end of article.

sibility of evidence obtained through a violation of the search and seizure guarantees, and (3) claims objecting to the admissibility of identifications made in line-ups conducted without counsel in violation of Wade, 119 Cong. Rec. 2225 (1973).

Third, the proposal would have further required a prisoner having gotten past the first two requirements to show "that a different result would probably have obtained if such constitutional violation had not occurred" S. 567, proposed § 2254(a)(1)(iv). This provision was designed to require that a habeas petitioner show only "a probability of acquittal on the actual charge on which a verdict was returned, or that without the violation he would have been convicted only of a lesser included offense. He would not need to show that he would also have been acquitted of all lesser included offenses or that he was in fact innocent." 119 Cong. Rec. 2225 (1973).

Congress took no action on S. 567; as an analysis of *Stone v. Powell* will demonstrate, the Court did.

III. STONE V. POWELL ANALYZED

In his opinion for the Court, Justice Powell did not reject the expansion of the scope of habeas corpus which he thought had been accomplished in *Brown v. Allen*; that is, federal constitutional claims are generally open to relitigation in collateral actions in federal courts. He did not believe, however, that during the period of expansion the Court had ever "consider[ed] whether exceptions to full review might exist with respect to particular categories of constitutional claims." *Stone v. Powell*, supra, slip. op. at 11. He recognized of course, that the Court had on a number of occasions accepted jurisdiction in state prisoner cases in which collateral claims of Fourth Amendment violations were made, had decided these cases on the merits, and had granted relief in some of them on the basis of Fourth Amendment violations.²⁰ And in *Kaufman v. United States*, 394 U.S. 217 (1969), the Court had held that federal prisoners could collaterally litigate search-and-seizure claims under 28 U.S.C. § 2255, largely on the basis that state prisoners could collaterally litigate search-and-seizure claims on habeas and the rights of the two classes should be parallel. But Justice Powell concluded that the Court had never really closely considered the question and reached an informed, principled decision on the issue; the question thus being considered an open one, he then canvassed the rationales of the exclusionary rule and the principles governing the scope of the habeas writ and announced for the Court the holding that habeas is not available to state prisoners to challenge the admissibility of evidence allegedly unconstitutionally seized, provided that the State afforded the defendant an opportunity for a full and fair litigation of his claim.

(A) The Purpose of the Exclusionary Rule: According to Justice Powell, the primary justification for the exclusionary rule is the deterrence of police conduct that violated Fourth Amendment rights. The rule is not a personal constitutional right; it is not calculated to redress the injury to the privacy of the victim of the search or seizure. The rule is but a "prophylactic" device by which the Court seeks to ensure compliance with the Fourth Amendment. This almost exclusive focus upon the deterrent purpose of the rule is one already well established in the Court's cases, e.g., *United States v. Calandra*, 414 U.S. 338 (1974); *United States v. Peltier*, 422 U.S. 531 (1975), and it furnished the basis for the Court's refusal to give retroactive effect to its search and seizure decisions. E.g., *Linkletter v. Walker*, 381 U.S. 618 (1965). *Mapp v. Ohio*, 367 U.S. 643 (1961), extending the exclusionary rule to the States, relied on deterrence but it addressed as well the "imper-

ative of judicial integrity", suggesting that the exclusion of illegally seized evidence prevents contamination of the judicial process. Id., 659. And see *Weeks v. United States*, 232 U.S. 383, 391-392, 394 (1914). Indeed, it is difficult to understand the decision in *Elkins v. United States*, 364 U.S. 206 (1960), in any sense but a judicial concern for the integrity of the judicial process.²¹

Therefore, the incremental increase in deterrence, if any occasioned by the habeas court's utilization of the exclusionary rule was greatly outweighed in the balance by the harm done to the judicial process through enforcement of the rule. This conclusion was reached upon consideration of several factors.

(B) The Harmful Effect of the Rule: Application of the rule, Justice Powell wrote, "deflects the truthfinding process and often frees the guilty." *Stone v. Powell*, supra, slip op. at 23. (1) Reliability. The physical evidence seized by police which is sought to be excluded is typically reliable and often the most probative bearing on guilt. However, the evidence is obtained, it in and of itself is not suspect, not tainted, in the same way that a coerced confession is. (2) Search for Truth. Emphasis upon the admissibility of evidence turns the trial away from what should be its primary goal, the ascertainment of the truth. The evidence if excluded may prevent the attainment of this goal. (3) The question of Guilt or Innocence. Excluding reliable and probative evidence will often permit the guilty to go free; in any event, disputes over admissibility does not contribute to effectuating the goal of convicting the guilty and freeing the innocent.

While the exclusionary rule serves the vital function of enforcing respect for Fourth Amendment values, continued Justice Powell, and the Court will adhere to it in the instance of trials and on direct appeal of trial court convictions, it does not serve the interests so well that the detriment of its enforcement through habeas proceedings is justified.

Thus, one can follow many of the parallels between *Stone v. Powell* and S. 567. The accomplishment of the aims of the decision and the bill is attempted in somewhat different fashions but the same aims are firmly fixed. In both instances, the federal habeas role will be diminished by state provision of the opportunity for a litigation of federal constitutional claims. The bill would have precluded search and seizure claims altogether and the decision leaves the possibility that some such cases may still be brought into federal habeas courts upon contentions that the State did not afford a full and fair opportunity for litigating the issue. But what is a full and fair opportunity?

Stone v. Powell does not attempt to define the circumstances under which it will be deemed that such an opportunity has been provided. The Court did not, however, remand the two cases before it to the federal courts for evaluation of the fullness and fairness of the opportunity the habeas petitioners had in the trial courts. It simply reversed. Whether this constitutes approbation of the California and Nebraska procedures is unclear. In both instances, trial courts had rejected the claims of the defendants; in the California case, the appellate court had not reached the merits but had decided that the error, if any, had been harmless, while the Nebraska appellate court rejected the claims on the merits.²² It will be remembered that in *Frank* the Supreme Court approved the state court's process as adequate when it undertook an independent inquiry and carefully considered the defendant's claims; in *Moore*, on the other hand, if it be considered consistent with *Frank* and not an extension of it, the state appellate court's rather perfunctory rejection of the defendant's claim on the record did not immunize the conviction from habeas attack.

The Court's analysis, it may be noted, per-

mits further decisions along the line set out in S. 567. The reliability standard, the irrelevance to the search for truth and the question of innocence, and the purpose to deter are all present with regard to confessions obtained in violation of *Miranda* and to line-up identifications made in violation of *Wade*. See, e.g., *Johnson v. New Jersey*, 384 U.S. 719 (1966); *Stovall v. Denno*, 388 U.S. 293 (1967). The Court's analysis in *Michigan v. Tucker*, 417 U.S. 433 (1974), of the *Miranda* requirements as "prophylactic standards" not themselves rights protected by the Constitution but judicial constructions to protect the right against self-incrimination prepares the way for a *Stone v. Powell* holding in a *Miranda* case.

Whether there are not also other constitutional decisions so to be treated is a question we need not here deal with. But the analysis would not appear to be narrowly limitable.²³

IV. CONGRESSIONAL ALTERATION OF STONE V. POWELL

Although the Court's opinion in *Stone v. Powell* is silent with regard to the kind of authority it is exercising, constitutional interpretation or statutory interpretation, and while its language with respect to the exclusionary rule is to some extent both types of interpretation, clearly its decision that a habeas court's power should not extend to hearing search and seizure claims when the petitioner has had an opportunity to raise them previously has to be based upon its construction of 28 U.S.C. § 2254, the habeas statute. True it is that Justice Powell announces that "the Constitution does not require" that state prisoners have the opportunity to present such claims under such circumstances, *id.*, slip op. at 14, but the question here is whether the Constitution permits the exercise of such power by federal courts. A long line of cases previously has required federal courts to litigate such claims, the language of § 2254 is adequately broad, and its constitutionality is so accepted by the Court that when the attorneys general of 41 States joined in an attempt to have the 1867 habeas statute declared unconstitutional the Supreme Court refused even to review the Court of Appeals rejection of the contention. *United States ex rel. Elliott v. Hendricks*, 213 F. 2d 922 (C.A. 3), cert. den., 348 U.S. 851 (1954) See *Ex parte Royall*, 117 U.S. 241, 249 (1885); *Frank v. Mangum*, supra, 331. Thus, Justice Powell must be understood as holding, though he did not even cite the statute nor quote the particular language, that a state prisoner convicted at least in part on the basis of evidence seized in violation of the Fourth Amendment but who has been able to raise that question at trial and on appeal, even though he lost, is not "in custody in violation of the Constitution or laws of the United States". 28 U.S.C. § 2254(a).

Indeed, the logic of the Court's opinion with respect to the exclusionary rule is that in no event does the admission at trial of evidence seized unconstitutionally violate a defendant's Fourth Amendment rights. One has a Fourth Amendment right not to have one's privacy invaded by officers not acting in accord with Fourth Amendment requirements. But the violation once accomplished is completed. It does not continue through to the admission of the evidence so obtained. Such admission works no new Fourth Amendment violation. *United States v. Calandra*, supra, 354; *United States v. Peltier*, supra, 535-539. "The primary meaning of 'judicial integrity' in the context of evidentiary rules is that the courts must not commit or encourage violations of the Constitution. In the Fourth Amendment area, however, the evidence is unquestionably accurate, and the violation is complete by the time the evidence is presented to the court.

The focus therefore must be on the question whether the admission of the evidence

Footnotes at end of article.

encourages violations of Fourth Amendment rights. As the Court has noted in recent cases, this inquiry is essentially the same as the inquiry into whether exclusion would serve a deterrent purpose." *United States v. Janis*, supra, slip op. at 25 n. 35.²¹

Mapp v. Ohio, supra, 655-656, however, held that the exclusionary rule was binding upon the States because it is "an essential part of the right to privacy" protected by the due process clause of the Fourteenth Amendment. Congress, if it should so decide, would not be precluded by *Stone v. Powell* in its statutory construction from concluding that the imprisonment of one pursuant to a state conviction based at least in part on evidence seized in violation of the Fourth Amendment does mean that he is "in custody in violation of the Constitution". The Fourth Amendment guarantee is applicable to the States through the due process clause of the Fourteenth Amendment, *Wolf v. Colorado*, supra, and the due process clause independently imposes upon the States a requirement of fundamental fairness. Under § 5 of the Fourteenth Amendment, Congress has the power to enforce "by appropriate legislation" the guarantees of the due process clause.

As for the deterrence issue, it is primarily a question of judgment whether applying the rule in one situation will constitute a significant deterrence of Fourth Amendment violations while applying it in another would have minimal effect. When the matter turns on such judgments, Congress has a special ability to develop and consider the factual basis of a problem that the Court does not have. *Oregon v. Mitchell*, 400 U. S. 112, 247-248 (1970) (Justice Brennan concurring and dissenting).

An example of congressional decisionmaking in this area which extended protection beyond that found by the Court to be required by the Constitution is 18 U. S. C. § 2515, in the electronic surveillance statute, mandating the application of the exclusionary rule with respect to evidence not obtained in compliance with the statute. In *Gelbard v. United States*, 408 U. S. 41 (1972), the Court held, on the language of § 2515 and its legislative history, that it could be invoked by a grand jury witness as a defense to a contempt charge brought for refusal to answer questions based on information obtained from the witness' communications unlawfully intercepted through wiretapping; in *United States v. Calandra*, supra, the Court held that, under the Fourth Amendment exclusionary rule, a grand jury witness could not refuse to answer questions based on unconstitutionally-seized evidence, noting the statutory basis of *Gelbard*. While § 2515 is addressed to federal law enforcement officials and federal courts, the precedent is just as applicable to the States where Congress has the power to legislate.

Some thought might be given by Congress to the possibility that the Court will soon modify the exclusionary rule itself. One of the arguments raised by the States in *Stone v. Powell* was that the Court should permit a "good faith defense" to the exclusionary rule in situations where, for example, police conduct was only in technical violation of constitutional requirements or where police acted in "good faith" in believing they had a right to search. Chief Justice Burger, in a concurring opinion, and Justice White, in dissent, urged adoption of such a modification. And the Court's opinion in *United States v. Peltier*, supra, clearly seems to lay the basis for such a holding. Whether Congress should therefore include in any amendment of the habeas statute a mandate to the federal courts to continue enforcing a broad exclusionary rule may also be considered.

Too, Congress may wish to consider structuring the habeas statute in such a way as to limit the major abuses that have evoked so much concern in the scholarly literature and

in judicial opinions. In this respect, two suggestions might be made.

(1) In *Mackey v. United States*, 401 U. S. 667, 675 (1971), Justice Harlan wrote a lengthy opinion arguing that the Court had gotten itself into a quagmire in its retroactivity rules and that it should instead draw a distinction between cases still open to direct review and cases where the conviction is final in the sense that only collateral relief is available. New constitutional doctrines must be fully retroactive within the former category while on habeas cases the courts should generally apply the law prevailing at the time a conviction became final rather than disposing of all such cases on the basis of intervening changes in constitutional interpretation. There may well be substantial merit to this argument and it would prevent the relitigation of many cases that could well be deemed closed.

(2) The problem of successive petitions by prisoners was treated most fully in *Sanders v. United States*, supra, and in the 1966 amendments adding subsections (b) and (c) to § 2,244. Congress might wish to consider whether the standards by which a federal habeas court declines to hear a second or successive petition needs to be and can be tightened so as to induce a greater degree of finality.

FOOTNOTES

¹ Justice Brennan's opinion in *Fay v. Noia*, 372 U. S. 391 (1963), undertook a lengthy exegesis to demonstrate that the common law understanding was actually that "restraints contrary to fundamental law, by whatever authority imposed, could be redressed by writ of habeas corpus." *Id.*, 408. See *id.*, 399-415. But see *id.*, 449-463 (Justice Harlan dissenting). Most of the scholarly commentary is contrary to the Brennan reading of history. E.g., Oaks, "Legal History in the High Court—Habeas Corpus," 64 Mich. L. Rev. 451 (1966); Bator, "Finality in Criminal Law and Federal Habeas Corpus for State Prisoners," 76 Harv. L. Rev. 441, 465-474 (1963) (pre-*Noia*); "Developments in the Law—Federal Habeas Corpus," 83 Harv. L. Rev. 1038, 1045-1050 (1970). It is unclear why Justice Brennan undertook this effort to establish the historicity of the broad proposition; it had been clearly established in *Brown v. Allen*, 344 U. S. 443 (1953), and arguably earlier, it was not in issue in *Noia*, and the dissenters did not call for a reconsideration of *Brown*. Hart & Wechsler, *op. cit.*, 1465.

² This statement, and the cases, assume that a statute is necessary to confer jurisdiction upon federal courts to grant the writ. *Ex parte Bollman*, 4 Cr. (8 U.S.) 75 (1807). One scholar has argued that the federal courts have the power absent statute as a direct implication of the suspension clause. Paschal, "The Constitution and Habeas Corpus," 1970 Duke L.J. 605.

³ Here, too, the scholarly opinion appears to be against a broad reading of the 1867 Act. E.g., Bator, *op. cit.*, 474-477; Mayers, "The Habeas Corpus Act of 1867: The Supreme Court as Legal Historian," 33 U. Chi. L. Rev. 31 (1965).

⁴ This standard is, of course, that of the Court with respect to the exclusionary rule question on collateral review in *Stone v. Powell*. On *Frank v. Mangum*, see Bator, *op. cit.*, 483-487. Compare *Fay v. Noia* supra, 420 (Justice Brennan for the Court), with *id.*, 456-457 (Justice Harlan dissenting).

⁵ "Discredited" is Professor Hart's term, "Foreword: The Time Chart of the Justices," 73 Harv. L. Rev. 84, 105 (1959), while "repudiated" is Justice Brennan's. *Fay v. Noia*, supra, 421. For contra views, contending that Moore and Frank are consistent, see *id.*, 457-458 (Justice Harlan dissenting); Bator, *op. cit.*, 488-489.

⁶ We assume in accordance with *Frank* that the corrective process supplied by the

State may be so adequate that interference by habeas corpus ought not to be allowed. It certainly is true that mere mistakes of law in the course of a trial are not to be corrected in that way. But if the case is that the whole proceeding is a mask—that counsel, jury and judge were swept to the fatal end by an irresistible wave of public passion, and that the State Courts failed to correct the wrong, neither perfection in the machinery for correction nor the possibility that the trial court and counsel saw no other way of avoiding an immediate outbreak of the mob can prevent this Court from securing to the petitioners their constitutional rights." *Id.*, 91. "We shall not say more concerning the corrective process afforded to the petitioners than that it does not seem to us sufficient to allow a Judge of the United States to escape the duty of examining the facts for himself when if true as alleged they make the trial absolutely void." *Id.*, 92.

⁷ Compare Bator, *op. cit.* 489-499, who, while recognizing the wavering of the Court, argues that the cases are all basically consistent with *Frank*, with Hart, *op. cit.*, 104-106, who reads the cases as broadening the scope of the writ beyond that in *Frank*.

⁸ Three cases were before the Court and on the merits the Court held six to three that defendants' rights had not been violated. There were in effect two opinions of the Court, one by Justice Reed, *id.*, 446, and one by Justice Frankfurter, *id.*, 488. Only Justice Jackson, *id.*, 532 (concurring in result), disagreed with the view that federal habeas courts should ordinarily decide the federal constitutional issues for themselves rather than deferring to state court resolution of the issues.

⁹ See, favoring *Brown*, Reitz, "Federal Habeas Corpus: Postconviction Remedy for State Prisoners," 108 U. Pa. L. Rev. 461 (1960); Wright & Sofaer, "Federal Habeas Corpus for State Prisoners: The Allocation of Fact-Finding Responsibility," 75 Yale L. J. 895, 897-906 (1966).

¹⁰ "Developments—" *op. cit.*, 1093-1103.

¹¹ "If a habeas applicant, after consultation with competent counsel or otherwise, understandingly and knowingly forewent the privilege of seeking to vindicate his federal claims in the state courts, whether for strategic, tactical, or any other reasons that can fairly be described as the deliberate bypassing of state procedures, then it is open to the federal court on habeas to deny him all relief if the state courts refused to entertain his federal claims on the merits." *Id.*, 439.

The Court has this Term in two cases limited, without addressing *Noia*, holding in *Estelle v. Williams*, No. 74-676 (May 3, 1976), that the failure of a defendant to object at trial to his being compelled to stand trial in prison garb, and in *Francis v. Henderson*, No. 74-5808 (May 3, 1976), that the failure of a defendant to challenge the composition of the grand jury that indicted him before trial in accordance with state rules precluded both defendants from raising the issues on habeas.

¹² C. Wright, *Law of Federal Courts* (2d ed. 1970), 209.

¹³ Judge Parker's cited cases began with *Moore v. Dempsey* and included the major cases of the period before *Brown v. Allen*.

¹⁴ Judge Parker construed the new § 2254 considerably more restrictively than the Court proved to do. Compare Parker, *op. cit.*, 175-177, with *Brown v. Allen*, supra, 447.

¹⁵ *Hearings on H.R. 5649* before Subcommittee No. 3 of the House Committee on the Judiciary, 84th Cong., 1st sess. (1955), 89-90.

¹⁶ 102 Cong. Rec. 940 (1966); 104 *id.* 4675 (1958). The bill would have permitted the issuance of the writ "only on a ground which presents a substantial Federal constitutional question (1) which was not theretofore raised and determined (2) which there was

no fair and adequate opportunity theretofore to raise and have determined and (3) which cannot thereafter be raised and determined in a proceeding in the State court, by an order or judgment subject to review by the Supreme Court of the United States on writ of certiorari."

¹¹ Hearings on S. 895 before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, 92d Cong., 1st sess. (1971), 94-121.

¹² An identical bill had been introduced in the Senate and a similar bill into the House near the end of the prior Congress, S. 3833 and H.R. 13722, 92d Cong., 2d sess. (1972). Senator Hruska introduced S. 567 on January 26, 1973, accompanying it with a lengthy memorandum from Attorney General Kleindienst explaining and justifying the bill that had previously been sent to the House Judiciary Committee. 119 Cong. Rec. 2220-2226. See Note, "Proposed Modification of Federal Habeas Corpus for State Prisoners—Reform or Revocation?" 61 Georgetown L. J. 1221 (1973).

¹³ E.g., *Lefkowitz v. Newsome*, 420 U.S. 283 (1975); *Cardwell v. Lewis*, 417 U.S. 583 (1974); *Cady v. Dombrowski*, 413 U.S. 433 (1973); *Adams v. Williams*, 407 U.S. 143 (1972); *Whitely v. Warden*, 401 U.S. 560 (1971); *Chambers v. Maroney*, 399 U.S. 42 (1970); *Harris v. Nelson*, 394 U.S. 286 (1969); *Mancusi v. DeForte*, 392 U.S. 364 (1968); *Cerafas v. Lavallee*, 391 U.S. 234 (1968); *Warden v. Hayden*, 387 U.S. 294 (1967).

¹⁴ *Elkins* overturned the "silver platter" doctrine under which evidence illegally seized by state officials could be turned over to federal officials for use in federal trials even though the evidence would have been inadmissible had federal authorities seized it. At the time, while the Fourth Amendment applied to state searches the exclusionary rule did not govern admissibility of the evidence so obtained into state trials. *Wolf v. Colorado*, 338 U.S. 25 (1949). The deterrent effect of excluding the evidence from federal trial was so attenuated that it is hard to believe it would have furnished a basis for decision even if the Court was at the time concerned with deterring state action. Confirmation of these conclusions may be found in *United States v. Janis*, No. 74-958 (July 6, 1976), refusing to bar from federal civil trials evidence unconstitutionally seized by state officers.

¹⁵ It appears on the basis of applicable precedents that both appellate courts were wrong and the federal courts so found. But the requirement is of an opportunity, not that the state courts will correctly decide the claim. Petitioning the Supreme Court for certiorari is the only avenue of relief from incorrect decisions.

¹⁶ Attorney General Kleindienst thought there were several other claims that would be precluded by the reliability standard of S. 567, including jury trial denial claims. 119 Cong. Rec. 2225 (1973).

¹⁷ If the exclusionary rule is not a substantive constitutional right, the serious question is raised about the Court's power to mandate its observance by state courts. If the rule is not a necessary corollary of a constitutional right but simply a judicially created remedial device, the Court's power should be much more limited than otherwise. See Monaghan, "Forward: Constitutional Common Law," 89 Harv. L. Rev. 1, 3-10 (1975).

STONE V. POWELL AND THE NEW FEDERALISM: A CHALLENGE TO CONGRESS

(By Ronald S. Flagg, member of the class of 1978 at Harvard Law School)

The Supreme Court's recent decision in *Stone v. Powell* raises serious questions about the wisdom of the Court's developing view of the federal system and the Court's competence to define the jurisdiction of the

federal courts. Mr. Flagg challenges the policies underlying the Court's "new federalism" and calls upon Congress to reassert the federal interest in a broad habeas corpus review of state convictions by the federal courts.

INTRODUCTION

The Supreme Court in recent decisions has shown an increasing solicitude for state interests in cases where federal constitutional claims have been raised.¹ Last term, the Court extended its conception of a "new federalism"² into the area of federal habeas corpus when it decided *Stone v. Powell*.³ The decision in *Stone*, as well as in many other cases that have come before the Court, reflects the judgments of the Court as to the proper balance between the jurisdiction of the federal and the state courts. In enunciating this "new federalism" the Court has foreclosed the availability of federal relief for unconstitutional or other unlawful acts by state authorities,⁴ and it has usurped the power granted to Congress by the Constitution⁵ to define the jurisdiction of the federal courts.⁶

Section I of this Note discusses *Stone* and the policy judgments made by the Court in restricting the availability of federal habeas corpus review. Section II examines other recent cases in which the Court has made similar judgments in restricting access to the federal courts generally in other substantive areas. Section III questions the validity of the judgments underlying the Court's opinion in *Stone* and, by implication, in other recent manifestations of the Court's "new federalism." Finally, Section IV calls upon Congress to assert its authority to define the jurisdiction of the federal courts so as to reverse the questionable judgments of the *Stone* decision.

I. STONE V. POWELL: THE POLICIES UNDERLYING THE "NEW FEDERALISM"

In *Stone*, the petitioner Powell had been convicted of murder in a California state court on the basis of testimony concerning a revolver which had been taken from him incident to his arrest for violation of a local vagrancy ordinance. The state courts, both at trial and on direct appeal, rejected Powell's arguments that the vagrancy ordinance was unconstitutional and that the search was invalid. Powell applied for a writ of federal habeas corpus pursuant to 28 U.S.C. § 2254 on the grounds that he was being held in violation of the Constitution. The District Court denied his plea, but the United States Court of Appeals reversed, holding that the vagrancy ordinance was unconstitutionally vague, that the arrest and search were unlawful, and thus that the evidence should have been excluded at trial.⁷ The Supreme Court reversed the Court of Appeals' decision, holding that "a federal court need not apply the exclusionary rule on habeas review of a fourth amendment claim absent a showing that the state prisoner was denied an opportunity for a full and fair litigation of that claim at trial and on direct review."⁸

Although the Court's decision involved consideration of Powell's fourth amendment claim, the result in *Stone* was not required by the Constitution. The Court did not hold that the federal courts lack jurisdiction pursuant to § 2254 over a fourth amendment claim,⁹ nor did it conclude that no violation of the fourth amendment had occurred. Neither did the Court rest its decision on construction of the federal habeas statute.¹⁰ Instead, as in previous abstention cases,¹¹ the Supreme Court based its decision on its own balancing of the relative state and federal interests involved.¹²

In reaching its decision in *Stone*, the Court purported to balance the advantages and disadvantages of application of the exclusion-

ary rule on federal habeas review. The Court found that the extension of the exclusionary rule to the states in *Mapp v. Ohio*¹³ was based "principally on the belief that exclusion would deter future unlawful conduct."¹⁴ However, the Court found that the additional deterrence gained by applying the exclusionary rule on habeas review was small in relation to the costs.¹⁵ The Court cited two specific costs. First, "the focus of the trial, and the attention of the participants therein, is diverted from the ultimate question of guilt or innocence that should be the central concern in a criminal proceeding."¹⁶ Second, "the physical evidence to be excluded is typically reliable and often the most probative information bearing on the guilt or innocence of the defendant."¹⁷

These considerations, however, apply with equal force to the application of the exclusionary rule at trial in the state courts or on direct review by the Supreme Court, as well as on collateral review by habeas corpus. Yet the Court did not relieve the states of their obligation to apply the exclusionary rule in their criminal proceedings at trial or on appeal, but only withdrew the operation of the rule when federal district courts review those same proceedings upon a petition for habeas corpus.¹⁸ This distinction can logically be based only upon judgments about the relative roles of the state and federal judiciaries in adjudicating the constitutional claims of state criminal defendants.

The primary judgment of the Court was that the state courts, with only direct review by the Supreme Court, protect fourth amendment rights as competently as the federal district courts. The majority opinion reasoned:

"Despite differences in institutional environment and the unsympathetic attitude to federal constitutional claims of some state judges in years past, we are unwilling to assume that there now exists a general lack of appropriate sensitivity to constitutional rights in the trial and appellate courts of the several States. State courts, like federal courts, have a constitutional obligation to safeguard personal liberties and to uphold federal law. . . . Moreover, the argument that federal judges are more expert in applying federal constitutional law is especially unpersuasive in the context of search-and-seizure claims, since they are dealt with on a daily basis by trial level judges in both systems."¹⁹

The Court listed four other policies which led it to limit the application of the exclusionary rule in the context of federal habeas corpus review: "(i) the most effective utilization of limited judicial resources, (ii) the necessity of finality in criminal trials, (iii) the minimization of friction between federal and state systems of justice, and (iv) the maintenance of the constitutional balance upon which the doctrine of federalism is founded."²⁰

These arguments are unconvincing in light of the federal interest in ensuring the proper adjudication of federal constitutional claims. The Court in *Stone*, as well as in the cases to be discussed in Section II, has redrawn, on the basis of its own policy judgments, the limits of federal jurisdiction more narrowly than the statutory limits prescribed by Congress. As Section III will suggest, the existing statutory regime has already struck a workable and desirable balance between the federal interest in correct adjudication of constitutional claims and the states' interests that the Court promoted in *Stone*. Even if the Court believed that the federal habeas corpus statute did not strike the proper balance, it should have deferred to Congressional definition of the proper jurisdiction of the federal courts.

II. THE NEW FEDERALISM IN OTHER CONTEXTS

In *Stone v. Powell*, the Supreme Court restricted the application of the exclusionary

Footnotes at end of article.

rule, not by cutting back on the substance of the rule itself, but by forbidding the federal courts to apply it in cases in which those courts previously had jurisdiction under 28 U.S.C. § 2254.²¹ The Court based its decision primarily on considerations of federalism and comity.²²

In his dissent, Justice Brennan expressed the fear that the decision in *Stone* would be used to restrict further the jurisdiction of the federal courts on habeas corpus review in cases involving claims of unconstitutional detention on other than fourth amendment grounds.²³ His concern regarding the potential extension of the rationale of *Stone* is well founded, especially when one examines the wide range of cases in which the Court has relied on similar policies to restrict the access of constitutional claimants to the federal courts.

*Francis v. Henderson*²⁴ exemplifies the use of the same federalism rationale to restrict federal habeas corpus in a nonfourth amendment context. In *Francis* the Court held that a state prisoner who failed to make a timely challenge to the racial composition of a grand jury that indicted him could not, after his conviction, bring that challenge in a federal habeas corpus proceeding under 28 U.S.C. § 2254.

The case involved the indictment of Francis, a 17 year old black youth, by a Louisiana grand jury on a charge of felony murder. Two months after the indictment the court appointed uncompensated counsel for him; however, this counsel, who was in failing health and who had not practiced criminal law for several years, took no action for Francis's defense until the day before trial. He offered no challenge to the racial composition of the grand jury that had indicted Francis, and he never informed him that such a challenge was possible. At trial, Francis was convicted of felony murder and sentenced to life imprisonment; his two older accomplices, through plea bargaining, each received 8-year prison terms.

In its decision denying Francis habeas corpus relief, the Supreme Court acknowledged that, under the statute and following its decision in *Fay v. Noia*,²⁵ "there can be no question of a federal district court's power to entertain an application for a writ of habeas corpus in a case such as this."²⁶ However, the Court reasoned that "considerations of comity and federalism"²⁷ require that the federal courts give effect to the state interest in enforcing its criminal procedure when considering whether to overturn state criminal convictions.²⁸ In addition to comity and federalism, the Court cited the states' interests in finality of criminal judgments and the Court's reluctance to see federal courts "unduly interfere with the legitimate activities of the States"²⁹ as further reasons for its decision to prevent the federal courts from exercising the power over Francis' constitutional claim.³⁰

This concern with "comity and federalism" has led the Court to restrict access to the federal district courts in other contexts in which those courts had the power to exercise jurisdiction under previous statutory interpretation.³¹ One such area is civil rights actions under 28 U.S.C. § 1983, the Civil Rights Act of 1871.³² In *Younger v. Harris*³³ the Court held that for reasons of equity, comity, and federalism, federal courts should abstain from enjoining under § 1983 a pending state criminal prosecution absent a finding of bad faith or immediate, irreparable harm.³⁴ The Court expressed a desire for "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and

their institutions are left free to perform their separate functions in separate ways."³⁵

Recent cases have extended the *Younger* doctrine in many directions. For example, in *Miranda v. Hicks*,³⁶ the Court held that the principles of *Younger* precluded a federal court from enjoining a state criminal prosecution instituted subsequent to the proceeding in the federal court. Also, in *Huffman v. Pursue, Ltd.*,³⁷ the Court invoked equitable restraint to preclude the enjoining of civil proceedings initiated by state prosecution. In these cases, the Court denied federal injunctive relief despite the existence of jurisdiction pursuant to 42 U.S.C. § 1983.

This solicitude for the state's interest in exercising its prosecutorial and judicial functions without federal interference, regardless of the impact on a defendant's constitutional claims, also surfaced in *O'Shea v. Littleton*.³⁸ There plaintiffs brought a civil rights action under § 1983, alleging that a county magistrate and judge had embarked on a continuing intentional practice of racially discriminatory bond-setting, sentencing, and assessing of jury fees. Despite the evidence of past abuses, the Court held that the named plaintiffs could not show that future offenses would be committed against them specifically and therefore lacked standing to bring suit for injunctive relief.³⁹ In addition the Court found that, even if plaintiffs could satisfy a standing requirement, injunctive relief against defendants' actions would constitute "a major continuing intrusion of the equitable power of the federal courts into the daily conduct of state criminal proceedings" and would be "in sharp conflict with the principles of equitable restraint."⁴⁰

Similarly, the Court has invoked the principles of comity and federalism to restrict the federal district courts from enjoining allegedly unconstitutional practices of state or local executive officials. In *Rizzo v. Goode*⁴¹ a group of individuals and a coalition of community organizations brought actions against the city of Philadelphia and its mayor, alleging a pervasive pattern of illegal and unconstitutional mistreatment by police officers. Suing under § 1983, the plaintiffs sought equitable relief, including appointment of a receiver to supervise the police department and the establishment of civilian review of police activity. The District Court heard evidence on over forty incidents of alleged police brutality, nineteen of which the Supreme Court later assumed *arguendo* to be violations of constitutional rights.⁴² The District Court found that public officials in Philadelphia consistently had refused to act to stop the violations. It directed the Police Department to draft "a comprehensive program for dealing adequately with civilian complaints," including "appropriate revision of police manuals and rules of procedure spelling out in simple language the 'do's and don'ts' of permissible conduct in dealing with civilians . . . [r]evision of procedures for processing complaints against police . . . and prompt notification to the concerned parties informing them of the outcome" of complaint procedures.⁴³

As it had in *O'Shea*, the Supreme Court found that the named plaintiffs lacked the requisite standing, as they could not demonstrate that future incidents arising from inadequate police disciplinary procedures would harm them specifically rather than other members of the class.⁴⁴ The Court also held that the District Court had erred in imputing liability to superior officials for the unconstitutional conduct of individual patrolmen. The Court's opinion in *Rizzo* concluded with its reason, by now quite familiar, for limiting federal injunctive relief for the abuses of state or local officials:

"Thus the principles of federalism which play such an important part in governing the relationship between federal courts and

state governments, though initially expounded and perhaps entitled to their greatest weight in cases where it was sought to enjoin a criminal prosecution in progress, have not been limited either to that situation or indeed to a criminal proceeding itself. We think these principles likewise have applicability where injunctive relief is sought not against the judicial branch of the state government, but against those in charge of an executive branch of an agency of state or local governments such as respondents here."⁴⁵

Thus the same principles of federalism and comity on which the Court relied in *Stone v. Powell* have been used in other cases to justify restrictions on the district courts' acknowledged power. The application of these principles has prevented the district courts from vindicating the constitutional claims of state prisoners and others who allege state infringement of constitutional rights.

III. A CRITIQUE OF THE SUPREME COURT'S "NEW FEDERALISM"

An examination of the policies upon which the Court has constructed this "new federalism" reveals the impropriety of the balance the Court has struck. In addition, it suggests strong arguments calling for congressional reassertion of its constitutional power to reopen the federal courts to those claims which recent Supreme Court decisions have foreclosed.

A. Federal Trial Court Jurisdiction Is Necessary for Proper Enforcement of Federal Constitutional Rights

Since the Court in *Stone* left the exclusionary rule intact for purposes of its application in state trials, on direct review by state appellate courts, and by the Supreme Court, the Court's assumption must be that the state judiciary checked only by the Supreme Court's discretionary review will suffice to protect the fourth amendment rights of state prisoners. The Court has predicated its judgment on the belief that there is "no intrinsic reason why the fact that a man is a federal judge should make him more competent, or conscientious, or learned with respect to the [considerations of fourth amendment claims] than his neighbor in the state courthouse."⁴⁶ This assertion ignores the difference in the institutional setting and outlooks of the state and federal judiciaries. It also overlooks the inadequacy or unavailability of state remedies in many cases.

State judges, who are either locally elected or appointed and who serve terms of limited durations,⁴⁷ are subject to greater political pressure from the local citizenry than are federal judges. The concerns of these local constituents are likely to focus more on the guilt or innocence of a defendant than on the constitutional rights of that individual, and state judges tend unduly to reflect the substantive goals of the state criminal law in their decisions rather than the "goals of the Federal Constitution in protecting individual rights from unlawful government action."⁴⁸ Federal judges, who enjoy life tenure, however, operate in an institutional setting more insulated from local pressures and less insulated from review by the federal Courts of Appeal and the Supreme Court than their state counterparts.⁴⁹

This distinction in the institutional pressures on state and federal judges was recognized in the debates of the Constitutional Convention,⁵⁰ in the debates over ratification of the Constitution,⁵¹ and in the debate in Congress over the Reconstruction legislation which first broadened federal jurisdiction over state actions.⁵² These assumptions concerning the bias and inadequacy of the state courts when presented with constitutional claims are a primary rationale for the existence of the inferior federal courts. In fact, state courts may not be as sympathetic to federal constitutional claims as are the

Footnotes at end of article.

federal courts.⁵³ Numerous instances of woe-ful disregard for federal law in state court proceedings can be cited; such disregard can be corrected only by federal habeas corpus actions.⁵⁴

State remedies also may be inadequate or unavailable. In California, for example, where Powell originally was tried in the state courts, fourth amendment claims are not cognizable in the state's habeas corpus proceedings.⁵⁵ Even where available, state remedies may be inadequate or unresponsive to constitutional claims.⁵⁶

Direct review of state court decisions by the Supreme Court provides insufficient federal scrutiny of state processes. First, the Supreme Court cannot possibly review all the state criminal convictions in which constitutional claims are raised.⁵⁷ Second, direct review by the Supreme Court will deny the defendant in a state criminal trial the benefit of a federal trial court's role in constructing a record and making findings of fact.⁵⁸ As an earlier Court emphasized, "[h]ow the facts are found will often dictate the decision of federal claims."⁵⁹ If one accepts the institutional arguments that the federal courts are more sympathetic to federal constitutional claims than state courts, then state criminal defendants should have some chance to have the facts in their cases determined in a federal forum.⁶⁰

Finally, the federal district courts provide potentially more uniform treatment of constitutional claims than do the more numerous state courts.⁶¹ Even before the Supreme Court speaks on a particular issue, there is likely to be a developing uniformity among the eleven Courts of Appeal. While divergences between circuits may appear on a given issue, these help to focus issues for the Supreme Court's ultimate determination. "In any event, the process is more likely to afford uniformity than any state interaction if only because there are fewer jurisdictions to reconcile."⁶² Thus, contrary to the Court's assertions in *Stone*, proper adjudication of constitutional claims requires the availability of a federal forum free from the institutional constraints of the state trial and appellate courts.

B. Broad Federal habeas corpus jurisdiction is not inconsistent with "effective utilization of judicial resources"

The Court in *Stone* expressed its desire for "the most effective utilization of limited judicial resources."⁶³ However numerous habeas corpus petitions are,⁶⁴ they represent only a small fraction of total civil filings and consume on the average less than 1% of the federal judge's time.⁶⁵ Many petitions are disposed of without the need for a hearing; when a hearing is required, it frequently takes less than one day.⁶⁶ Moreover, Congress has responded to any overload caused by habeas corpus petitions by enacting the Federal Magistrates Act.⁶⁷ The Act provides for the preliminary screening by federal magistrates of applications for posttrial relief and the submission of a report and recommendation to the district judge to facilitate decision-making.⁶⁸ Congress also has limited wasteful duplication of effort between the state court and the federal district court by limiting the scope of collateral review to constitutional questions,⁶⁹ requiring exhaustion of state remedies,⁷⁰ and limiting the situations in which the federal court may redetermine controverted facts.⁷¹

Even supposing that habeas corpus petitions unduly burden the resources of the federal courts, the Supreme Court should not determine which substantive federal rights should be accorded enforcement priority.⁷² If a rising caseload threatens to inundate the federal courts, Congress should act to provide additional resources or reexamine enforcement priorities in a systematic fashion.⁷³ Selective enforcement of constitutional

claims by the federal courts is not an appropriate response.

C. The Interest in Finality in Criminal Trials Does Not Require Further Restriction of Federal Habeas Jurisdiction

The Court in *Stone*⁷⁴ as well as in *Francis v. Henderson*⁷⁵ cited the need for finality in criminal trials as a reason for restricting the habeas jurisdiction of the federal courts. While one many concede the need to establish a point beyond which state convictions will be immune from attack, where that point should be is not self-evident. In a federal system premised on the supremacy of federal law, some federal supervision of the state courts in their determination of federal constitutional claims is necessary. As final arbiter of federal constitutional claims, however, the Supreme Court is incapable of reviewing all state criminal convictions in which such claims have been raised. In order to effect some federal review of these claims, a workable division of labor between the Supreme Court and the lower federal courts is necessary. The habeas corpus statute established a regime which recognized the need for some federal supervision of constitutional claims and the Supreme Court's inability to examine all such claims on direct review.⁷⁶

While finality of state court convictions is important, effective enforcement of constitutional guarantees must take precedence. The habeas corpus statute as previously interpreted adequately accommodated the state's interest in finality by establishing a presumption that the state hearings had been adequate and casting the burden of proving deficiencies upon the petitioner,⁷⁷ and by restricting federal collateral review to constitutional claims and violations of federal laws.⁷⁸ Thus, prior to *Stone v. Powell*, the habeas procedures, while recognizing the state interest in finality of criminal convictions, carried out "the manifest federal policy that federal constitutional rights of personal liberty shall not be denied without the fullest opportunity for plenary federal judicial review."⁷⁹

D. Minimizing friction between the Federal and State judicial systems does not require the elimination of Federal habeas corpus review of Federal constitutional claims

The Court in *Stone* relied on the need to minimize friction between federal and state systems of justice.⁸⁰ The federal habeas procedures which the Court curtailed in *Stone*, however, were responsive to the need to accommodate both the state and federal interests at issue. Tension was reduced by requiring the prisoner to exhaust his state remedies prior to application for a writ, thus giving the state courts a chance to address the constitutional claim.⁸¹ As noted above, if a federal court did entertain a habeas petition, it limited its review to federal and constitutional questions;⁸² and even then the State's fact-finding process was presumed to be correct.⁸³

Since the Supreme Court has appellate jurisdiction over all cases arising under the constitution and laws of the United States,⁸⁴ it is impossible to eliminate all federal scrutiny of state criminal proceedings. Neither is it wise. In a system where federal law is supreme, some friction between the state and federal courts is inevitable.⁸⁵

Moreover, the procedure which the Court created in *Stone v. Powell* holds the potential for increased intrusion by federal courts into the state judicial process. The Court's decision bars consideration of a fourth amendment claim unless the prisoner was not afforded an "opportunity for full and fair litigation" of the claim.⁸⁶ Thus the federal judge, rather than focusing in the first instance on the prisoner's fourth amendment claim, appears to be required to deter-

mine the adequacy of the state process, and then to deal with the constitutional questions should inadequacies be found. Though the content of the requirement of an "opportunity for full and fair litigation" is yet unclear, it raises the possibility that federal judges, otherwise precluded from granting redress to prisoners convicted on the basis of illegally obtained evidence, will engage in more searching scrutiny of the state judicial process than is common at present—a result likely to heighten, rather than diminish state-federal friction.⁸⁷

IV. THE NEW FEDERALISM—A CHALLENGE FOR CONGRESS

Federalism concerns the proper relationship between the federal and state governments and thus must take into account in the interests of both. The Court, in its recent enunciation of a "new federalism," has been careful to safeguard the State's judicial,⁸⁸ executive,⁸⁹ and legislative functions.⁹⁰ However, the Court has failed to safeguard the interests of the federal government, especially the major federal interest, whether in habeas corpus petitions or civil rights actions—the enforcement of federal constitutional and statutory rights.

The federal interest theoretically can be protected by the states as well as by the federal government. The Court contends that, in fact, the state courts are equally as capable of enforcing federal rights as the federal courts.⁹¹ The purpose of this Note has been to demonstrate, however, that the argument is far less persuasive than the Court asserts.⁹² In its reasoning, the Court ignores the differences in institutional setting and outlook of the state and federal courts. It ignores the inadequacy and unavailability of state remedies, as well as the lack of responsiveness of state institutions. Finally, it ignores the basic assumptions that have led to the provision for inferior federal courts in the first instance and subsequently to the various congressional enactments defining the jurisdiction of the federal courts. The questionable assumptions of the Court's recent decisions manifest a fundamental hostility to the rights asserted themselves.⁹³

By redrawing the limits of Federal jurisdiction more narrowly than the statutory limits provided by Congress, the Court has defined the extent to which it believes the federal courts should be available to vindicate constitutional and Federal claims. Congress need not accept this judgment of the Court; it has the constitutional power to define the jurisdictions of the federal courts.⁹⁴ Until it can be shown with greater certainty that state forums will give sufficient protection to federal rights, Congress should act to maintain the availability of the federal courts for vindication of those rights.

Congress should act to reverse *Stone v. Powell* by providing that any constitutional claim which can be raised on direct review also is cognizable by federal habeas corpus. Congress also should reverse *Francis* and *Davis*⁹⁵ by amending 42 U.S.C. §§ 2254 and 2255 to ensure that a habeas petition brought by a state or federal prisoner can be entertained despite procedural default in the trial court unless the prisoner has deliberately bypassed the appropriate procedures. Only the threat of habeas serves as a "necessary . . . incentive for trial and appellate courts throughout the land to conduct their proceedings in a manner consistent with established constitutional standards."⁹⁶

FOOTNOTES

¹ *The Supreme Court, 1975 Term*, 90 HARV. L. REV. 58, 221 (1976).

² As used herein, the "new federalism" is a shorthand expression for this trend in Supreme Court decisions of increasing solicitude for state interests. The term was used in a similar fashion in Note, *Municipal Bank-*

ruptcy, The Tenth Amendment and The New Federalism, 89 HARV. L. REV. 1871 (1976).

⁹ 96 S. Ct. 3037 (1976).

¹⁰ This pattern of Supreme Court decisions limiting the availability of the federal courts to vindicate federal claims extends well beyond the cases discussed in this Note.

Although the pattern is not uniform, it is clear enough: the Supreme Court is making it harder and harder to get a federal court to vindicate a broad range of federal constitutional and other legal rights. . . .

That there is indeed a pattern, and that it is more than accidental, seems clear from the scope and pervasiveness of the phenomenon. Class actions, standing to sue, federal review of constitutional claims in state criminal and civil proceedings, attorneys' fees, [the power of the federal court to fashion] meaningful remedies—in these and other contexts, the Supreme Court has sharply restricted the federal courts' power to protect basic rights. Instead, protection of these rights has been relegated to the state courts, few of which have shown themselves responsive. Society of American Law Teachers, Supreme Court denial of Citizen Access to Federal Courts to Challenge Unconstitutional or Other Unlawful Acts: The Record of the Burger Court 2-3 (October 1976). See also *Causes of Popular Dissatisfaction with the Administration of Justice: Hearings Before the Subcomm. on Const. Rights of the Senate Comm. on the Judiciary*, 94th Cong., 2d Sess. 64-68 (1976) (statement of Aryeh Neier and Burt Neuborne on behalf of the American Civil Liberties Union).

¹¹ Congressional power to define the jurisdiction of the federal courts derives from Article III, section 1 of the Constitution which states: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." The Constitutional Convention that met in 1787 wrestled with several plans dealing with the inferior federal courts before it settled on the plan embodied in Article III. During the debates, John Rutledge had urged that the state courts would be sufficient to secure national rights, while James Madison had argued for the mandatory establishment of the inferior federal courts. These two positions were compromised, leaving it to the discretion of Congress to establish inferior federal courts. "And it seems to be a necessary inference from the express decision that the creation of inferior federal courts was to rest in the discretion of Congress, that the scope of their jurisdiction, once created, was also to be discretionary." P. Bator, P. Mishkin, D. Shapiro, & H. Wechsler, Hart & Wechsler's The Federal Courts and The Federal System, 11, 12 (2d ed. 1973) [hereinafter cited as Hart & Wechsler]. See generally, Reddish & Woods, *Congressional Power to Control the Jurisdiction of Lower Federal Courts: A Critical Review and a New Synthesis*, 124 U. Pa. L. Rev. 45 (1975).

¹² Justice Brennan, dissenting in *Stone*, argued that the "interest balancing approach" used to justify the majority decision is "nothing less than an obvious usurpation of Congress' Article III power to delineate the jurisdiction of federal courts." 96 S. Ct. at 3061 (Brennan, J., dissenting).

¹³ 507 F.2d 93 (9th Cir. 1974). The court of appeals concluded that, although the exclusion of the evidence would serve no deterrent purpose with regard to police officers who were enforcing statutes in good faith, it would deter legislators from enacting unconstitutional statutes in the future. 507 F.2d at 98.

¹⁴ 96 S. Ct. at 3052 n.37.

¹⁵ *Id.*

¹⁶ The Court rejected the argument of the dissent that the decision concerned the scope of the habeas corpus statute and was

required as a matter of statutory interpretation. "Our decision today is not concerned with the scope of the habeas corpus statute as authority for litigating constitutional claims generally." *Id.*

¹⁷ *Younger v. Harris*, 401 U.S. 37 (1971); *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975); *Hicks v. Miranda*, 422 U.S. 332 (1975). See *Maraist, Federal Intervention in State Criminal Proceedings: Dombrowski, Younger, and Beyond*, 50 Tex. L. Rev. 1324 (1972); Note, *Federal Jurisdiction—The Abstention Doctrine As Amended by Hicks v. Miranda: A Legal Definition and Ominous Omissions*, 54 N.C. L. Rev. 247 (1976). See also text accompanying notes 32-37 *infra*.

¹⁸ The Court noted that its decision did not mean that the federal courts lack jurisdiction over fourth amendment claims. 96 S. Ct. at 3052 n. 37. Under 28 U.S.C. § 2254(a), federal jurisdiction is only available when the petitioner is held in state custody "in violation of the Constitution or laws or treaties of the United States." The existence of jurisdiction must then mean that where unconstitutionally-seized evidence has been admitted at trial, a violation of the Constitution has occurred. Thus, it is not the Constitution which requires that fourth amendment claims not be cognizable on habeas corpus review.

However, nothing in the habeas corpus statute indicates that the federal courts have the discretion to reject a category of cases over which they have jurisdiction. Thus, one can only conclude that the Court's decision was founded upon the policy considerations it put forward. See text accompanying notes 13-20 *infra*.

For further discussion of why the decision cannot be constitutionally based, see the dissent of Justice Brennan, 96 S. Ct. at 3057-61.

¹⁹ 367 U.S. 643 (1961).

²⁰ 96 S. Ct. at 3047 (citing *Mapp v. Ohio*, 367 U.S. 643, 658 (1961)). See also *Oaks, Studying the Exclusionary Rule in Search and Seizure*, 37 U. Chi. L. Rev. 665 (1970).

²¹ 96 S. Ct. at 3051.

²² *Id.* at 3049-50.

²³ *Id.* at 3050. For a discussion of the effect of *Stone v. Powell* on the exclusionary rule, see Note, *Fourth Amendment in the Balance—The Exclusionary Rule After Stone v. Powell*, 28 Baylor L. Rev. 611 (1976).

²⁴ 96 S. Ct. at 3052 n.37.

²⁵ *Id.* at 3051-52 n.35 (citations omitted). See Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 HARV. L. REV. 441, 509 (1963).

²⁶ 96 S. Ct. at 3050 n.31, (quoting *Schneekloth v. Bustamonte*, 412 U.S. 218, 259 (Powell, J., concurring)). See also *Friendly, Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. Chi. L. Rev. 142 (1970).

²⁷ "[T]he application of the [exclusionary] rule is limited to cases in which there has been both such a showing [that the state prisoner was denied an opportunity for a full and fair litigation of that claim] and a Fourth Amendment violation." 96 S. Ct. at 3052 n.37 (emphasis added).

²⁸ As used in this Note, "comity" refers to the discretionary deference of the federal courts to the state courts. Comity often appears in the guise of the minimization of federal interference with state processes.

²⁹ 96 S. Ct. at 3062-63 (Brennan, J., dissenting). Justice Brennan's dissent was joined by Justice Marshall. Justice White filed a separate dissent.

³⁰ 96 S. Ct. 1708 (1976).

³¹ 372 U.S. 391 (1963).

³² 96 S. Ct. at 1710.

³³ *Id.* at 1711.

³⁴ The Court referred to its decision in *Davis v. United States*, 411 U.S. 233 (1973), as presenting an analogous concern for the federal interest in the federal rules of criminal procedure. In *Davis*, the Court held that

a federal prisoner who failed to make a timely challenge to the racial composition of the grand jury that indicted him could not later seek collateral relief by federal habeas corpus pursuant to 28 U.S.C. § 2255. The Court based its decision on an interpretation of congressional intent under Rule 12(b)(2) of the Federal Rules of Criminal Procedure and 28 U.S.C. § 2255. Rule 12(b)(2) provides that a challenge to the constitutional validity of a grand jury must be made by motion before the trial. The Court held that Congress in enacting § 2255, which provides relief to federal prisoners held in violation of the Constitution, did not mean to undercut the effect of Rule 12(b)(2) by allowing federal prisoners to mount the same challenge prohibited by 12(b)(2) in a post-trial petition under § 2255. 411 U.S. at 242.

³⁵ 96 S. Ct. at 1711.

³⁶ The rationale underlying both *Davis* and *Francis* is that the right to raise federal constitutional claims on habeas corpus should be restricted to deter defendants from violating state and federal rules of criminal procedure. However, as the Court recognized in *Pay v. Nola*, deterrence is only an effective policy against actions done knowingly or intentionally. Prisoners who because of inexperience, poor counsel, or other reasons are unaware of their rights will not be deterred by the Court's new standard, but instead will be trapped in a needlessly "airtight system of forfeitures." 372 U.S. at 432.

³⁷ See Note, *Municipal Bankruptcy, The Tenth Amendment and The New Federalism*, 89 HARV. L. REV. 1871, 1874-1875 (1976).

³⁸ 42 U.S.C. § 1983, originally part of the Civil Rights Act of 1871, today reads: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

For historical background on § 1983, see *Monroe v. Pape*, 365 U.S. 167 (1961). See generally *McCormack, Federalism and Section 1983: Limitations on Judicial Enforcement of Constitutional Protections, Part I*, 60 U. Va. L. Rev. 1 (1974).

³⁹ 401 U.S. 37 (1971).

⁴⁰ *Id.* at 43-57.

⁴¹ *Id.* at 44.

⁴² 422 U.S. 332 (1975).

⁴³ 420 U.S. 592 (1975).

⁴⁴ 414 U.S. 488 (1974).

⁴⁵ *Id.* at 493-99.

⁴⁶ *Id.* at 502.

⁴⁷ 423 U.S. 362 (1976).

⁴⁸ *Id.* at 367-68. The district judge found five constitutional violations, but the Supreme Court was willing to concede, *arguendo*, that fourteen additional incidents, as to which the district court had made no finding, amounted to constitutional violations. *Id.* at 368.

⁴⁹ *COPPAR v. Tate*, 357 F. Supp. 1289, 1321-22 (E.D. Pa. 1973).

⁵⁰ 423 U.S. at 372-73.

⁵¹ *Id.* at 380. Thus, the Court explicitly brought *Rizzo* into the *Younger* line of abstention cases, also citing *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975).

⁵² 96 S. Ct. at 3051 n.35 (quoting Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 HARV. L. REV. 441, 509 (1963)).

⁵³ See, e.g., Cal. Const. art. 6, § 16.

⁵⁴ *Developments in the Law—Federal Habeas Corpus*, 83 HARV. L. REV. 1038, 1060 (1970).

⁵⁵ *Id.* at 1061; *Chevigny, Section 1983 Jurisdiction: A Reply*, 83 HARV. L. REV. 1352, 1357 (1970).

⁵⁶ During the debate over the establishment of the inferior federal courts, James Madison noted that an appeal from the state courts

to the Supreme Court may not, in many cases, be a remedy. "What was to be done after improper Verdicts in State tribunals obtained under the biased directions of a dependent Judge, or the local prejudices of an undirected jury?" Hart & Wechsler, *supra* note 5 at 11.

⁵¹ Alexander Hamilton, discussing in *The Federalist* why the adjudication of federal questions should not be left to the states, wrote:

The most discerning cannot foresee how far the prevalence of a local spirit may be found to disqualify the local tribunals for the jurisdiction of national causes; whilst every man may discover that courts constituted like those of some of the states would be improper channels of the judicial authority of the Union. State judges, holding their offices during pleasure, or from year to year, will be too little independent to be relied upon for an inflexible execution of the national laws. *The Federalist* No. 81, at 510 (B. Wright ed. 1961) (A. Hamilton).

⁵² During debate over the Civil Rights Act of 1971, Representative Coburn stated: The United States courts are further above mere local influence than the county courts; their judges can act with more independence, cannot be put under terror as local judges can; their sympathies are not so nearly identified with those of the vicinage: the jurors are taken from the State, and not the neighborhood: they will be able to rise above prejudices or bad passions or terror more easily. *Cong. Globe*, 42d Cong., 1st Sess. 460 (1871). See also *id.* at 653 (comments of Senator Osborn); *Monroe v. Pape*, 365 U.S. 167, 172-85 (1961).

⁵³ "[I]t is difficult to avoid concluding that federal courts are more likely to apply federal law sympathetically and understandingly than are state courts." ALI, *Study of the Division of Jurisdiction Between State and Federal Courts* 166 (1969). See also *Developments in the Law—Federal Habeas Corpus*, 83 Harv. L. Rev. 1038, 1060-63 (1970); Amsterdam, *Criminal Prosecutions Affecting Federally Guaranteed Civil Rights: Federal Removal and Habeas Corpus Jurisdiction to Abort State Court Trial*, 113 U. Pa. L. Rev. 793, 800-03 (1965); McCormick, *Federalism and Section 1983: Limitations on Judicial Enforcement of Constitutional Claims, Part II*, 60 U. Va. L. Rev. 250, 263-64 (1974); Chevigny, *Section 1983 Jurisdiction: A Reply*, 83 Harv. L. Rev. 1352, 1357-59 (1970); Mishkin, *The Federal "Question" in the District Courts*, 53 Colum. L. Rev. 157, 158 (1953).

⁵⁴ An amicus brief submitted to the Supreme Court by the American Civil Liberties Union in *Stone v. Powell* cited numerous cases in which fourth amendment claims were presented to state courts and rejected even though the applicable precedents made clear that the fourth amendment had been violated. Amicus Brief by American Civil Liberties Union at 18-21, *Stone v. Powell*, 96 S. Ct. 3037 (1976). Among the state cases which were reversed on fourth amendment grounds on federal habeas review in 1975 were *Patterson v. Lockhard*, 513 F.2d 579 (8th Cir. 1975); *Moffet v. Wainwright*, 512 F.2d 496 (5th Cir. 1975); *United States ex rel. Coleman v. Smith*, 395 F. Supp. 115 (W.D.N.Y. 1975); *O'Berry v. Wainwright*, 394 F. Supp. 591 (S.D. Fla. 1975); *Frankboner v. Robinson*, 391 F. Supp. 542 (W.D. Va. 1975).

⁵⁵ *In re Wright*, 65 Cal. 2d 652, 422 F.2d 998, 56 Cal. Rptr. 110 (1967). See also Reitz, *Federal Habeas Corpus: Post-conviction Remedy for State Prisoners*, 108 U. Pa. L. Rev. 461, 465 (1960) ("The narrow common-law writ of habeas corpus which the states incorporated into their jurisprudence is totally incapable of encompassing the modern issues of due process and equal protection.").

⁵⁶ Inadequate state processes are not restricted to the settling of habeas corpus. In *Rizzo v. Goode*, 423 U.S. 362 (1976), the Su-

preme Court prevented the district court from providing injunctive relief, saying that the "federal courts must be constantly mindful of the 'special delicacy of the adjustment to be preserved between federal equitable power and state administration of its own law.'" *Id.* at 378 (citations omitted).

Yet in its concern for the administration of state law, the Court left unremedied the state's failure to enforce federal constitutional rights. The district judge previously had found that the state remedies (such as Police Department complaint procedures, redress through the Commission on Human Relations or the Police Advisory Board of Philadelphia, criminal prosecution by the Philadelphia District Attorney, and private civil actions against the police) for the unconstitutional police activities at issue were inadequate or no longer in existence. *COPPAR v. Tate*, 357 F. Supp. 1289, 1292-94, 1319 (E.D. Pa. 1973).

In contrast, no one has ever denied the efficacy of the district court's remedy "or the fact that it effectuated a betterment in the system." 423 U.S. at 381 (Blackmun, J., dissenting). The federal courts have proven adept at meeting the problems posed by the changing nature of litigation from the traditional model of disputes between private parties over private rights to the conception of litigation as a method of carrying out public policy through vindication of constitutional and statutory rights. This facility of the federal courts is attributable partly to the liberal pleading, joinder, and class action provisions of the Federal Rules of Civil Procedure, and the flexibility of response to the problems accompanying such suits, with their concomitant size and complexity, by such means as the appointment of magistrates and masters. See Chayes, *The Role of the Judge in Public Law Litigation*, 89 Harv. L. Rev. 1281 (1976).

⁵⁷ See Reitz, *Federal Habeas Corpus: Post-conviction Remedy for State Prisoners*, 108 U. Pa. L. Rev. 461, 464 (1960).

⁵⁸ See 28 U.S.C. § 2254(d) (1970).

⁵⁹ *England v. Louisiana State Bd. of Medical Examiners*, 375 U.S. 411, 416 (1964). See also *Townsend v. Sain*, 372 U.S. 293, 312 (1963).

⁶⁰ As Professor Amsterdam described the situation:

These defendants (in civil rights cases) depend on the federal constitution. . . . Its guarantees turn on questions of fact. The defendants are tried in state courts and the facts are found against them. It was known that the facts would be found against them, and they are. If this was an end of factfinding, the Constitution would be worthless. Amsterdam, *supra* note 53, at 840.

⁶¹ See *Developments in the Law, supra* note 53, at 1061. This same argument applies to the consideration of the availability of federal court review of constitutional claims arising under § 1983. See Chevigny, *supra* note 53, at 1357-58.

⁶² Chevigny, *supra* note 53, at 1358.

⁶³ 96 S. Ct. at 3050 n. 31.

⁶⁴ After an increase in the number of habeas petitions in the 1960's, the number of petitions has dropped markedly in the last few years. The number of habeas corpus petitions from state prisoners increased from 1,020 in fiscal 1961 to 9,063 in fiscal 1970. Administrative Office of the U.S. Courts, *Annual Report of the Director* 135, table 17 (1971). Between 1971 and 1974 the number of habeas corpus petitions has declined from 8,372 to 7,626. In 1974, habeas corpus petitions from state prisoners represented less than 8% of the total civil filings in the United States district courts. Administrative Office of the U.S. Courts, *Annual Report of the Director*, 221-22, tables 49-50 (1974).

⁶⁵ Habeas corpus petitions from state pris-

oners constitute 8% of civil filings but require less than 1% of the average judge's time. Note, *Proposed Modification of Federal Habeas Corpus for State Prisoners—Reform or Revocation*, 61 Geo. L. J. 1221, 1246 (1973). See also Shapiro, *Federal Habeas Corpus: A Study in Massachusetts*, 87 Harv. L. Rev. 321, 367-72 (1973).

⁶⁶ Yet it is all too easy to overstate the strain that an expanded habeas jurisdiction and expanded federal constitutional rights put on the judicial system. Most of the petitions were quickly dismissed: less than 500 reached the hearing state, and most of those hearings lasted less than one day. Nor was the burden on the states staggering: many petitions do not even require a response; less than ten percent of the state convictions attacked had to be defended in a hearing, and so few prisoners were released that the burden of retrial must be small. *Developments in the Law, supra* note 53, at 1041 (footnotes omitted).

⁶⁷ 28 U.S.C. § 636 (Supp. IV 1974).

⁶⁸ 28 U.S.C. § 636(b)(3) (Supp. IV 1974). The performance of the magistrate's function was explicitly intended "to afford some degree of relief to district judges and their law clerks, who are presently burdened with burgeoning numbers of habeas corpus petitions and applications under 28 U.S.C. 2255." S. Rep. No. 371, 90th Cong., 1st Sess. 26 (1967).

⁶⁹ 28 U.S.C. § 2254(a) (1970).

⁷⁰ *Id.* § 2254(b).

⁷¹ *Id.* § 2254(d).

⁷² Evaluating the relationship between Congress and the Supreme Court on habeas corpus, Justice Frankfurter wrote:

Congress could have left the enforcement of federal constitutional rights governing the administration of criminal justice in the States exclusively to the State courts. These tribunals are under the same duty as the federal courts to respect rights under the United States Constitution. . . . It is not for us to determine whether this power should have been vested in the federal courts. . . . [The wisdom of such a modification in the law is for Congress to consider, particularly in view of the effect of the expanding concept of due process upon enforcement by the States of their criminal laws. It is for this Court to give fair effect to the habeas corpus jurisdiction as enacted by Congress. By giving the federal courts that jurisdiction, Congress has imbedded into federal legislation the historic function of habeas corpus adopted to reaching an enlarged area of claims. . . .

Congress has the power to distribute among the courts of the States and of the United States jurisdiction to determine federal claims. It has seen fit to give this Court power to review errors of federal law in State determinations, and in addition to give to the lower federal courts power to inquire into federal claims, by way of habeas corpus. . . . But it would be in disregard of what Congress has expressly required to deny State prisoners access to the federal courts. *Brown v. Allen*, 344 U.S. 443, 499-500, 508-10 (1953) (concurring opinion) (emphasis added).

⁷³ Senator Nelson (D. Wis.) commented during the last congressional term: In my view, the assertion of constitutional rights—and the existence of a federal forum to review those claims—is vitally important for the society, as well as for the petitioner. Our willingness to use scarce judicial resources in this way reflects again the high priority this society places on constitutional liberties and individual freedom. If this society no longer values the constitutional rights to the same degree, that judgment should be reflected by the representatives of the people—Congress—through a decision to restrict the habeas jurisdiction of the federal courts. Congress is also the only body which can address the rising caseload in the federal courts in a sys-

tematic way and make some basic judgments about how scarce judicial resources should be allocated. 121 Cong. Rec. 34695 (Oct. 1, 1976). Oct. 1, 1976).

⁷⁴ 96 S. Ct. at 3050 n.31.

⁷⁵ 96 S. Ct. at 1711.

⁷⁶ See Freund, *Symposium: Habeas Corpus—Proposal for Reform*, 9 UTAH L. REV. 18, 30 (1964).

⁷⁷ See 28 U.S.C. § 2254(d) (1970).

⁷⁸ See *id.* § 2254(a).

⁷⁹ *Fay v. Noia*, 372 U.S. 391, 424 (1963).

⁸⁰ 96 S. Ct. at 3050 n.31.

⁸¹ See 28 U.S.C. § 2254(b) (1970). See also Wright & Sofaer, *Federal Habeas Corpus for State Prisoners: The Allocation of Fact-Finding Responsibility*, 75 YALE L. J. 895, 903 (1966).

⁸² See 28 U.S.C. § 2254(a) (1970).

⁸³ See *id.* § 2254(d).

⁸⁴ U.S. CONST. art. III.

⁸⁵ Professor Freund has commented that friction between the federal and state courts "is largely a matter of psychology which is self-determining and self-correcting. It seems to me if this is seen as really a problem of internal federal judicial administration, there is no reason why state judges should feel offended that review is had by a district judge rather than by Supreme Court justices. If it would help any, one might think of the federal district judges sitting as delegates or masters for the Supreme Court." Freund, *Symposium: Habeas Corpus—Proposal for Reform*, 9 UTAH L. REV. 18, 30 (1964). See also Brown v. Allen, 344 U.S. 443, 510 (1953) (Frankfurter, J., concurring).

⁸⁶ 96 S. Ct. at 3039, 3052.

⁸⁷ See Note, *Federal Habeas Corpus for State Prisoners and the Fourth Amendment*, 52 N.C.L. REV. 633, 642 (1974).

⁸⁸ See text accompanying notes 32-37 *supra*, regarding Younger, Huffman, Hicks, O'Shea, and Francis.

⁸⁹ See text accompanying notes 41-45 *supra*, regarding Rizzo v. Goode.

⁹⁰ See, e.g., Warth v. Seldin, 422 U.S. 490, 508 n.18 (1975).

⁹¹ 96 S. Ct. at 3051 n.35.

⁹² See Section III *supra*.

⁹³ See Stone v. Powell, 96 S. Ct. 3037, 3071 (1976) (Brennan, J. dissenting); Rizzo v. Goode, 423 U.S. 362, 383-84, 387 (1976) (Blackmun, J. dissenting); Warth v. Seldin, 422 U.S. 490, 520 (1976) (Brennan, J. dissenting).

⁹⁴ See note 5 *supra*.

Congress demonstrated its concern with the continued availability of federal post-conviction remedies late in 1976. In April the Supreme Court had promulgated rules of practice and procedure for post-conviction relief under 28 U.S.C. §§ 2254, 2255. Following objections to the proposed rule by several Congressmen, eight amendments were passed which made it easier for habeas petitioners to get a federal hearing than would have been the case under the Court's proposed rules. Act of Sept. 28, 1976, Pub. L. No. 94-426, 90 Stat. 1334 (1976).

⁹⁵ See notes 24-30 *supra*, and accompanying text.

⁹⁶ *Disist v. United States*, 394, U.S. 244, 262-63 (1969) (Harlan, J., dissenting).

By Mr. DECONCINI (for himself, Mr. ALLEN, Mr. BAYH, and Mr. KENNEDY):

S. 1315. A bill to amend title 28, United States Code, to provide more effectively for bilingual proceedings in all district courts of the United States, and for other purposes; to the Committee on the Judiciary.

BILINGUAL COURTS ACT

Mr. DECONCINI. Mr. President, on behalf of myself and Senators KENNEDY, BAYH, and ALLEN, I am pleased to today

reintroduce the Bilingual Courts Act, which the Senate has passed in the two preceding Congresses on September 30, 1974 and July 14, 1975. This legislation will guarantee to every American who is not fluent in the English language the services of a competent interpreter in any criminal or civil proceeding in a Federal court. Our citizens of Spanish, Puerto Rican, Chinese, native American and other heritages who do not adequately understand English as well as our deaf citizens who must communicate by sign language are in effect denied real justice under the law without this guarantee.

The Bilingual Courts Act establishes this guarantee in its two major provisions. The first part of the bill sets standards, based on constitutional guarantees already enumerated by the courts, for use of interpreters in the Federal courts. In any criminal or civil case, when the judge determines that a defendant, a party or witness cannot understand English sufficiently well to comprehend the testimony, the judge shall order a translation of all proceedings for that person. In a criminal case, an oral simultaneous translation is required. In civil cases, where circumstances warrant, the judge has discretion to order consecutive or summary translation rather than simultaneous. At the judge's discretion, an electronic recording of the proceedings may be kept to verify the translation for the record. When an interpreter is required, the judge shall obtain the services of a local or nearby certified interpreter from a list kept by the district courts, or if none is available, another competent interpreter.

The second part of the act assigns to the administrative office of the courts the responsibility for implementation of the new interpreter rules. The office will identify competent interpreters for lists kept by the district courts, hire full or part-time interpreters for use in districts with high need, purchase necessary equipment, set fee schedules for interpreter services, and carry out other necessary functions. The act will result in the upgrading of the quality and quantity of interpreters in the Federal courts.

In the 93d Congress the Subcommittee on Improvements in Judicial Machinery conducted 2 days of hearings and received testimony in favor of the Bilingual Courts Act from civic leaders, lawyers, judges, persons involved in the administration of justice and from representatives of the administration. J. Stanley Pottinger, Assistant Attorney General for the Civil Rights Division of the Department of Justice, testified that:

The bilingual courts bill represents recognition that a person's ability to comprehend the language of the court is an indispensable element of equality and efficiency in the courts. The Justice Department endorses this legislation.

The Bilingual Courts Act is necessitated not only by a sense of fundamental fairness in our judicial system, but by the Constitution itself. It is mandated by the sixth amendment guarantees of the right to effective counsel and the right of confrontation. Only through the aid of simultaneous translation will the

party be able to communicate with his attorney to enable that attorney to effectively cross-examine those English-speaking witnesses, to test their credibility, their memory, and their accuracy of observation in the light of the defendant's version of the facts. Though case law on the subject is sparse, the U.S. Second Circuit Court of Appeals has held, in *U.S. ex rel Negron v. New York*, 434 F.2d 386 (2d Cir. 1970), that it is constitutionally required that a non-English speaking defendant be provided with a simultaneous translation of all courtroom proceedings.

The fifth amendment, providing that "no person * * * shall be deprived of life, liberty or property without due process of law", supports my belief that the Bilingual Courts Act should apply to both criminal and civil proceedings. Surely any legal proceeding that allows a party to an action to be deprived of life, liberty or property without first insuring that he fully understands what is happening at the trial lacks in basic and fundamental fairness and thus violates the due process clause.

The proposals contained in this legislation are certainly not novel. Article 2(a) of the Canadian Bill of Rights, adopted in 1960, guarantees every person the right to the assistance of an interpreter in any proceeding in which he is involved if he does not understand or speak the language in which the case is being heard. In addition, the Constitution of the State of New Mexico explicitly provides that in all criminal proceedings the defendant is entitled "to have the charge and testimony interpreted to him in a language that he understands".

Fundamental fairness, the integrity of the fact-finding process, the potency of our adversary system of justice and the Constitution demand the enactment of the Bilingual Courts Act.

Mr. President, the need is clear. The Senate has twice passed this legislation and I am confident that it will do so again in the very near future. I would hope that this year the House would see its way clear to hold hearings and then favorably act on this vitally important legislation.

I ask unanimous consent, Mr. President, to have the text of the bill printed in the RECORD.

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

S. 1315

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 "Bilingual Courts Act".

CONDUCT OF BILINGUAL PROCEEDINGS

SEC. 2. (a) Chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1827. Bilingual proceedings

"(a) (1) In any criminal action, whenever the judge determines, on his own motion or on the motion of a party to the proceedings, that (A) the defendant does not speak and understand the English language with a facility sufficient for him to comprehend either the proceedings or the testimony, or (B) in the course of such proceedings, testimony may be presented by any person who does not so speak and understand the English

language, the court, in all further proceedings in that action, including arraignment, hearings, and trial, shall order an oral simultaneous translation of the proceedings, or an oral simultaneous translation of that testimony, to be furnished by an interpreter in accordance with the provisions of subsection (b) of this section.

"(2) In any civil action, whenever the judge determines on his own motion or on the motion of a party to the proceedings, that (A) a party does not speak and understand the English language with a facility sufficient for him to comprehend either the proceedings or the testimony, or (B) in the course of such proceedings, testimony may be presented by any person who does not so speak and understand the English language, in all further proceedings in that action, including hearings and trial, the court shall order an oral translation of the proceedings to be made by an interpreter in accordance with the provisions of subsection (b) of this section. The judge shall also determine, in the interests of justice, whether the translation shall be simultaneous, consecutive, or summary in nature, except that if a party requests a simultaneous translation, the court shall give the request special consideration.

"(3) In any criminal or civil action, the judge, on his own motion or on the motion of a party to the proceedings, may order all or part of the non-English testimony and the translation thereof to be electronically recorded for use in verification of the official transcript of the proceedings.

"(4) The defendant in any criminal action, or a party in any civil action, who is entitled to a translation required under this section, may waive the translation in whole or in part. The waiver must be expressly made by the defendant or party upon the record and approved by his attorney and by the judge. An interpreter shall be used to explain the nature and effect of the waiver to the non-English speaking defendant or party.

"(5) The term 'judge' as used in this section shall include a United States magistrate and a referee in bankruptcy.

"(b) (1) The district court in each judicial district shall maintain on file in the office of the clerk of the court a list of all persons in that district who have been certified as interpreters by the Director of the Administrative Office of the United States Courts under section 604(a) (12) of this title.

"(2) In any action where the services of an interpreter are required to be utilized under this section, the court shall obtain the services of a certified interpreter from within the judicial district, except that, where there are no certified interpreters in the judicial district, the court, with the assistance of the Administrative Office of the United States Courts, shall determine the availability of and utilize the services of certified interpreters from nearby districts. Where no certified interpreter is available from a nearby district, the court shall obtain the services of an otherwise competent interpreter."

(b) The analysis of chapter 119, of title 28, United States Code, is amended by adding at the end thereof the following new item: "1827. Bilingual proceedings."

FACILITIES AND PERSONNEL FOR BILINGUAL PROCEEDINGS

Sec. 3. Section 604(a) of title 28, United States Code, is amended—

(1) by redesignating paragraph (12) as paragraph (13); and

(2) by inserting immediately below paragraph (11) the following new paragraph:

"(12) Under section 1827 of this title, (A) prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in bilingual proceedings, and in so doing shall consider the education, training, and experience of those persons; (B) maintain an updated master list of all interpreters certified by him, and report annually on the frequency of requests for, and the use and effectiveness of interpreters in bilingual proceedings pursuant to the provisions of this Act; (C) provide, or make readily available to each district court, appropriate equipment and facilities for the translation of non-English languages; (D) prescribe, from time to time, a schedule of reasonable fees for services rendered by such interpreters and, in those districts where the Director considers it advisable based on the need for interpreters, authorize the employment by the court of certified full-time or part-time interpreters; and (E) pay out of moneys appropriated to the judiciary for the conduct of bilingual proceedings the amount of interpreter's fees or costs of recording which may accrue in a particular proceeding, unless the court, in its discretion, directs that all or part of those fees or costs incurred in a civil proceeding in which an interpreter is utilized pursuant to section 1827(a) (2) of this title be apportioned between the parties or allowed as costs in the action;"

ing, and experience of those persons; (B) maintain an updated master list of all interpreters certified by him, and report annually on the frequency of requests for, and the use and effectiveness of interpreters in bilingual proceedings pursuant to the provisions of this Act; (C) provide, or make readily available to each district court, appropriate equipment and facilities for the translation of non-English languages; (D) prescribe, from time to time, a schedule of reasonable fees for services rendered by such interpreters and, in those districts where the Director considers it advisable based on the need for interpreters, authorize the employment by the court of certified full-time or part-time interpreters; and (E) pay out of moneys appropriated to the judiciary for the conduct of bilingual proceedings the amount of interpreter's fees or costs of recording which may accrue in a particular proceeding, unless the court, in its discretion, directs that all or part of those fees or costs incurred in a civil proceeding in which an interpreter is utilized pursuant to section 1827(a) (2) of this title be apportioned between the parties or allowed as costs in the action;"

APPROPRIATIONS

SEC. 4. There are hereby authorized to be appropriated to the Federal judiciary such sums as may be necessary to carry out the amendments made by this Act.

EFFECTIVE DATE

SEC. 5. The amendment made by this Act shall take effect on the date which is six months after the date of enactment of this Act.

By Mr. CULVER:

S. 1316. A bill to authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973: to the Committee on Environment and Public Works.

Mr. CULVER. Mr. President, today I am taking this opportunity to introduce legislation authorizing continued Federal assistance under section 6(i) of the 1973 Endangered Species Act for State programs protecting endangered or threatened species of fish, wildlife, and plants.

When Congress enacted this important act in 1973, it was apparent that the participation of the States would be essential to the success of our national efforts to preserve fish and wildlife from extinction. Accordingly, section 6(i) of the Endangered Species Act provides funding for cooperative Federal-State agreements that maintain active programs for the conservation of threatened or endangered species. To assist States with the development of appropriate programs, \$10 million was authorized under this provision through fiscal year 1977 for allocation by the Departments of the Interior and of Commerce. The Federal share of the costs of these intergovernmental projects may be as high as 75 percent.

To date, 17 States have signed cooperative agreements with the Interior Department under this section of the law and are therefore eligible for Federal assistance. The Department has helped these States to develop and implement recovery programs for over 30 endangered species, including the bald eagle, the California condor, and the American peregrine falcon. It is anticipated that another 13 States will soon participate in this arrangement.

Mr. President, I believe this cooperative effort is vitally important and provides the necessary assistance that many States have needed to enhance their fish and wildlife protection projects. Funding for section 6(i) of the Endangered Species Act expires at the end of this fiscal year, and the legislation which I am introducing would reauthorize financial aid for these State activities under section 6(i) through fiscal year 1980. A total of \$3 million would be authorized for each fiscal year.

The Senate Subcommittee on Resource Protection will conduct a hearing on this bill on April 21, 1977, and I am confident we will be able to give this important measure our full and expeditious consideration.

Mr. President, I know that several Senators are concerned about various developments regarding the implementation of the Endangered Species Act. As chairman of the Resource Protection Subcommittee, I hope my colleagues will refrain from using legislation reauthorizing section 6(i) as a vehicle for addressing their particular concerns about other aspects of the act. I believe these broader issues should be examined closely, and the subcommittee will hold comprehensive oversight hearings on the implementation of the endangered species program later this summer.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 1316

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6(i) of the Endangered Species Act of 1973 (16 U.S.C. 1535(1)) is amended to read as follows:

"(1) APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated not to exceed the following sums: "(1) \$10,000,000 through the period ending September 30, 1977.

"(2) \$3,000,000 for each of the fiscal years ending September 30, 1978; September 30, 1979 and September 30, 1980."

By Mr. MATSUNAGA:

S. 1318. A bill to permit the State of Hawaii to use the proceeds from the sale, lease, or other disposition of certain real property for any public purpose; to the Committee on Armed Services.

SAND ISLAND

Mr. MATSUNAGA. Mr. President, today I am introducing proposed legislation, identical to H.R. 12003 and H.R. 1895, my bills of the 93d and 94th Congresses, respectively, which seeks to correct an oversight in the law that currently prevents the State of Hawaii from developing 202 acres of prime State-owned land on Sand Island for much-needed industrial purposes.

One of Hawaii's most pressing problems is the shortage of industrial land on Oahu, the State's most populous island. An ideal location for the expansion of industrial activity within the city of Honolulu is Sand Island, which forms the protective seaward perimeter of Honolulu Harbor. Because of its proximity to

the State's business and industrial centers, Sand Island, and particularly the above-mentioned real property which my bill addresses, is greatly needed for the continued development of the State's transportation and commerce. Anticipated uses of the land include improved maritime facilities, bulk fuel storage for Honolulu International Airport, one of the world's busiest, and expansion of Hawaii's most successful foreign trade zone.

However, an oversight in the applicable statutes currently prevents the State from utilizing revenues from the lease or sale of the above-mentioned 202 acres for purposes other than the support of the University of Hawaii. The land, formerly part of the Sand Island Military Reservation, was transferred to the then-Territory of Hawaii by Executive Order No. 10837 in August 1959, with the above stipulation regarding the University of Hawaii. That condition was set forth in Public Law 85-756, signed by President Eisenhower on August 25, 1958, which authorized the President to convey the 202 acres to the Territory of Hawaii by executive order, an action which he carried out a year later.

Since the passage of the legislation and the subsequent executive order, Hawaii has become a State, and the University of Hawaii is now funded directly from the State's general fund. However, the restriction on the use of the 202 acres at Sand Island has not been lifted, an action which requires amendatory legislation.

Through the passage of my bill, Congress would eliminate this outdated restriction on the use of the revenues received from the land, and would give Hawaii the flexibility to use the 202 acres on Sand Island for any public purpose. I emphasize that passage of the legislation would not be to the detriment of the University of Hawaii, the funding of which is now provided directly by the State.

Previous replies from the Department of Defense and the Department of the Interior to requests for executive comments on my previous bills have specified no objections to the passage of this legislation, and I have no reason to believe that the situation has been altered since then. Accordingly, I respectfully request that the appropriate committee or committees and the full Senate undertake the expeditious passage of this corrective and necessary legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1318

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding section 4(a) of the Act entitled "An Act to provide for the transfer of title to certain land at Sand Island, Territory of Hawaii, to the Territory of Hawaii, and for other purposes", approved August 25, 1958, the State of Hawaii may use for any public purpose the revenue or proceeds from the sale, lease, or other disposition of the lands held by it under a transfer made by Executive Order Numbered 10833 under such Act on August 25, 1959.

CXXIII—715—Part 10

By Mr. MATSUNAGA:

S. 1319. A bill for the relief of certain natives of the Philippines who served in the U.S. Armed Forces during World War II; to the Committee on the Judiciary.

CITIZENSHIP FOR FILIPINO VETERANS OF WORLD WAR II

Mr. MATSUNAGA. Mr. President, I am introducing today legislation which would grant immediate U.S. citizenship to certain Filipino veterans who fought with the U.S. Armed Forces in World War II.

Immediately following the attacks on Pearl Harbor and Manila by the Japanese Imperial Air Force in December 1941, many natives of the Philippines volunteered for service in the U.S. armed services. They fought with great valor and courage and their enlistment was welcomed by the Government of the United States. Indeed, the U.S. Government made strenuous efforts to recruit Filipinos for service in our Armed Forces.

As an inducement to enlistment, many recruiters assured the Filipinos that they would be eligible for citizenship if they served honorably in the Armed Forces during World War II. In 1942, the Second War Powers Act was signed into law. Among other things, the act waived some of the normal naturalization requirements for aliens who, like the Filipinos, fought with the U.S. forces overseas.

Many Filipino veterans did become American citizens before the Second War Powers Act expired in 1946. Regrettably, however, others were denied citizenship either because they were unaware of the provisions of the Second War Powers Act or because they were discouraged by officials of the U.S. Immigration and Naturalization Service who, allegedly, stopped processing citizenship applications before the Second War Powers Act expired in 1946. In recent years, a number of these veterans have entered the United States on temporary visas and they are seeking U.S. citizenship on the basis of their honorable military service during World War II. Sixty-eight of them, facing deportation, filed suit in the U.S. district court in San Francisco to block the deportation order. Ruling in their favor, Judge Charles B. Renfrew said:

The court cannot ignore the heroic sacrifices made by these and other Filipinos during World War II. Their courage and valor at Corregidor, during the Bataan Death March, and throughout the Japanese occupation of the Philippine Islands, stand as the finest examples of the dedication of free men opposing and resisting tyranny."

An appeal, filed by the U.S. Department of Justice, is still pending in the Ninth U.S. Court of Appeals.

The Filipino veterans were somewhat disconcerted by the Ford administration's willingness to appeal the decision, and to pursue deportation. After all, as one of them pointed out, the United States had recently admitted more than 150,000 Vietnamese refugees and was then reviewing, on a case by case basis, the cases of American draft evaders and deserters. It is their hope that President Carter will be more sympathetic to the pleas of veterans who "fought for freedom and the American flag."

My bill is consistent with the district

court decision in that it would allow Filipino veterans who are already in this country on visitor visas to have their status adjusted to that of permanent resident. In addition, the bill would waive the residency requirements of the Immigration and Nationality Act and allow those veterans and other Filipino veterans who served for at least 3 years in the U.S. Armed Forces during World War II, and were honorably discharged, to become U.S. citizens immediately if they are otherwise qualified for citizenship. Finally, the bill would grant immediate U.S. citizenship to the spouses and dependent children of such veterans.

I strongly believe that enactment of my bill would correct a grave injustice done to Filipino veterans at the end of World War II, and I urge that the measure be given early favorable consideration.

By Mr. STONE:

S. 1320. A bill to amend the Federal Election Campaign Act of 1971 with respect to the filing of reports with State officers; to the Committee on Rules and Administration.

Mr. STONE. Mr. President, today I am reintroducing a bill similar to one that I introduced last year (S. 3780), to amend section 316 (2 U.S.C. 439) of the Federal Election Campaign Act of 1971, which places certain responsibilities with regard to the public availability of Federal campaign finance reports, on the State secretaries of state. This section provides:

(a) "Appropriate State" defined. A copy of each statement required to be filed with the Commission by this chapter shall be filed with the Secretary of State (or, if there is no office of Secretary of State, the equivalent State officer) of the appropriate State. For purposes of this subsection, the term "appropriate State" means—

(1) for reports relating to expenditures and contributions in connection with the campaign for nomination for election, or election, of a candidate to the office of President or Vice President of the United States, each State in which an expenditure is made by him or on his behalf, and

(2) for reports relating to expenditures and contributions in connection with the campaign for nomination for election, or election, of a candidate to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, the State in which he seeks election.

(b) Duties of State Officers. It shall be the duty of the Secretary of State, or the equivalent State officer, under subsection (a) of this section—

(1) to receive and maintain in an orderly manner all reports and statements required by this chapter to be filed with him;

(2) to preserve such reports and statements for a period of 10 years from date of receipt, except that reports and statements relating solely to candidates for the House of Representatives shall be preserved for only 5 years from the date of receipt;

(3) to make the reports and statements filed with him available for public inspection and copying during regular office hours, commencing as soon as practicable but not later than the end of the day during which it was received, and to permit copying of any such report or statement by hand or by duplicating machine, requested by any person, at the expense of such person; and

(4) to compile and maintain a current list

of all statements or parts of statements pertaining to each candidate.

As a former secretary of state of Florida, I am very aware of the problems that State officials have encountered with the State filing requirements. A number of these difficulties surfaced as long as 4 years ago when Francis Valeo, then Secretary of the Senate, wrote to 34 secretaries of state, pursuant to his authority as supervisory officer of Senate elections. The purpose of his letter was to determine the degree of compliance and the extent of the problems that State officials had encountered in administering the act. Seventeen States responded and the replies were printed in "Federal Campaign Disclosure at the State Level With Respect to Elections for the U.S. Senate in 1972."

Two problems that were mentioned frequently were the long period of time that the States were required to preserve the reports—10 years, in most cases—which was creating storage problems, and the expense involved in complying with the section.

Mr. Valeo testified about these difficulties before the Subcommittee on Privileges and Elections of the Senate Rules Committee in 1973, during hearings which the subcommittee held on proposed amendments to the Federal Election Campaign Act. While extensive amendments were made to the act, Federal Election Campaign Act Amendments of 1974, the section relating to the filing of reports with Secretaries of State remains essentially unchanged.

In October 1975, I wrote to all State secretaries of state asking their comments on section 316, with particular emphasis on the report preservation requirement. Thirty-seven States responded. Of these, 33 States expressed the desire to see the report preservation time shortened. Other problems which were mentioned were the need for Federal assistance, and the irrelevance to any one State of much of the documents filed in the States by multicandidate committees.

Shortly after I wrote to State officials, the Federal Election Commission sent a detailed questionnaire to each secretary of state or equivalent State official. As of March 2, 1976, 47 States and the District of Columbia had responded. The results of this survey support the conclusions which I have drawn from my own informal survey and they form the basis for the legislation that I am introducing today.

The first subsection of my bill allows the States more flexibility in determining where the Federal election campaign reports are filed. The FEC survey revealed that 14 of the 47 jurisdictions have one office receiving Federal election reports and another receiving State reports. The comments that I received from State officials indicate that many would like to be able to keep all of their campaign reports—Federal and State—in the office that they had established to receive State reports. However, the way the law is worded, Federal reports must be filed in the office of secretary of state or if there is no secretary of state, with the equivalent State official. This wording has

created problems for a number of States which have a secretary of state but which would like to be able to send the Federal reports to the separate board or commission that they set up to handle State reports. In their survey report the FEC recommended that the States be given the discretion of selecting the location of the State office where these reports should be filed and maintained. My bill would allow the Governor of each State to designate the proper office in which to file Federal campaign reports. I note that the 1976 annual report of the FEC recommends this procedure. It is not the intention of the bill to take away from any State secretary of state the duties under the Federal law if that office is the proper one to perform these functions. However, in those States, such as Kentucky, in which the secretary of state's office would be duplicating a job already performed for State reports by a separate State commission, the Governor could designate the commission as the office in which the Federal reports are to be filed. This makes sense administratively, and it also would make public review easier as all election campaign reports would be available at the same location.

The problem of storing all of the Federal reports that have to be filed with the States is one which nearly all the States have mentioned. The present law requires the Commission to preserve reports and statements filed with it for 10 years. My bill would not change this requirement. What the bill would change is the unnecessarily long period of time during which the States are required to preserve their duplicate copies. Currently all reports and statements must be preserved by the States for 10 years, with the exception of reports relating to candidates for election to the House of Representatives, which must be kept for 5 years. Given the fact that the statute of limitations on prosecutions has been shortened to 3 years and that the FEC must preserve all of the reports for 10 years, there is little reason not to allow the States more leeway in this area. To quote from the recommendations at the end of the FEC survey report (p. 13):

The overwhelming sentiment of most state elections offices was that the requirements for storage of federal reports was much too long. Many of the suggestions seemed to concentrate on retaining records for the term of the office sought or for shortening the Senate record retention period from 10 to 5 years. As a number of State officials have suggested, the Commission could then become the sole repository of these reports after these new time periods elapse.

The 1976 FEC annual report also recommends that the preservation times be shortened.

On the basis of my communications with the secretaries of state and the latest FEC recommendations, the bill shortens to 3 years the time that reports and statements relating to candidates for the House must be preserved. Reports and statements pertaining to Presidential and Vice Presidential candidates may be destroyed after 5 years from the date of receipt. Senate candidates' statements and reports may be destroyed after 7

years. Reports and statements would still be available from the preceding election, which was a matter of concern to a number of States which responded to my proposal for a 5-year retention period for Senate and Presidential candidates. Let me stress that this provision is permissive in the sense that if any State feels that there will be a demand for these records beyond the 7-, 5-, or 3-year period, it may keep them beyond that time. A State is not required to destroy the records, but after 7, 5, or 3 years a State will be free to destroy or retain the reports, as it sees fit.

The bill also specifically allows the States to microfilm the reports and destroy the originals as soon as they are microfilmed. The microfilmed record is then subject to the 7-, 5- or 3-year retention requirement. Twenty-eight States which responded to the FEC survey indicated that they had access to microfilm or microfiche equipment but only two States use it for their Federal reports. Many States are uncertain as to whether the statute allows them to microfilm and whether or not they can then destroy the originals. My bill would eliminate any uncertainty on this question. Allowing the States to microfilm the reports would alleviate their storage problem to a large extent.

Reports filed by multicandidate committees make up the bulk of the papers filed in the States. The FEC survey found that in 29 of the States that responded, 60 percent or more of the reports on file came from national, multicandidate committees. The FEC report concludes (p. 11):

Most states felt that there was little, if any, interest in multi-candidate committee reports in their states. This relative lack of interest coupled with the almost two to one ratio of multi-candidate to within state reports that have to be received, processed and stored prompted a number of states to comment that the benefits of public access to these multicandidate reports were not worth the cost of maintaining processing, and storing them.

One of the regulations which the FEC proposed last year and which became effective April 13, 1977 allows a multicandidate committee to file reports relating to contributions to, or expenditures on behalf of, Presidential and Vice Presidential candidates only with the Secretary of State in the State in which the recipient and contributing committees have their headquarters. As the explanation accompanying the proposed regulation stated:

This prevents committees which make one contribution to a Presidential candidate from having to file in every state in which the Presidential candidate files, which would serve no public purpose.

This regulation will alleviate some of the burden of multicandidate committee reports. However, the States will still receive the voluminous reports of committees which contribute to other Federal candidates even though only one or two pages may relate to that State. Many States have expressed the opinion that these reports should be filed only at the FEC as there is little or no interest in them at the State level. But this may be

because the importance of these reports is not yet understood by the press and others who are interested in a candidate's financial support. Subsection (c) of my bill does not change the site of the filings, but it does give the States the option to sort through the reports and throw away any portions which do not relate to expenditures made in, or to candidates from, that State.

The bill authorizes an appropriation of \$500,000 to reimburse the States for their expenses in administering section 316 during the next nonelection/election year cycle. To quote once again from the conclusions reached in the FEC survey (p. 12):

It should be noted that the responsibility for receiving, processing, making available for public inspection and storing these federal reports does, in fact, impose a heavy burden on most state elections offices. For the most part, state election officers have limited staff, money and space with which to perform their normal state elections functions and these federal reporting requirements present an additional burden on already overworked offices, especially during an election period.

After I introduced S. 3780 last year I wrote to the secretaries of state to find out what their expenses were in administering the reporting requirements. Their annual costs ranged from a high of \$17,500 to a low of \$90. Some States, such as Michigan and Pennsylvania have a full-time employee working on Federal election reports. Other expenses include filing cabinets, storage space, and miscellaneous office supplies. I think the \$500,000 authorized in the bill would easily cover all expenses incurred by the States during a 2-year period. If we are serious about giving the public easy access to campaign reporting information, then we should be willing to help the States with the financial burden which it imposes on them.

Finally the bill makes a technical clarification, the need for which was pointed out in 1973 by Mr. Valeo, by adding the words "and reports" or "and statements" at various places in the section.

The Federal Election Commission and, in particular, their Clearinghouse on Election Administration which conducted the survey to which I have been referring, have been very responsive to the problems raised by State election officials. I know that they are doing everything possible within the framework of the act, to ease the burden on the States. But I think they have done as much as they can do without action from Congress. I believe that my bill will solve many of the problems that the States are facing in administering this act.

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

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

S. 1320

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 316(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 439(a)) is amended—

(1) by inserting the words "and report" after the word "statement", and

(2) by striking out "the Secretary of State (or, if there is no office of Secretary of State, the equivalent State officer)" and inserting in lieu thereof "the Secretary of State (or the equivalent State officer), or if different, the officer of the government of each State who is charged by State law with maintaining State election campaign reports, to be designated by the Governor of that State".

(b) Section 316(a)(1) of such Act (2 U.S.C. 439(a)(1)) is amended by inserting the words "statements and" before the word "reports".

(c) Section 316(a)(2) of such Act (2 U.S.C. 439(a)(2)) is amended by inserting the words "statements and" before the word "reports".

(d) Section 316(b) of such Act (2 U.S.C. 439(b)) is amended—

(1) by striking out "the Secretary of State, or the equivalent State officer," and inserting in lieu thereof the following: "the Secretary of State (or equivalent State officer), or the officer designated",

(2) by striking out paragraph (2) thereof and inserting in lieu thereof the following:

"(2) to preserve such reports and statements (either in the original filed form or in a facsimile copy by microfilm or otherwise) for a period of 7 years from date of receipt for candidates for the Senate, for a period of 5 years from date of receipt for candidates for the President and Vice President and for a period of 3 years from date of receipt for candidates for the House of Representatives"; and

(3) by striking out paragraph (4) thereof and inserting in lieu thereof the following:

"(4) to compile and maintain a current list of all statements and reports, or parts thereof, pertaining to each candidate."

(e) Section 316 of such Act (2 U.S.C. 439) is amended by adding at the end thereof the following new subsection:

"(c) If a report filed with the State officer under subsection (a)(2) relates to candidates for election from other States, the duty of the State officer under subsection (b) to preserve and make the report available extends only to those portions of that report which relate to candidates for election in that State."

(f) There is authorized to be appropriated to the Federal Election Commission the sum of \$500,000 for use by the Commission in reimbursing State offices during 1977 and 1978 with whom statements are filed under section 316 of the Federal Election Campaign Act of 1971, for expenses incurred in carrying out their duties under that section. The Commission shall pay a reimbursement to a State upon application made therefor by the Governor and upon proof satisfactory to the Commission that the amount claimed as reimbursement accurately reflects additional cost imposed on the State government as a result of such section 316.

By Mr. EAGLETON:

S. 1321. A bill to extend the deadline for transmittal of U.S. Commission on Civil Rights report on unreasonable discrimination based on age in programs and activities receiving Federal financial assistance, and for other purposes; to the Committee on Human Resources.

Mr. EAGLETON. Mr. President, today I am introducing a bill to authorize an extension of the filing of the U.S. Commission on Civil Rights' report to Congress on unreasonable discrimination based on age in programs and activities receiving Federal financial assistance.

The Older Americans Act of 1975 mandated a study to be conducted by the Commission and to be submitted to Congress not later than 18 months after the enactment date of November 28, 1975; thus, the report would have been due in June 1977. However, appropriations to

support the Commission's study were not made available until May 28, 1976, and the project director was not hired until July 1976. Given the 6 months' delay in actual startup time for the study, I believe it is necessary to extend the deadline for the final report by 6 months.

Mr. President, there is strong indication of widespread discrimination against the aged in many of the Federal programs providing such basic necessities as employment, housing, community and health services, and transportation. Evidence of age discrimination as it relates to both hiring of older workers and mandatory retirement can be shown by the increasing number of court cases in which age discrimination is being charged. In health care programs conducted at community and family health centers, only 6 percent of the total registrants are 65 or older despite the fact that these older persons have health care needs perhaps three times greater than those of the young registrants in these programs. Only 2 percent of persons receiving rehabilitation services are 65 or older; and only 8 percent of 25 percent of social services funds expended under the Social Security Act for adult programs are spent on older persons.

This litany of discrimination against the aged is extensive but, as yet, we have no documentary evidence on which to base Federal regulations to deal with the problem. This is the goal of the study to be conducted by the U.S. Commission on Civil Rights.

Mr. President, given the delay in funding, and the extremely broad scope of the study, I urge that Congress grant this modest extension.

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

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

S. 1321

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 307(d) of the Age Discrimination Act of 1975 (42 U.S.C. 6106(d)) is amended—

(1) by striking out "eighteen months" and inserting in lieu thereof "two years"; and

(2) by adding at the end thereof the following new sentence: "The Commission is authorized to provide, upon request, information and technical assistance regarding its findings and recommendations to Congress, to the President, and to the heads of Federal departments and agencies for a 90-day period following the transmittal of its report."

By Mr. LONG (for himself, Mr. MAGNUSON, Mr. BAYH, and Mr. CASE):

S. 1324. A bill to amend the Regional Rail Reorganization Act of 1973 to require ConRail to make premium payments under certain medical and life insurance policies, to provide that ConRail shall be entitled to a loan under section 211(h) of such act in an amount required for such premium payments, and to provide that such premium payments shall be deemed to be expenses of administration of the respective railroads in reorganization; to the Committee on Commerce, Science, and Transportation.

Mr. LONG. Mr. President, I am introducing an amendment to the Regional Rail Reorganization Act that is designed to correct a problem that has recently arisen with respect to the life insurance coverage of certain retired noncontract employees of the railroads in reorganization. Last year, in Public Law 94-555, the Congress provided that these benefits of retired noncontract railroad workers should be provided for by the so-called "211(h) program." As many of my colleagues are aware, the 211(h) program is a loan guarantee program designed to allow payment of certain important benefits to people who have been affected by the reorganization of the northeast railroad system now rather than having to wait for the various reorganization courts to settle the affairs of the estates of the bankrupt rail carriers. Many of the people eligible for this sort of loan would otherwise have to suffer while they were denied such things as life insurance coverage, pensions, and so forth. The U.S. Railway Association guarantees a loan to ConRail, which in turn pays the eligible recipient the amount owed to him or her by the estate of the bankrupt rail carrier, acting as agent. The amount of the loan is ultimately paid back by the estate.

Unfortunately, with respect to the particular benefits in question here—life insurance coverage for retirees—the reorganization court of one of the railroads in reorganization has ruled that the benefit, is not an expense of administration. Under the existing wording of section 211, this means that ConRail is not eligible for the loan that is needed. The amendment I am introducing will correct this by mandating both that the loan should be made and that it should be an expense of administration, thus assuring repayment. This will treat these benefits in the same manner as we have treated pensions and other categories of section 211 benefits.

By Mr. PEARSON:

S. 1325. A bill to amend section 406(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1376) to provide explicit statutory authority for the payment of "flow-through" subsidy pursuant to an experimental program administered by the Civil Aeronautics Board during the period August 1, 1973, through July 31, 1975; to the Committee on Commerce, Science, and Transportation.

Mr. PEARSON. Mr. President, I introduce for appropriate reference a bill to amend section 406(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1376) to provide explicit statutory authority for flow-through subsidy payments that were made pursuant to an experimental local air service program administered by the Civil Aeronautics Board from August 1, 1973, through July 31, 1975.

Mr. President, during the 2-year period beginning August 1, 1973, the CAB conducted an experimental local air service program in cooperation with Frontier Airlines, a local service air carrier based in Denver, Colo., and with Air Midwest, a Kansas-based commuter air carrier that subsequently has been certificated by the CAB as a local service airline. Under the terms of the experiment, part of the sub-

sidy that would be paid to Frontier Airlines for service to selected points was transmitted through Frontier to Air Midwest in return for scheduled air services performed by Air Midwest at those selected points on Frontier's certificate of public convenience and necessity. This experiment, called the flow-through experiment, was approved by the CAB in CAB Order 74-1-78.

Subsequently, the U.S. Court of Appeals for the District of Columbia Circuit invalidated the "flow through" experiment and vacated the CAB order which authorized Air Midwest to perform Frontier's service responsibilities in return for some subsidy payment. (*Air Line Pilot's Association, International v. Civil Aeronautics Board*, 515 F. 2d 1010 (1975)). The court simply found that the Board lacked explicit authority under section 406 of the Federal Aviation Act of 1958 to conduct the experiment.

Unfortunately, the General Accounting Office has found that the CAB is obligated, under the Federal Claims Collection Act of 1966 (31 U.S.C. 951, et seq.), and the regulations adopted thereunder (4 C.F.R. Parts 101-105), to see restitution for all payments made to Frontier for the beneficial use of Air Midwest, the carrier which actually provided the service, pursuant to the "flow through" experiment.

The mechanical application of the Federal Claims Collection Act, in this case, would result in a gross inequity and injustice to the carriers who, in good faith, participated in the Board's experiment to develop improved ways and means to provide small community air service at reduced cost to the taxpayers.

The amount of subsidy payment made to the carriers during the course of the experiment is \$240,172, plus an amount withheld by the Board—but actually earned by the carriers—totaling about \$22,040.

In an official opinion issued November 24, 1976, the GAO has concluded that the CAB must demand repayment in full of those amounts earned by the carriers for services rendered. The GAO opinion further states that, under existing law, the Board is not empowered to compromise the claim.

Mr. President, the CAB has suggested that legislation be enacted to alleviate these obviously inequitable and anomalous circumstances. It is my judgment that the public interest would be served by legislation that would remove the legal uncertainties that have arisen from the "flow-through" subsidy experiment that was authorized by the Board as an attempt to test the "feasibility and desirability of the flow-through concept" as a program that would have had nationwide applicability.

But for the good faith actions of the Board, an administrative arm of the Congress, this situation would not exist today. The payments were made to the subject carriers on the basis of the Board's determination that service to the local communities could only be provided through the subsidy which the Federal Aviation Act authorizes in such circumstances.

The court of appeals did not hold that

subsidy was not appropriate to maintain service; the court simply held that the method of making subsidy payment, as chosen by the CAB, was not a valid exercise of CAB discretion.

Both Air Midwest and Frontier accepted the flow-through subsidy arrangement to maintain operations entirely consistent with the intent of the Federal Aviation Act. The Board's recent certification of Air Midwest as a subsidy-eligible carrier constitutes a reaffirmation that subsidy-assisted service to the subject communities is required by the public convenience and necessity.

Mr. President, the bill I introduce today would relieve Frontier Airlines and Air Midwest of any liability to repay funds earned by them pursuant to the Board's flow-through subsidy experiment. The Civil Aeronautics Board has endorsed the bill as introduced today.

Mr. President, I ask unanimous consent that the text of my bill together with a letter dated April 6, 1977 and addressed to me from CAB Chairman John Robson, an opinion issued by the General Counsel of the GAO, a letter from me to Chairman Robson soliciting views on this legislation in draft form, and the Chairman's response to my letter, all be printed in the RECORD immediately following these remarks.

Mr. President, I urge prompt enactment of this bill.

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

S. 1325

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 406(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1376) is amended by deleting the period at the end thereof and by adding the following:

"Provided, That nothing in this section shall prohibit the Board from making payments as compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, for the period August 1, 1973 through July 31, 1975, where such payments have already been provided by Board order, to the holder of a certificate authorizing the transportation of mail by aircraft, to the account or for the benefit of any air carrier designated as "air taxi operator" by the Board, which provided air transportation between points named in the holder's certificate in satisfaction of an express condition to the suspension by Board order of the holder's certificate authority to engage in air transportation between those points. In no event shall such payments differ from the amount previously provided by such Board order."

CIVIL AERONAUTICS BOARD,
Washington, D.C., April 6, 1977.

HON. JAMES B. PEARSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PEARSON: I am writing you in regard to the operations of Frontier Airlines, a subsidized local service carrier, and of Air Midwest, a Kansas-based commuter carrier recently certificated to provide service between eight local communities in Kansas and Colorado and to the hub airports at Denver, Wichita, and Kansas City. Because of a Court of Appeals decision invalidating a 1974 Board decision awarding subsidy through Frontier to Air Midwest, it appears that the Board is now required to demand that Air Midwest and Frontier Airlines refund

the \$240,172 subsidy paid them during court review of the Board's decision. Given the circumstances, the Board believes legislation to relieve the air carriers of the refund obligation may be appropriate.

The Board's staff has consulted with the General Accounting Office on the question of the Board's obligation to attempt to recover the subsidy paid under the vacated Board order. The Acting General Counsel of the GAO issued an opinion dated November 24, 1976 (enclosed) in which he concluded that the Board must make a written demand upon Frontier and Air Midwest for repayment of the full amount of the "flow-through" subsidy. GAO reasoned that the Government has a valid claim for repayment and that the carriers do not appear to have defenses to that claim. The GAO opinion relies on the general proposition that the United States is entitled to recover public moneys which have been wrongfully, erroneously, or illegally paid by its agents, whether by mistake of law or of fact.

Moreover, the opinion states that the Board is obligated under the Federal Claims Collection Act of 1966 (31 U.S.C. 951, *et seq.*) and the regulations adopted thereunder (4 C.F.R. Parts 101-105) to attempt to collect the claim against Air Midwest and Frontier. Furthermore, the Board is not empowered to pass upon the validity of the claim or to compromise it. Accordingly, the Board is required to demand of Air Midwest and Frontier repayment of the \$240,172 "flow-through" subsidy disbursed to them.

The Board, pursuant to the GAO opinion, intends shortly to make such a demand on the carriers. The purpose of this letter is to inform you of this intention and to express our view that the possible liability of the carriers for subsidy paid during court review raises the question of whether the public interest would be served by legislation relieving the carriers of that liability. The payments were made to the carriers on the basis of the Board's determination that service to the local communities could only be provided through the subsidy which the Federal Aviation Act authorizes in such circumstances (Section 406(b) of the Act, 49 U.S.C. 1376(b)). The court's decision does not hold that subsidy was not appropriate to maintain service. Both Air Midwest and Frontier, therefore, accepted the "flow-through" subsidy arrangement to maintain operations wholly consistent with the statute. The Board's recent certification of Air Midwest as a subsidy-eligible carrier constitutes a reaffirmation that subsidy assisted service to the communities is required by the public convenience and necessity.

Legislation to relieve the carriers of refund liability would assure that the carriers' financial ability to continue operations would not be impaired by the amount of the refund. If such legislation is deemed appropriate, the Board, of course, stands ready to provide any requested assistance.

Sincerely,

JOHN E. ROBSON,
Chairman.

GENERAL ACCOUNTING OFFICE,
Washington, D.C., November 24, 1976.
JAMES C. SCHULTZ, Esq.,
General Counsel,
Civil Aeronautics Board.

DEAR MR. SCHULTZ: Our advice has been requested concerning whether the Civil Aeronautics Board (CAB) has a claim for the recovery of certain "flow-through" subsidy payments made by the Board under an order which was judicially determined to be invalid. For the reasons set forth hereafter, we believe that the Board does have a claim for recovery of the full amount of subsidy payments already made, which should be pursued against either or both of the air carriers involved. Needless to say, we likewise

believe that subsidy amounts withheld should not be paid.

I

The "flow-through" subsidy was purportedly authorized by section 406(a) of the Federal Aviation Act of 1958, 49 U.S.C. § 1376 (a) (1970), which provides:

"The Board is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith (including the transportation of mail by an air carrier by other means than aircraft whenever such transportation is incidental to the transportation of mail by aircraft or is made necessary by conditions of emergency arising from aircraft operation), by each holder of a certificate authorizing the transportation of mail by aircraft, and to make such rates effective from such date as it shall determine to be proper; (2) to prescribe the method or methods, by aircraft-mile, pound-mile, weight, space, or any combination thereof, or otherwise, for ascertaining such rates of compensation for each air carrier or class of air carriers; and (3) to, publish the same." (Emphasis added.)

The relevant facts are stated below.

In 1970 the CAB suspended the duty of Frontier Airlines, a "certificated" carrier, to serve three Kansas cities, on condition that substituted service be provided. This substituted service was supplied by Air Midwest, a "non-certificated" commuter air taxi operator.

On August 1, 1973, Air Midwest applied to the CAB for an allocation of subsidy funds, under section 406(a) of the Act, *supra*, to support the substituted service it was providing. Apparently recognizing that Air Midwest was not eligible for a direct subsidy due to its non-certificated status, it was proposed that the subsidy be allocated to Frontier, the certificated carrier, which would then pay over the subsidy to Air Midwest. Hence, the subsidy would "flow through" Frontier to Air Midwest. In CAB Order 74-4-77 (April 12, 1974), the Board approved the flow-through proposal, allowing subsidy payments for a 2-year period commencing retroactively as of August 1, 1973, and terminating on July 31, 1975. The CAB Order recognized the unprecedented nature of this subsidy arrangement, describing it as an "experimental program to test the feasibility and desirability of the 'flow-through' subsidy concept * * *." *Id.* at 1. It also rejected objections by several participants in the proceeding that the Board lacked authority under section 406(a) to subsidize services provided by a non-certificated carrier. *Id.* at 4.¹

Subsequently, in response to petitions to review the CAB subsidy order, the United States Court of Appeals for the District of Columbia Circuit vacated the order. *Air Line Pilots Association, International v. Civil Aeronautics Board*, 515 F.2d 1010 (1975) (hereafter referred to as *ALPA*). The court first pointed out that the flow-through subsidy could not be justified as meeting a "need" of Frontier under section 406(b) of the Act, as construed in *Delta Airlines, Inc. v. Summerfield*, 347 U.S. 74 (1954), which requires that need be established in relation to the entire operations of a carrier:

"The Board argues that the flow-through subsidy is in literal compliance with the statute because the money is paid to the certificate holder, Frontier. It further argues that the subsidy meets the 'need' of Frontier because, unless Air Midwest is supported, it will stop flying to the three cities, and in

that case Frontier will have to reinstitute service itself. In the Board's view, Frontier has a legally cognizable 'need' to be protected against the activation of its contingent obligation to provide service.

"* * * the Board erred in approving the flow-through subsidy. The Board wishes to pay Frontier not to reimburse it for expenses, but to keep Frontier from incurring expenses at all. Moreover, in calculating the amount to be paid the Board has reference only to the operating experience of Air Midwest. * * * In wholly ignoring the financial condition of Frontier, the Board violated the dictate of *Summerfield* to look to the need of the carrier to be subsidized. What Frontier's need might be does not appear from the record, but it could be that Frontier as a whole is so successful that even if it were forced to resume service to Hutchinson, Great Bend, and Dodge City, it would not be able to show a need for subsidy." 515 F.2d at 1013.

The Court went on to hold that:

"In any case, the Board has no power to subsidize Air Midwest nor any other non-certificated carrier. Even though the Board may have been correct in finding Air Midwest more efficient at serving the three Kansas cities than Frontier would be and even if, therefore, it is desirable to keep Air Midwest in that service, Congress has not given the Board power to pursue that end by giving public money to Air Midwest." *Id.*

Accordingly, the CAB order was "vacated" by the Court "and the cause remanded to the Civil Aeronautics Board with instructions to deny the request for subsidy * * *." *Id.*

As of the date of the Court's decision—July 11, 1975—flow-through payments had already been made in the amount of \$240,172. The Board has withheld the remaining amounts—\$22,040—which would have been payable under the flow-through subsidy program.

A memorandum dated July 25, 1975, from a CAB attorney to the General Counsel explores the question of whether flow-through amounts already paid should be recovered. The memorandum notes that under section 3(a) of the Federal Claims Collection Act of 1966, 31 U.S.C. § 952(a) (1970), the CAB "shall attempt collection of all claims of the United States for money or property arising out of * * * [its] activities * * *," and that, as a general proposition, the United States is entitled to recover public moneys which have been wrongfully, erroneously, or illegally paid out by its agents, citing *United States v. Wurts*, 303 U.S. 414 (1938). However, the memorandum goes on to discuss three theories which could possibly establish an exception to the requirement for recovery in this case.²

One of the three theories explored is that flow-through subsidy payments received prior to the judicial determination of invalidity may be retained in the same manner as payments under non-mail rate orders. See pages 3-5 of the memorandum. However, the memorandum ultimately rejects this theory on the basis that the flow-through subsidy is not analogous to an ordinary rate order for this purpose, and, in any event, the flow-through subsidy order was determined to be "void" rather than "voidable." We concur in the memorandum's discussion and

² The memorandum points out that CAB's authority to compromise claims is subject to the \$20,000 limitation contained in 31 U.S.C. § 952(b) (1970). The compromise authority of our Office is subject to the same limitation. Accordingly, since the amount here involved exceeds \$20,000, the memorandum and our response are concerned only with the issue of whether a claim exists, rather than whether there are any grounds for compromise.

¹ See also, the Board's Order to Show Cause in the flow-through subsidy application, CAB Order 74-1-78 (January 14, 1974).

conclusion on this point, and see no need to restate that analysis here. We will address our views primarily to the other two theories raised, which concern, respectively, "detrimental reliance" and "ratification by specific appropriation."

II

According to the memorandum, it might be argued that Air Midwest should be permitted to retain subsidy payments for its performance of substituted service, at least to the extent that those services were performed in reliance on the CAB order.³ The memorandum cites, for example, *Missouri Utilities Co. v. City of California*, 8 F. Supp. 454 (W.D. Mo. 1934), appeal dismissed, 79 F.2d 1003 (8th Cir. 1935), where "the Court indicated that it would be inequitable to require repayment of United States funds even if wrongfully paid, if the recipient had acted to his detriment in reliance upon the ostensible legality of the payments." Memorandum at page 3.

The opinion in *Missouri Utilities* did suggest, by way of dictum, that a recipient of Federal funds in a manner consistent with a Federal statute would have the right to rely on the constitutionality of the statute, so that there might be no equitable basis for recovery should the statute be declared unconstitutional. While this case seems to have no bearing on the facts here involved, we recognize that the law is somewhat uncertain concerning whether, and to what extent, theories in the nature of estoppel apply against the United States. Judicial decisions, as well as decisions of our Office and other authorities, have considered the estoppel doctrine applicable to the United States in some circumstances. See e.g., *United States v. Georgia-Pacific Co.*, 421 F.2d 92 (9th Cir. 1970); *Smale & Robinson, Inc. v. United States*, 123 F. Supp. 457 (S.D. Cal. 1954); 55 Comp. Gen. 911, 931 (1976); 53 Comp. Gen. 502, 506 (1974); see generally, 2 Davis, *Administrative Law Treatise*, §§ 17.01-17.04 (1958 & 1970 Supp.); Annot., 27 A.L.R. Fed. 702.

However, the great weight of authority (including many decisions which recognize the applicability of estoppel in some contexts) supports the view that estoppel cannot apply to, in effect, sanction payments which are made, or would be made, contrary to a Federal statute or valid statutory regulations. Accordingly, it is our opinion that the strict rule against estoppel in *Federal Crop Insurance Co. v. Merrill*, 332 U.S. 380 (1947), and related cases, precludes a defense of estoppel in the instant matter since it involves payments made contrary to statute. See e.g., 27 A.L.R. Fed. 702, *supra*, § 5; 51 Comp. Gen. 162, 165 (1971). This position has very recently been affirmed by the Court of Claims:

"It is a well-settled principle that the Government has inherent authority to recover sums illegally or erroneously paid, and that it cannot be estopped from doing so by the mistakes of its officers or agents. See *United States v. Wurts*, 303 U.S. 414, 415, 59 S.Ct. 637, 82 L.Ed. 932 (1938); *American Fidelity Fire Ins. Co. v. United States*, 513 F.2d 1375, 1381, 206 Ct.Cl. 570, 580 (1975); *Fansteel Metallurgical Corp. v. United States*, 172 F. Supp. 263, 270, 145 Ct.Cl. 496, 500

³ The memorandum indicates that this theory would apply only to \$153,059 of the subsidy payments already paid. The remaining \$87,113 of the amounts paid represents retroactive payments for which there could have been no reliance on the CAB order.

⁴ In the instant case, of course, payments were made in violation of the terms of a statute, concerning which there was no constitutional challenge. *Missouri Utilities* actually supports the view that persons are charged with knowledge of statutory requirements.

(1959). As this court recognized in *Fansteel Metallurgical Corp. v. United States*, 172 F. Supp. at 270, 145 Ct.Cl. at 500:

"[W]hen a payment is erroneously or illegally made it is in direct violation of article IV, section 3, clause 2, of the Constitution. [case citation.] Under these circumstances it is not only lawful but the duty of the Government to sue for a refund thereof * * *."

Aetna Casualty & Surety Co. v. United States, 526 F.2d 1127, 1130 (1975) cert. denied, 44 U.S.L.W. 3659 (U.S. May 10, 1976).

While we thus conclude that the estoppel theory is inapplicable here as a matter of law, there is in any case an inadequate factual basis to invoke estoppel in this matter. Even where consideration of estoppel is appropriate, it seems clear that the party seeking to invoke this doctrine must establish that he acted reasonably in relying upon the actions (or inactions) of the party to be estopped. See, *United States v. Georgia-Pacific Co.*, *supra*; *Smale & Robinson, Inc. v. United States*, *supra*.

We do not believe that the airlines can claim reasonable reliance, for purposes of estoppel, on the validity of the CAB order. As noted previously herein, (1) the Board itself described the flow-through subsidy as a novel and experimental concept; (2) the express terms of the statute refer only to payments to certificated carriers; and (3) the Board's authority to grant the flow-through subsidy was subject to legal challenges in its own proceeding and in the subsequent petition for judicial review, which was pending while most of the subsidy payments were made. In this context, it is abundantly clear to us that the airlines accepted subsidy payments with their eyes open, having full notice of the potential legal objection, and thereby assumed the risk that the Board's order would be invalidated. There is no indication that the Board concealed, misrepresented, or in any way attempted to minimize the legal questions concerning its authority. Indeed, the public record known to the airlines spoke for itself.

In sum, we consider the estoppel argument inapplicable to this case as a matter of law and fact.

III

The third theory considered in the memorandum is that the action of Congress in appropriating for section 406 subsidies, with knowledge that the Board was making flow-through subsidy payments, constitutes a "ratification" of such payments. This theory is expressed in two alternative forms: (1) that the appropriations constitute an implied repeal of section 406 insofar as it excludes payments to a non-certificated carrier under the flow-through experiment; or (2) that the appropriations ratify flow-through payments made up to the time of the judicial determination of invalidity.

The Department of Transportation and Related Agencies Appropriation Acts for the fiscal years 1975 and 1976 provide for section 406 subsidies, under the heading "Payments to Air Carriers," as follows:

"For payments to air carriers of so much of the compensation fixed and determined by the Civil Aeronautics Board under section 406 of the Federal Aviation Act of 1958 (49 U.S.C. 1376), as is payable by the Board * * *"

Pub. L. No. 93-391 (August 28, 1974), 88 Stat. 768, 778; Pub. L. No. 94-134 (November 24, 1975), 89 Stat. 695, 707.

As the memorandum points out, the House and Senate appropriation hearings for each of the 2 fiscal years contain various references to the flow-through subsidy experiment, as well as the pending judicial challenge to it. These references consist of presentations by CAB officials, and exchanges between Board officials and committee members, concerning the nature and status of the flow-through subsidy experiment. None of

these references, nor anything else (to our knowledge) in the legislative histories of the appropriation acts, indicates any congressional sentiment concerning the Board's legal authority to pay flow-through subsidies.

The memorandum rejects the first alternative theory that the appropriations implicitly repeal section 406 in relation to the flow-through subsidy. We agree that this theory is without merit. As the memorandum points out, repeals by implication are not favored, citing *Committee For Nuclear Responsibility, Inc. v. Seaborg*, 463 F.2d 783 (D.C. Cir. 1971). The memorandum also notes that "it would be rather late in the day" to urge an argument of repeal by implication now since this argument was not even raised in ALPA. Actually, we believe that such an argument is necessarily precluded by ALPA.

The second alternative of this theory is that the appropriations serve to ratify subsidy payments up to the date of the ALPA decision on a "pro tanto" basis. The memorandum relies here on *Committee For Nuclear Responsibility, supra*, in which the court held that the enactment of authorization and appropriation legislation for a nuclear test project did not constitute a determination as to the adequacy of the environmental impact statement for the test project under the National Environmental Policy Act (NEPA). The court observed, 463 F.2d at 785-86:

"* * * Congress must be free to provide authorizations and appropriations for projects proposed by the executive even though claims of illegality on grounds of non-compliance with NEPA are pending in the courts. There is, of course, nothing inconsistent with adoption of appropriations and authorizations measures on the pro tanto assumption of validity, while leaving any claim of invalidity to be determined by the courts. That is the effect of the authorization and appropriations measures relating to the Cannikin test. This conclusion is established by the general principles just discussed. Nothing in the legislative history leads to a different result. On the contrary, there is an affirmative indication that at least some of the Congressmen voting for the authorization and appropriations measures specifically contemplated that the claim of illegality remained for resolution by the courts. The legislative history indicates that while the impact statement was used as reference material by both proponents and opponents of the test, Congress did not purport to make a binding determination on the issue whether the statement was in compliance with NEPA."

Based on the analysis in *Committee For Nuclear Responsibility*, the memorandum suggests an argument that:

"* * * Air Midwest should be permitted to retain the subsidy payments which it received up until the time of the ALPA decision, since Congress, with specific awareness of the Board's experiment, appropriated funds for subsidy payments to be made pending the outcome of the judicial challenge. Nor would the present assertion of this argument by the Board be inconsistent with the failure to interpose it as a defense in the ALPA case, since there the issue was the basic legality of the experiment under § 406 and not the question of the Board's pro tanto authorization, by Congressional ratification, to make particular subsidy payments to Air Midwest until such time as its ineligibility to receive such payments might be judicially determined."

However, it also points out that applicability of the "pro tanto ratification" theory here would depend on the existence of an adequate factual background from which to infer congressional ratification of flow-

through subsidy payments pending the outcome of ALPA.

As in the case of estoppel, we consider this ratification argument inapplicable, both legally and factually.

Initially, we do not believe that *Committee For Nuclear Responsibility* can be read as supporting any "pro tanto ratification" theory of the type described in the memorandum, i.e., a ratification of illegal payments made pending the determination of illegality. There was nothing illegal about the underlying purpose for which appropriations were to be used in *Committee For Nuclear Responsibility*—conduct of a nuclear test. The test could not actually take place unless and until an adequate NEPA statement was issued. However, presumably some funds were properly used in preparation for the test prior to issuance of the statement, and, once an adequate statement was issued, funding could proceed. In other words, *Committee For Nuclear Responsibility* has nothing to do with a challenge to the basic use of funds as such; nor does the opinion suggest the possibility of a pro tanto ratification in such circumstances.

Turning to the instant case, certainly the CAB appropriations would have been available for flow-through subsidy payments to the extent that such payments were legal under section 406, but the ALPA decision holds that the payments were never legal. As noted previously, the court in ALPA "vacated" the CAB flow-through subsidy order and remanded the cause to the Board "with instructions to deny the request for subsidy * * *." Clearly, therefore, the flow-through subsidy order was void from the outset and all payments made under it were illegal.

We find absolutely no indication of a congressional intent to ratify illegal flow-through payments made prior to the ALPA decision. The appropriations are by their terms available for payments of "so much of the compensation fixed * * * under section 406 * * * as is payable by the Board * * *." As a result of ALPA, no flow-through subsidy was payable by the Board at any time. In our view, the existence of appropriations for section 406 payments is an entirely neutral fact here. At most, the Congress left determination of the legality of flow-through payments to the court; and the judicial determination, once made, governed all such payments.

IV

The final point addressed in the memorandum is how, and against whom, collection should be effected, assuming that a claim exists. The memorandum indicates that a claim against Frontier Airlines could be collected by offset against other subsidy payments due to Frontier, but that there is no source for offset of a claim against Air Midwest. However, it concludes that, while Air Midwest is clearly liable for a claim, Frontier probably could not be held liable. This conclusion is based on the structure of the flow-through subsidy arrangement, "particularly as perceived by the court in the ALPA case," under which Frontier received payment only in nominal capacity: "In these circumstances, a claim by the United States for money had and received would not be likely to prevail against Frontier, which—with the full understanding of the Board, Frontier and Air Midwest—did not receive these moneys for its own use but solely as a nominee for the intended recipient, Air Midwest."

While this analysis appears correct on the surface, we do not think it is quite so clear that Frontier has no liability. As the memorandum points out, at page 2, the claim is "for restitution of money had and received, to prevent unjust enrichment by the re-

ipient of unauthorized payments of public funds." It seems to us that Frontier, rather than Air Midwest, could well be considered the party unjustly enriched. While Air Midwest at least performed services for which the subsidy was paid, there is ample basis to conclude that Frontier was a real beneficiary of the subsidy as well as the nominal payee.

Under the substituted service arrangement, which led to the flow-through subsidy application, suspension of Frontier's obligation to serve the three Kansas cities was contingent upon Air Midwest's service to those cities. Had Air Midwest been unable to continue service without the subsidy, Frontier's obligation would have been automatically renewed. Moreover, as the ALPA court noted, it is not clear that Frontier could have qualified for a subsidy for this service under the appropriate standard, which requires consideration of the carrier's overall operations and financial condition. The court in ALPA thus concluded that the flow-through subsidy could not be justified as meeting Frontier's "need" within the meaning of section 406. However, the court does seem to have recognized that Frontier was more than a nominal payee by observing that:

"* * * The Board wishes to pay Frontier not to reimburse it for expenses, but to keep Frontier from incurring expenses at all. * * * 515 F.2d at 1013. (Emphasis added.)

While we cannot instruct the Board on exactly how to seek collection of the claim, we do suggest, in view of the foregoing, that further consideration be given to Frontier's possible liability.

Sincerely yours,

MILTON J. SOCOLAR,
Acting General Counsel.

U.S. SENATE,

Washington, D.C., April 20, 1977.

HON. JOHN ROBSON,
Chairman, Civil Aeronautics Board,
Washington, D.C.

DEAR MR. CHAIRMAN: I am enclosing a draft bill to amend section 406(a) of the Federal Aviation Act of 1958 in order to provide statutory authority for the Board's "flow-through" subsidy program conducted from August 1, 1973 through July 31, 1975.

This legislation is apparently necessary in view of the decision of the Court of Appeals holding that the Board had inadequate statutory authority to conduct the "flow-through" experiment.

Of course the attached language is designed to have no substantive effect except to ensure that no inequitable consequences to the detriment of the carriers involved in the experiment, or to the detriment of the communities served during the experiment, will result from the court's decision.

Because the attached draft bill has no prospective substantive effect whatsoever, I hope that the Board will be able to provide me with its views on the proposal at the earliest possible time.

Thank you for your prompt attention to this request.

With kindest personal regards,

Very truly yours,

JAMES B. PEARSON,
U.S. Senator.

CIVIL AERONAUTICS BOARD,
Washington, D.C., April 20, 1977.

HON. JAMES B. PEARSON,
Committee on Commerce, Science, and
Transportation, U.S. Senate, Washing-
ton, D.C.

DEAR SENATOR PEARSON: This will respond to your letter of April 20, 1977, requesting the Board's views concerning a proposed amendment to section 406 of the Federal

Aviation Act which would provide statutory authority for the Board's flow-through subsidy program conducted from August 1, 1973, through July 31, 1975. The bill would have no prospective effect.

The Board supports the proposed legislation.

Sincerely,

RICHARD J. O'MELIA,
For JOHN E. ROBSON, Chairman.

ADDITIONAL COSPONSORS

S. 107

At the request of Mr. PEARSON, the Senator from New Hampshire (Mr. MCINTYRE) and the Senator from Louisiana (Mr. JOHNSTON) were added as cosponsors of S. 107, a bill to avoid reductions in veterans' pensions concomitant to increases in Social Security benefits.

S. 256

At the request of Mr. PEARSON, the Senator from New Mexico (Mr. SCHMITT) was added as a cosponsor of S. 256, the Natural Gas Act Amendments of 1977.

S. 414

At the request of Mr. THURMOND, the Senator from Utah (Mr. GARN) was added as a cosponsor of S. 414, to require health warning on certain labels.

S. 418

At the request of Mr. BAYH, the Senator from Minnesota (Mr. ANDERSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Florida (Mr. STONE), and the Senator from Illinois (Mr. PERCY) were added as cosponsors of S. 418, the Displaced Homemakers Act.

S. 514

At the request of Mr. RIBICOFF, the Senator from Michigan (Mr. RIEGLE) was added as a cosponsor of S. 514, to amend title XVIII of the Social Security Act.

S. 689

At the request of Mr. KENNEDY, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 689, a bill to amend the Federal Aviation Act of 1958 to encourage, develop, and attain an air transportation system which relies on competitive market forces.

S. 834

At the request of Mr. SCHWEIKER, the Senator from Delaware (Mr. ROTH) and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of S. 834, to amend the Internal Revenue Code.

S. 939

At the request of Mr. BAYH, the Senator from Minnesota (Mr. HUMPHREY) was added as a cosponsor of S. 939, the Trade Adjustment Assistance Program amendments.

S. 991

At the request of Mr. RIBICOFF, the Senator from Kentucky (Mr. HUDDLESTON) was added as a cosponsor of S. 991, to establish a Department of Education.

S. 1141

At the request of Mr. STONE, the Senator from New Hampshire (Mr. MCINTYRE) was added as a cosponsor of S. 1141, to amend title 38 of the United

States Code to assist veterans with a permanent and total service-connected disability due to the loss or loss of use of one upper and one lower extremity to acquire specially adapted housing.

S. 1246

At the request of Mr. PROXMIRE, the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 1246, to amend the Housing and Community Development Act of 1974.

S. 1258

At the request of Mr. MAGNUSON, the Senator from Florida (Mr. CHILES) was added as a cosponsor of S. 1258, providing for the designation of the libraries of accredited law schools as depository libraries of Government publications.

S. 1290

At the request of Mr. HELMS, the Senator from North Carolina (Mr. MORGAN) was added as a cosponsor of S. 1290, to amend the peanut program.

S. 1290—WITHDRAWAL

At the request of Mr. HELMS, the Senator from Idaho (Mr. McCURE) was withdrawn as a cosponsor of S. 1290, to amend the peanut program.

SENATE JOINT RESOLUTION 26

At the request of Mr. CURTIS, the Senator from Arizona (Mr. DeCONCINI) was added as a cosponsor of Senate Joint Resolution 26, to require the Federal Government to end deficit financing.

AMENDMENTS SUBMITTED FOR PRINTING

SUPERVISORY AUTHORITY OF FEDERAL BANKING AGENCIES—S. 71

AMENDMENT NO. 196

(Ordered to be printed and referred to the Committee on Banking, Housing and Urban Affairs.)

Mr. PROXMIRE. Mr. President, I am today submitting for printing and reference to the Committee on Banking, Housing and Urban Affairs an amendment to S. 71, recommended by Chairman Burns of the Federal Reserve System. The amendment would accomplish the following:

First, Amend the summary suspension provisions of the Financial Supervisory Act of 1966 to provide the opportunity for a hearing by any person suspended from his position as an officer or director of an insured bank by a bank regulatory agency upon indictment or conviction of a felony involving dishonesty or breach of trust; and to require such agency to find that such suspension is needed to protect depositors or public confidence in the bank. The hearing procedure provided for is necessitated by the decision of the U.S. Court of Appeals in the case of Feinberg against FDIC.

Second, Make it a misdemeanor to willfully refuse to testify or produce records in response to a subpoena issued by a bank regulatory agency.

Third, Conform sections 3(a) and 2(a)(5)(D) of the Bank Holding Company Act to section 4(a) of that act. The Federal Reserve would be permitted to extend from 2 to 5 years the time period

within which a bank holding company must divest itself of shares in a bank acquired in the course of collecting a debt previously contracted. The 5-year time period is already law in the case of nonbank shares.

Mr. President, I ask unanimous consent that the text of this amendment be printed in the RECORD.

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

AMENDMENT NO. 196

At the end of the bill add the following:

SEC. 11. Section 8(g) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)) is amended to read as follows:

"(g) (1) Whenever any director or officer of an insured bank, or other person participating in the conduct of the affairs of such bank, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the appropriate Federal banking agency may, if continued service or participation by the individual may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank, by written notice served upon such director, officer, or other person suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the bank. A copy of such notice shall also be served upon the bank. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the agency. In the event that a judgment of conviction with respect to such offense is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the agency may, if continued service or participation by the individual may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank, issue and serve upon such director, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the bank except with the consent of the appropriate agency. A copy of such order shall also be served upon such bank, whereupon such director or officer shall cease to be a director or officer of such bank. A finding of not guilty or other disposition of the charge shall not preclude the agency from thereafter instituting proceedings to remove such director, officer, or other person from office or to prohibit further participation in bank affairs, pursuant to paragraph (1), (2), or (3) of subsection (e) of this section.

"(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a national bank less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a national bank are suspended pursuant to this section, the Comptroller of the Currency shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the bank and their respective successors take office.

"(3) Within 30 days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the director, officer, or other person

concerned may request in writing an opportunity to appear before the agency to show that the continued service to or participation in the conduct of the affairs of the bank by such individual does not, or is not likely to, pose a threat to the interests of the bank's depositors or threaten to impair public confidence in the bank. Upon receipt of any such request, the appropriate Federal banking agency shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, officer, or other person) and place at which the director, officer, or other person may appear, personally or through counsel, before one or more members of the agency or designated employees of the agency to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the agency shall notify the director, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the bank will be continued, terminated or otherwise modified, or whether the order removing said director, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the bank will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the agency's decision, if adverse to the director, officer, or other person. The Federal banking agencies are authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection."

(h) (1) Section 8(h)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(h)(1)) is amended by inserting after "Any hearing provided for in this section" the following: "(other than the hearing provided for in subsection (g)(3) of this section)".

(2) Section 8(h)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1818(h)(2)) is amended by inserting "or (3)" after "or an order issued under paragraph (1)".

(i) Section 8(j) of the Federal Deposit Insurance Act (12 U.S.C. 1818(j)) is amended by striking out "(e)(5), (e)(7), (e)(8)" and inserting in lieu thereof "(e)(3), (e)(4)".

(j) Section 8(k) of the Federal Deposit Insurance Act (12 U.S.C. 1818(k)) is amended by striking out "paragraph (1) of subsection (g)" and inserting in lieu thereof "paragraph (1) or (3) of subsection (g)".

(k) Section 8(n) of the Federal Deposit Insurance Act (12 U.S.C. 1818(n)) is amended by adding at the end thereof the following new sentence: "Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memorandums, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the appropriate Federal banking agency, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than 1 year or both."

SEC. 12. (a) Section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)) is amended by inserting after the second sentence the following new sentence: "The Board is authorized upon application by a bank to extend, from time to time for not more than one year at a time, the two-year period referred to above for disposing of any shares acquired by a bank in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extensions shall in the aggregate exceed three years."

(b) Section 2(a)(5)(D) of such Act (12 U.S.C. 1841(a)(5)(D)) is amended by add-

ing at the end thereof the following new sentence: "The Board is authorized upon application by a company to extend, from time to time for not more than one year at a time, the two-year period referred to herein for disposing of any shares acquired by a company in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extensions shall in the aggregate exceed three years."

TAX SIMPLIFICATION AND REDUCTION ACT OF 1977—H.R. 3477

AMENDMENT NO. 197

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

Mr. LAXALT. Mr. President, together with my good friend from Delaware, Mr. BIDEN, I am today submitting an amendment to H.R. 3477 as reported by the Finance Committee. Our amendment will facilitate the employment of the handicapped by reinserting the supplemental 10 percent "jobs tax credit" for the handicapped into the Tax Reduction and Simplification Act of 1977.

The House version of the "jobs tax credit" provided for a credit against employer income taxes equivalent to 40 percent of the first \$4,200 of wages paid to additional employees for calendar year 1977 and 1978. The credit had a maximum total of \$40,000 and was determined by a formula which made use of the recordkeeping which employees are required to undertake in conjunction with their Federal Unemployment Tax Act—FUTA—returns. The 10-percent supplemental credit for additional wages paid to handicapped employees was allowed for those who were referred upon completion of an individualized, written rehabilitation plan approved by one of the States under the Vocational Rehabilitation Act.

The Finance Committee replaced the Ways and Means jobs tax credit with an option to business of either a 2-percent incremental investment tax credit or a 25-percent credit for each additional employee on the first \$4,200 in wages paid with no \$40,000 "cap" and no supplemental credit for hiring handicapped employees.

Our amendment would provide a supplemental credit for handicapped employees to be administered in the same way as envisioned by the House. The Joint Committee on Internal Revenue Taxation has estimated an additional revenue cost of our proposal of \$25 million for 1978.

A major objective of H.R. 3477 is to attain a prompt reduction in our currently unacceptable rate of unemployment. Needless to say, we endorse this objective. But, we also believe that we should be sensitive to the special difficulties which handicapped individuals face in securing employment.

Our Nation's handicapped do not want charity. They want to work and become productive, contributing members of our society. Only through such work will they attain the better quality of life and the independence to which they are entitled. The only handicap that disabled people have is getting a job—not holding one.

Mr. President, I ask unanimous consent that the text of the Laxalt-Biden amendment be printed in the RECORD.

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

AMENDMENT NO. 197

On page 81, between lines 23 and 24, insert the following:

"(d) Additional 10 Percent Credit for Vocational Rehabilitation Referrals.—

"(1) In general.—The amount of the credit allowable by section 44B for any taxable year (determined without regard to this subsection) shall be increased by the amount determined for such taxable year—

"(A) by substituting '35 percent' for '25 percent' in the appropriate paragraph of subsection (a), and

"(B) by applying such paragraph and subsection (b) separately with respect to the unemployment insurance wages paid to vocational rehabilitation referrals.

"(2) Aggregate wages must increase.—The increase in wages taken into account under paragraph (1)(b) of this subsection shall not exceed the increase in wages taken into account for purposes of that portion of the credit which is determined under subsections (a) and (b) without regard to this subsection.

On page 92, line 24, strike out "(d)" and insert in lieu thereof "(e)".

On page 93, between lines 4 and 5, insert the following:

"(4) Vocational rehabilitation referral.—

"(A) In general.—The term 'vocational rehabilitation referral' means a handicapped individual who has been referred to the employer upon completion of (or while receiving) rehabilitative services pursuant to an individualized written rehabilitation plan under a State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act.

"(B) Handicapped individual.—For purposes of subparagraph (A), the term 'handicapped individual' means any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment."

On page 93, line 5, strike out "(e)" and insert in lieu thereof "(f)".

AMENDMENT NO. 198

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

Mr. HASKELL submitted an amendment intended to be proposed by him to the bill (H.R. 3477) to provide for a refund of 1976 individual income taxes and other payments, to reduce individual and business taxes, and to provide tax simplification and reform.

NOTICES OF HEARINGS

NEW YORK CITY SEASONAL FINANCING ACT

Mr. PROXMIRE. Mr. President, I wish to announce that the Committee on Banking, Housing and Urban Affairs will hold oversight hearings on the New York City Seasonal Financing Act on May 16, 17 and 18, 1977. The hearings will explore the following subjects, among others:

New York City's progress in carrying out its financial plan, and the likelihood of its achieving a balanced budget in fiscal year 1978 and beyond;

The plan for repayment of the moratorium notes, and its impact on the financial plan;

The prospects for repayment of the Federal loans in fiscal years 1977 and 1978;

The city's plans for borrowing in the private markets and from the Federal Government in fiscal 1978; and

The prospects for New York City's meeting its borrowing needs in the private markets after June 30, 1978, when the Federal loan program ends.

The hearings will begin at 10 a.m. in room 5302, Dirksen Senate Office Building.

Anyone wishing information concerning these hearings should contact Elinor B. Bachrach, professional staff member, room 5300, Dirksen Senate Office Building, 202-224-7391.

PRICE POLICY FOR ALASKAN OIL

Mr. JOHNSTON. Mr. President, on April 15, in accordance with the provisions of the Energy Policy and Conservation Act, the President transmitted to Congress his report on price incentives for the production of crude oil on the North Slope of Alaska. This oil will begin to flow through the trans-Alaskan pipeline later this year. It is anticipated that additional domestic crude oil production from the North Slope of 1.2 million barrels per day will be on stream early in 1978.

The Subcommittee on Energy Conservation and Regulation of the Committee on Energy and Natural Resources will hold a hearing on the issue of pricing policy for Alaskan oil on May 3, 1977. The hearing will commence at 9 a.m. in room 3110 of the Dirksen Senate Office Building.

The subcommittee will hear testimony from the administration, from affected States and from selected private witnesses. Questions concerning this hearing should be directed to Betsy Moler or Ben Copper at 224-0611.

NOMINATION

Mr. RIBICOFF. Mr. President, I wish to announce that the Committee on Governmental Affairs will hold hearings on the nomination of Jay Solomon, of Tennessee, to be Administrator of General Services, on Thursday, April 21, 1977. They will begin at 9 a.m. in room 3302, Dirksen Senate Office Building.

DISTRICT OF COLUMBIA MATTERS

Mr. EAGLETON. Mr. President, the Subcommittee on Governmental Efficiency and the District of Columbia of the Governmental Affairs Committee will hold hearings on April 27, 1977, on a number of bills. Persons wishing to testify on any of the proposed legislation should contact the subcommittee staff director Robert Harris in room 6222, Dirksen Senate Office Building by Monday, April 25.

The bills to be heard are as follows:

S. 1060, to restate the charter of George Washington University;

S. 1061, to allow continued Treasury borrowing by the District of Columbia;

S. 1062, to change the fiscal year of the Armory Board;

S. 1063, to allow the issuance of revenue bonds by the District for the building of university facilities;

S. 1101, to terminate District of Columbia borrowing authority from the Treasury for sewage works;

S. 1102, to allow District of Columbia to enter into interstate compacts; and

S. 1103, to allow other States to sue for taxes in the D.C. Superior Court.

DISTRICT OF COLUMBIA JUDGES

Mr. EAGLETON. Mr. President, the Committee on Governmental Affairs will hold a hearing on the nomination of Gladys Kessler, Robert Shuker, Robert Scott, Annice Wagner, and Paul Webber to be Judges of the Superior Court of the District of Columbia. The hearings will be held on April 28, 1977, at 9 a.m. in room 457, Russell Senate Office Building.

Persons wishing to testify on these nominations should contact either Claudia Ingram or Robert Harris at the Governmental Affairs Committee office, 3308 Dirksen Senate Office Building.

ADDITIONAL STATEMENTS

FLOOD INSURANCE

Mr. EAGLETON. Mr. President, since its passage in 1973, the Federal Disaster Protection Act has become a very controversial issue. Many of the regulations imposed by the Federal Insurance Administration make it impossible for cities and their surrounding communities to secure Federal grants and restricts lending to these cities in the designated flood plain area by lending institutions. These cities are then subject to sanctions imposed by the Administrator which will have serious and adverse effects on their economy.

The city of Cassville, Mo., is the most recent city to be affected by this act. Not only is their chance for Federal aid limited, but their very right to govern themselves is threatened by the imposition of land use planning without local participation. As an expression of concern and opposition to the program, the board of aldermen of the city of Cassville has passed the following resolution which I ask unanimous consent to have printed in the RECORD.

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

RESOLUTION OF THE BOARD OF ALDERMEN OF THE CITY OF CASSVILLE, MO.

The Board of Aldermen of the City of Cassville, Missouri, met in reconvened session at the City Hall in Cassville, Missouri on the 25th day of March, 1977.

Present were the Mayor, J. W. LeCompte, Aldermen Marlee Edie, W. C. Halley, Gene Schlichtman, W. E. Leonard, City Attorney Joe R. Ellis and City Clerk F. O. Fields.

The proposal of the Department of Housing and Urban Development, Federal Insurance Administration, under the provisions of the Flood Disaster Protection Act of 1973 was discussed by the Board of Aldermen. The Board considered the letter of J. Robert Hunter, Administrator of the Program, dated March 14th, 1977 addressed to Mayor J. W. LeCompte. The letter advised that if the City of Cassville does not pass ordinances containing regulations required by the Federal Insurance Administration prior to April 15th, 1977, that the Administrator will place sanctions upon the City which will restrict federal grants to the City and restrict lending in the designated flood plain area by lending institutions having Federal Deposit Insurance (all area financial institutions have such insurance). Thereupon, having fully reviewed the requirements of the Administrator, the regulations to be imposed upon the City, the sanctions to be imposed and the procedures of the Administrator in

developing the flood insurance program for the City of Cassville, Missouri, the Board of Aldermen, upon motion duly made and seconded passed and approved the following resolutions, to-wit:

"Resolved, that the Federal Insurance Administrator has not adequately informed the officials and citizens of the City of Cassville of the commencement of the flood study and the study itself, concerning the nature of the study itself, the general principles to be applied, the use to be made of the data obtained, the areas involved, and the manner in which the study was to be undertaken."

"Resolved, that the Board of Aldermen, the governing body of the City of Cassville, Missouri, and the citizens of the community have not been fully consulted, as required by the provisions of Section 206 of the Flood Disaster Protection Act of 1973, concerning the development of the program. It is resolved further that information relating to the development of the program has not been disseminated in the community as required, and that interested persons have not had the opportunity to bring all relevant facts and technical data concerning the local flood hazard to the attention of the Administrator."

"Resolved, that the regulations to be imposed by the Administrator and the sanctions to be imposed by the Administrator were not fully explained to officials and citizens of the City until March 7th, 1977."

"Resolved, that in the opinion of the Board of Aldermen, the regulations sought to be imposed upon the City by the Administrator will have serious and adverse effect on the economy of the City of Cassville and the surrounding community."

"Resolved, that the regulations and sanctions sought to be imposed by the Administrator will result in the taking of property rights of citizens of the City of Cassville without due process of law."

"Resolved, that the areas that are included in the flood plain map developed by the Administrator for the City of Cassville, Missouri have not historically flooded, and that the Board of Aldermen do not believe that the flood plain map accurately defines the actual flood plain within the City of Cassville, Missouri."

"Resolved, that the citizens of the City of Cassville, Missouri, have through their initiative provided a sound economy through the development of industrial projects, and support for area recreational and agricultural business; that approximately fifty percent of the corporate area of the City has been placed in the flood plain by the Administrator; that all of the industry in the community has been placed in the flood plain area, or will be placed in the flood plain area in the program of the Administrator proposed for Barry County, Missouri; that these industries employ approximately one thousand persons; that approximately seventy five percent of the business and commercial area of the City has been placed in the flood plain by the Administrator; that the program of the Administrator proposed for the City of Cassville and Barry County will affect real property in the City or in the area proposed to be annexed by the City in current annexation proceedings of a value of millions of dollars; all of which the Administrator proposed to regulate as he may deem best to the detriment of the City and its economy."

"Resolved, that the program of the Administrator takes from the citizens of the City of Cassville, Missouri, their right of self determination, and their right to be governed in local affairs by their elected City, County and State officials."

"Resolved, that the program of the Administrator imposes land use planning without local participation and as dictated by the Administrator upon the City of Cassville."

"Resolved, that a copy of this resolution be forwarded to the elected representatives of

the citizens of Cassville in the United States Congress and the United States Senate, as an expression of the opposition of the City to the program of the Administrator, and as a solicitation of support from these offices."

Passed and approved this 25th day of March, 1977.

PLANS INITIATED TO REOPEN ALASKA METHODIST UNIVERSITY

Mr. STEVENS. Mr. President, I appreciate this opportunity to submit for the record the following statement by Dr. P. Gordon Gould regarding Alaska Methodist University.

Alaska Methodist University is the only private 4-year degree institution in the entire State of Alaska. AMU is presently conducting a complete reorganization study which is unique in higher education in our Nation. While other universities have had to close their doors, AMU is the only school to initiate plans to reopen.

Dr. Gould is one of the original founders of Alaska Methodist University. This eloquent statement truly demonstrates the need for public support of AMU to benefit both Alaska and the entire Nation. In the near future, I will be calling upon my colleagues to seek their support for this university.

Mr. President, I ask unanimous consent that the statement by Dr. Gould, "Alaska Methodist University: Pioneers To Meet Human Need in Alaska Through Good Quality Education," be printed in the RECORD.

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

ALASKA METHODIST UNIVERSITY PIONEERS TO MEET HUMAN NEED IN ALASKA THROUGH GOOD QUALITY EDUCATION

Alaska, geographically located at the apex of the North Pacific Basin and within a few flying hours from every major population area of the Northern Hemisphere is "Uncle Sam's Show Window". This "Show Window" is ideally situated between the two great world powers now contending for the mind and spirit of man. What happens in Alaska has far-reaching consequences both national and international.

Multitudes of oppressed, impoverished, exploited and beleaguered people in underdeveloped countries are hearing the assuring word of our President that the United States is deeply concerned about human rights (human-well-being-issues) in every nation on earth; that our Government would prefer our aid to these nations be used to alleviate human distress rather than expended for instruments of destruction. They look with eager longing not only for aid to be given, but also for some guidelines as to how it shall be administered that their needs be met and their hopes and dreams realized. But unfortunately the United States has no where in all the world to point to a pilot project where such guide lines are developed and might be observed and appraised.

Millions of people from all over the world now visit Alaska each year. Here they have an unprecedented opportunity to observe the performance of our Government (both national and state) in meeting these human issues in which we profess deep concern.

The purpose of a "Show Window" is to display our best wares before the public view. The world's people are looking in our "Show Window". When they return home they report what they have seen. What might they

see if our performance backed up what we proclaim?

Plainly speaking then, Alaska is a gigantic laboratory where our Government may, through its varied agencies, render the kind of aid that would make possible through research, study, planning and performance a demonstration, before the eyes of the world, of a realistic approach to those concerns voiced by our President.

Let us look at this "Show Window" laboratory so amazingly prepared for just such a demonstration before the eyes of the world.

1. As already mentioned it is ideally situated between the two major world powers now contending for the mind and spirit of man.

2. It is fantastically stocked with natural resources upon which the life of man depends. (already the eyes of hungry nations are fastened upon these resources).

3. It is large enough to present any easy, off-hand solution to the major issues of human well being now confronting every nation in the world. These issues broadly stated are—a. Child Care; b. Health and Well Being; c. A Wider Spread Of Economic Opportunity; d. More Opportunity For Cultural Sharing; e. Education; f. An Assured Opportunity For Spiritual Advance.

4. It is peopled with persons of varied cultural heritage who now have to learn how to blend their cultural assets and skills in creative ways to serve the common good.

5. It is now passing through what might be called a three-pronged revolution not too different from what other underdeveloped nations are experiencing.

(a) Political—Emerging from Territorial status to Statehood. From a time when all major decisions regarding it were made by others afar off, to a time when self-determination and its attending citizenship responsibilities are the stern facts of life.

(b) Industrial—When the exploitation of natural resources are no longer exported for the sole benefit of absentee controllers, but are explored and exploited for the benefit (primarily) of the citizens as a whole.

(c) Social—The restless rising of the common man demanding a place in the sun, a voice in determining his destiny, and a role of integrity as a responsible citizen.

The Land Claims Settlement Act was the catalyst that brought all these things into sharp focus. The demands made by that Act not only place a heavy burden upon Alaska Natives (Aleut, Eskimo, Indian) but also have far-reaching consequences for all other Alaskans as well. There is a tremendous urgency to meet these human issues in a realistic fashion that would provide a more abundant life, not only for native people, but for all other Alaskans too. The dimensions and demands of this task far exceed the capability of any single agency to achieve single handedly. Therefore Federal Aid is urgently needed.

The founding of Alaska Methodist University is an evidence of a commitment on the part of The United Methodist Church and a willingness to pioneer in facing up to this stupendous task, not in a sectarian manner, but as an expression of humanitarian concern not only to be talked about but also to be acted upon in such a manner as would awaken Alaskans in particular, and our nation in general to the critical opportunity for serving the needs of man in a creative fashion that would result in making the abundant life available for all. Alaska's true destiny could never be achieved by imported leadership, nor by draining off its natural resources without regard to the plight of her people, it must be attained through indigenous leadership... leadership prepared within Alaska for Alaska. Good quality education preparing youth in Alaska for leadership responsibilities seems to be the key to make Alaska become what its name signi-

fies... The Great Land. It is a matter of history that, in the beginning years of many of our States, the majority of the leadership in those early years came from graduates of the private colleges that were established within their boundaries.

Alaska Methodist University, though beleaguered by financial and other difficulties already has made a considerable contribution to Alaska and our nation. Graduates of the University now serve not only in Alaska but elsewhere as well. The University envisions a future role of far-reaching dimensions as it becomes a center providing good quality education that prepares Alaskans for exercising those skills most urgently required to meet the critical needs of Alaska's present and future.

NATIONAL SERVICE AND CONSCRIPTION POSE HUGE PROBLEMS

Mr. PROXMIRE. Mr. President, during the past few months I have tried to point out that the All-Volunteer Force concept has been working. Military statistics show the Armed Forces have been able to attain their recruiting quotas while improving their personnel quality standards at the same time. Military and civilian attitudes toward the military also improved as the All-Volunteer Forces supplanted the draft.

This success has not been earned without cost. Personnel costs in the Defense Department have increased enough to warrant quick action to remedy the situation. This action should take the form of cutting military frills and halting the alarming trend of grade-creep inflation.

There is no reason to believe that a return to conscription would significantly lessen the personnel costs of the military, unless, of course, we force our young men and women to serve at the terribly low military pay rates of the 1960's. Yet, none of the critics of the AVF have suggested a return to this low pay scale, a situation which was corrected before the Nation turned to the All-Volunteer concept.

Despite these facts, which indicate the AVF can be maintained with minimal policy changes, some observers have urged the abandonment of the AVF and a return to the draft or the institution of a national service requirement. Today I would like to call my colleagues' attention to two recent Washington Post articles which deal with these often-suggested "solutions."

The first article, written by Peter J. Ognibene, discusses the possibility of a "fair" conscription lottery and concludes that no lottery can remove the inherent injustice of a peace time draft. Mr. Ognibene echoes my feelings perfectly when he writes:

Any selection process that inducts some young men into the military but requires nothing of others is by its very nature unfair. Eliminating deferments and establishing a lottery did not do away with selectivity. It merely changed the way in which the few were chosen from the many.

As Mr. Ognibene states, conscription should only be used as a last resort.

The second article deals with another solution being discussed—a national service requirement. Harvard Law School Professor Charles Fried criticizes the idea of a national service for several

reasons. He attacks the principle behind the national service as being contrary to our national heritage and right of liberty, while calling the practicalities of operating such a national service a "nightmare." As Professor Fried correctly points out, the costs and administrative headaches of establishing, monitoring, operating, and supervising such a national service would be beyond comprehension. The assets of such an operation would be overwhelmed by the liabilities involved, especially when one considers the service requirement is certain to be vehemently opposed as a breach of personal liberty.

Mr. President, these two articles illustrate the enormous drawbacks to both of the solutions proposed as remedies to the so-called All-Volunteer Forces problem. I ask unanimous consent that both articles be printed in the RECORD.

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

[From the Washington Post, Apr. 12, 1977]
A FAIR LOTTERY CANNOT CHANGE AN UNFAIR DRAFT

(By Peter J. Ognibene)

The draft was supposedly laid to rest four years ago, but the corpse keeps twitching. In his first visit to Capitol Hill after he was sworn in as Secretary of Defense, Harold Brown told the Senate Armed Services Committee that he favors a Pentagon proposal "to have a standby draft capability."

The chairman of that committee, Sen. John Stennis (D-Miss.), responded with an even stronger pitch for conscription. "Like it or not," he said, "we're going to have to go back to the Selective Service System for obtaining some of our men. The quicker we realize that and get it to the people so they know it, the better."

More recently, Sen. Sam Nunn, the Georgia Democrat who chairs that committee's panel on manpower, argued in these pages that "the All-Volunteer Force (AVF) may be a luxury that the United States can no longer afford." He contends that "the AVF has lived up to few of the expectations of its early proponents" and suggests "the government should begin now to explore possible alternatives to the AVF, such as a national service program for all our nation's young people."

Although the volunteer army does not work perfectly—what in government does?—the military has been getting sufficient numbers of volunteers for active duty. Moreover, the quality of those recruits has been steadily rising. In 1975, for example, 67 per cent of the male volunteers were high school graduates. Last year the percentage was 70.

The present "success" of the volunteer army is linked, no doubt, with the "failure" of the economy to provide civilian jobs for young people. High unemployment rates and recent military pay raises have made marching for Uncle Sam a relatively attractive proposition.

Equally important, but too often ignored by draft advocates, the armed services provide a route of upward mobility for some of society's least advantaged individuals. The military affords them an opportunity to learn skills with which they can earn a livelihood in or out of service.

But because financial incentives have helped make the volunteer army successful, some critics regard these recruits as "mercenaries." What they fail to realize is that conscription itself is an economic institution.

The draft is a tax. Indeed, that is the

central reality of conscription. It takes the labor of 19-year-olds at less than competitive wages to relieve the rest of us of a few dollars' tax burden. The government does not give businessmen patriotic appeals; it pays them the going rate for everything from fighter planes to floor wax. Should it do less for servicemen?

Because conscription is now a fading memory, it is easy to forget just how unfair the draft was. Millions managed to escape military service by getting deferments for college, critical occupations or parenthood. Although the draft lottery closed most of these escape routes, it could not eliminate the fundamental inequity: selectivity.

Any selection process that inducts some young men into the military but requires nothing of others is by its very nature unfair. Eliminating deferments and establishing a lottery did not do away with selectivity. It merely changed the way in which the few were chosen from the many.

Moreover, selectivity does not end with induction. It continues within the armed forces. While the college student may not be able to escape service when selection is by lot, he stands a relatively good chance of avoiding hazardous duty in time of war. Because he will probably score well on Army classification tests, he is more likely to wind up behind the lines as a clerk or technician. The less educated become foot soldiers.

In other words, a fair lottery cannot change an unfair draft.

Universal service is not the answer. For one thing, there is the problem of numbers. Some four million Americans turn 18 every year. The active and reserve forces can use, perhaps, 700,000 of them. What would the rest do?

Put them to work on public projects and you take jobs away from individuals with families to support. The cost, which would run into tens of billions of dollars, would swell an already large budget deficit and produce a small economic return. An underpopulated and embattled country such as Israel may need universal service to survive; the United States, fortunately, does not.

But above all, the draft violates the principle on which this nation was founded—the preservation of individual rights and liberties. Thus, conscription should be used only as a last resort. Short of an all-out war requiring huge armies in the field—an unlikely prospect when one nuclear weapon can wipe out several massed divisions—there can be no compelling case for the draft.

COMPULSORY PUBLIC SERVICE: A BAD PRECEDENT

(By Charles Fried)

Proposals for a program of compulsory public service for all young people have been making the rounds in congressional and editorial circles. One major network news commentator hailed such a program as an idea "whose time has come."

I disagree. In this, the beginning of our third century of liberty, it is shocking that so many should be ready to impose in so drastic and total a way on the liberties of a whole generational slice of the American population. And it is particularly disheartening that the liberties of our young people should be casually disposed of on such ill-conceived and essentially self-serving grounds.

The proposal, which has attracted so much favorable comment, is this: All youths—say at high school-leaving age—would be required to spend a year in some form of public service activity, but this obligation could be discharged by enlistment in one of the military services. The proposal is thought to be good in principle and good in practice. In principle, it is thought to affirm the notion of an obligation of public service. And practically it would help alleviate a prob-

lem which is showing up in the volunteer army. It appears that the volunteer army is turning out to be very expensive while still failing to attract recruits of a desirable quality. It is thought that by instituting a general obligation of service, many more will find it worth their while to discharge that obligation in the military, thereby improving the quality of the army and lessening the burden on the taxpayers.

The idea is wrong in principle and would surely be a nightmare in practice.

The idea is wrong in principle because the liberty of young people is worth no less than the liberty of middle-aged politicians and editorializers who would take from them the right to determine how to live their lives during a substantial period of time. I would not wish to denigrate the principle that we all have an obligation to serve our community, but the notion that we may be compelled to do so absent manifest necessity and some clear national emergency, is foreign to our traditions. The shoddiness of the proposal, indeed, reveals itself when we see that it really boils down to a desire on the part of the middle-aged to get something—a high quality defense manpower pool—without paying for it. If the nation needs a military establishment of a particular quality, then the nation as a whole should pay for it, and not force a small segment of the population to contribute its services unwillingly for nothing.

But if the argument of principle doesn't convince, the practicalities should. All one has to do is consider the difficulties of tens of thousands of local school boards in enforcing useful activities on high school students during some five or six weekday hours, to see how unlikely we would be to be able to provide and supervise a meaningful, compulsory year-long, 24-hour-a-day experience for every 18-year-old in the nation. (And make no mistake about it, desired effect of driving large numbers of youths into the military as a preferred alternative.)

I ask those who would casually deprive their fellow citizens of their liberty for a year of their lives, who would administer these programs? Who would determine what constituted appropriate public service alternatives? Who would enforce attendance, and discipline participants who snuck away for an hour, or a day, or a week? Who would keep order in the dormitories? Or would there be dormitories? What about drinking and drugs? Would there be exemptions for students? For persons engaged in essential activities? And so on.

I would have thought the loathing the American people have displayed for multiplication of bureaucracies and regulations would indicate that the last thing in the world the public would want at this point would be a program that turned over every 18-year-old in the nation (man and woman) to wholly undefined, non-existent set of institutions.

TAX RETURN OF SENATOR LOWELL WEICKER, JR., FOR 1976

Mr. WEICKER. Mr. President, in the interest of full financial disclosure, I ask unanimous consent that the joint tax return for 1976 of my wife and myself be printed in the RECORD.

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

1040 U.S. INDIVIDUAL INCOME TAX RETURN 1976
Lowell P. and Marie L. Weicker, Jr., Round Hill Road, Greenwich, Conn.

Your social security number: XXXXXXXXXXXX
Spouse's social security no.: XXXXXXXXXXXX
Occupation: U.S. Senator. Spouse's: Home-maker.

First names of your dependent children who lived with you: Scott, Gray, and Brian Bianchi.

Total dependents, 5.

9. Wages, salaries, tips, and other employee compensation (See Statement 1), \$44,600.

10a. Dividends \$8,916, less exclusion \$200, balance, \$8,716.

11. Interest income, \$941.

12. Income other than wages, dividends, and interest (from line 37), \$11,659.

13. Total (add lines 9, 10c, 11 and 12), \$65,916.

14. Adjustments to income (such as moving expense, etc., from line 42), \$3,000.

15a. Subtract line 14 from line 13, \$62,916.

15c. Adjusted gross income. Subtract line 15b from line 15a, then complete Part III, \$62,916.

16. Tax, check if from: Tax Rate Schedule X, Y or Z, \$5,444.

17a. Multiply \$35.00 by the number of exemptions on line 6d, \$175.

17b. Enter 2% of line 47 but not more than \$180 (\$90 if box 3 is checked), \$180.

18. Balance. Subtract line 17c from line 16 and enter difference (but not less than zero), \$5,264.

19. Credits (from line 54), \$11.

20. Balance. Subtract line 19 from line 18 and enter difference (but not less than zero), \$5,253.

21. Other taxes (from line 62), \$316.

22. Total (add lines 20 and 21), \$5,569.

23a. Total Federal income tax withheld, \$11,091.

24. TOTAL (add lines 23a through e), \$11,091.

26. If line 24 is larger than line 22, enter amount overpaid, \$5,522.

27. Amount of line 26 to be refunded to you, \$5,522.

LOWELL P. WEICKER, JR.
MARIE L. WEICKER.

April 15, 1977.

Preparer's signature: Wiendick and Co., Greenwich, Conn.

INCOME OTHER THAN WAGES, DIVIDENDS, AND INTEREST

30a Net gain or (loss) from sale or exchange of capital assets (attach Schedule D), \$-1,000.

32a Pensions, annuities, rents, royalties, partnerships, estate or trusts, etc. (attach Schedule E), \$5,159.

36 Other, see statement 5, \$7,500.

37 Total, \$11,659.

ADJUSTMENTS TO INCOME

39 Employees business expense (attach Form 2106), \$3,000.

42 Total (add lines 38 through 41). Enter here and on line 14, \$3,000.

TAX COMPUTATION

43 Adjusted gross income (from line 15c), \$62,916.

44a If you itemize deductions, check here, and enter total from Schedule A, line 40, and attach Schedule A, \$35,840.

45 Subtract line 44 from line 43 and enter difference (but not less than zero), \$27,076.

46 Multiply total number of exemptions claimed on line 6f by \$750, \$3,750.

47 Taxable income. Subtract line 46 from line 45 and enter difference, but not less than zero, \$23,326.

CREDITS

51 Foreign tax credit (attach Form 1116), \$11.

54 Total (add lines 48 through 53), \$11.

OTHER TAXES

58 Self-employment tax (attach Schedule SE), \$316.

62 Total (add lines 55 through 61), \$316.

SCHEDULE A—ITEMIZED DEDUCTIONS

Medical and Dental Expenses (not compensated by insurance or otherwise),—

1 One half (but not more than \$150) of

insurance premiums for medical care. (Be sure to include in line 10 below), \$150.

4 Subtract line 3 from line 2. Enter difference (if less than zero, enter zero), 0.

5 Enter balance of insurance premiums for medical care not entered on line 1, \$828.

7 Total (add lines 4 through 6c), \$828.

8 Enter 3% of line 15c, Form 1040, \$1,887.

9 Subtract line 8 from line 7 (if less than zero, enter zero), 0.

10 Total (add lines 1 and 9). Enter here and on line 34, \$150.

Taxes.—
11 State and local income, \$386.

12 Real estate, \$6,752.

13 State and local gasoline (see gas tax tables), \$323.

14 General sales (see sales tax tables), \$556.

15 Personal property, \$75.

16 Sales tax, auto, \$376.

17 Total (add lines 11 through 16). Enter here and on line 35, \$8,468.

Interest Expense.—
18 Home mortgage, \$6,559.

19 Other, see statement 7, \$18,564.

20 Total (add lines 18 and 19). Enter here and on line 36, \$25,123.

Contributions (See page 15 of Instructions for examples.)
21a Cash contributions for which you have receipts, cancelled checks or other written evidence, \$730.

24 Total contributions (add lines 21a through 23). Enter here and on line 37, \$730.

Miscellaneous Deductions.—
32. Other, see statement 8, \$1,369.

33 Total (add lines 30 through 32). Enter here and on line 39, \$1,369.

Summary of Itemized Deductions.—
34 Total medical and dental—line 10, \$150.

35 Total taxes—line 17, \$8,468.

36 Total interest—line 20, \$25,123.

37 Total contributions—line 24, \$730.

39 Total miscellaneous—line 33, \$1,369.

40 Total deductions (add lines 34 through 39). Enter here and on Form 1040, line 44, \$35,840.

DIVIDEND INCOME

1. See statement 2, \$8,916.

2. Total of line 1, \$8,916.

6. Dividends before exclusion (subtract line 5 from line 2). Enter here and on Form 1040, line 10a, \$8,916.

INTEREST INCOME

7. See statement 3, \$941.

8. Total interest income. Enter here and on Form 1040, line 11, \$941.

FOREIGN ACCOUNTS AND FOREIGN TRUSTS
1. Did you, at any time during the taxable year, have any interest in or signature or other authority over a bank, securities, or other financial account in a foreign country (except in a U.S. military banking facility operated by a U.S. financial institution)? No.

SHORT-TERM CAPITAL GAINS AND LOSSES
1. See statement 6, (—)\$190.

2. Enter your share of net short-term gain or (loss) from partnerships and fiduciaries, (—)\$19.

3. Enter net gain or (loss), combine lines 1 and 2, (—)\$209.

5. Net short-term gain or (loss), combine lines 3 and 4, (—)\$209.

LONG-TERM CAPITAL GAINS AND LOSSES
6. See statement 6, —\$530.

9. Enter your share of net long-term gain or (loss) from partnerships and fiduciaries, \$1,932.

11. Net gain or (loss), combine lines 6 through 10, \$1,402.

12. Long-term capital loss carryover attributable to years beginning after 1969 (see Instruction I), \$12,488.

13. Net long-term gain or (loss), combine lines 11 and 12, (—)\$11,086.

SUMMARY OF PARTS I AND II

14. Combine lines 5 and 13, and enter the net gain or (loss) here, (—) \$11,295.

16. If line 14 shows a loss, a. Enter one of the following amounts: (i) If line 5 is zero or a net gain, enter 50% of line 14; (ii) If line 13 is zero or a net gain, enter line 14; or, (iii) If line 5 and line 13 are net losses, enter amount on line 5 added to 50% of amount on line 13, (—)\$5,752.

b. Enter here and enter as a (loss) on Form 1040, line 30A, the smallest of: (i) The amount on line 16a; (ii) \$1,000 (\$500 if married and filing a separate return); or, (iii) Taxable income, as adjusted (see instruction J), \$1,000.

COMPUTATION OF ALTERNATIVE TAX

Note: Enter your capital loss carryovers from 1976 to 1977, post-1969, \$9,504.

SUPPLEMENTAL INCOME SCHEDULE

Income or Losses from Partnerships, Estates or Trusts, Small Business Corporations.—

See statement 4 (Estate), \$5,159.

COMPUTATION OF SOCIAL SECURITY SELF-EMPLOYMENT TAX

Computation of Net Earnings from NON-FARM Self-Employment.—

See statement 5, \$4,000.

Nonfarm Optional Method.—
9 a Maximum amount reportable, under both optional methods combined (farm and nonfarm), \$1,600.

Computation of Social Security Self-Employment Tax.—

12 b From nonfarm (from line 8, or line 11 if you elect to use the Nonfarm Optional Method) \$4,000.

13 Total net earnings or (loss) from self-employment reported on line 12, \$4,000.

14 The largest amount of combined wages and self-employment earnings subject to social security or railroad retirement taxes for 1976 is, \$15,300.

16 Balance (subtract line 15c from line 14), \$15,300.

17 Self-employment income—line 13 or 16, whichever is smaller, \$4,000.

18 Self-employment tax \$316.

COMPUTATION OF FOREIGN TAX CREDIT

Schedule A—Taxable Income from Sources Outside the U.S.—

A. Canada. (a) Dividends, \$110.

Schedule B—Foreign Taxes Paid or Accrued.—

Total tax withheld at source on: dividends, \$11.

Schedule C—Computation of Foreign Tax Credit.—

1 Total foreign taxes paid or accrued, \$11.

4 Total foreign taxes available for credit, \$11.

5 Taxable income or (loss) from sources outside the U.S., \$110.

7 Net foreign source taxable income, \$110.

8 Taxable income from all sources, \$23,326.

9 Deduction taken on your tax return for personal exemptions, \$3,750.

10 Add line 8 and line 9, \$27,076.

11 Divide line 7 by line 10, \$0.00406.

12 Total U.S. income tax before any credits, \$5,444.

13 General tax credit, \$180.

15 Add line 13 and 14, \$180.

16 Line 12 less line 15, \$5,264.

17 Limitation on credit (line 16 multiplied by line 11), \$21.

18 Foreign tax credit, \$11.

Schedule D—Summary of Credits from Separate Schedules C.—
8 Foreign tax credit (line 6 less line 7). Enter here and on your tax return, \$11.

EMPLOYEE BUSINESS EXPENSES

Employer's name: United States Senate, Washington, D.C.

1 Travel expenses while away from home on business:

(b) Meals and lodging, \$3,000.

CAPITAL LOSS CARRYOVER

Section A.—Short-term Capital Loss Carryover.—

1 Enter loss shown on your 1975 Schedule D, \$328.

2 Enter gain shown on your 1975 Schedule D, 0.

3 Reduce any loss on line 1 to the extent of any gain on line 2, \$328.

4 Enter amount shown on your 1975 Form 1040, line 29a, \$1,000.

5 Enter smaller of line 3 or 4, \$328.

6 Excess of amount on line 3 over amount on line 5, 0.

Section B.—Long-term Capital Loss Carryover.—

7 Line 4 less line 5, \$672.

8 Enter loss from your 1975 Schedule D, \$13,832.

9 Enter gain shown on your 1975 Schedule D (Form 1040), line 5. If that line is blank or shows a loss, enter a zero, 0.

10 Reduce any loss on line 8 to the extent of any gain on line 9, \$13,832.

11 Multiply amount on line 7 by 2, \$1,344.

12 Excess of amount on line 10 over amount on line 11, \$12,488.

Section A.—Short-term Capital Loss Carryover.—

1 Enter loss shown on your 1976 Schedule D (Form 1040), line 5, \$209.

2 Enter gain shown on your 1976 Schedule D (Form 1040), line 13. If that line is blank or shows a loss, enter a zero, 0.

3 Reduce any loss on line 1 to the extent of any gain on line 2, \$209.

4 Enter amount shown on your 1976 Form 1040, line 30a, \$—1,000.

5 Enter smaller of line 3 or 4, \$209.

6 Excess of amount of line 3 over amount on line 5, 0.

Section B.—Long-term Capital Loss Carryover.—

7 Line 4 less line 5 (Note: If you ignored lines 2 through 6, enter amount from your 1976 Form 1040, line 30a), \$—791.

8 Enter loss from your 1976 Schedule D (Form 1040), line 13, \$11,086.

9 Enter gain shown on your 1976 Schedule D (Form 1040), line 5. If that line is blank or shows a loss, enter a zero, 0.

10 Reduce any loss on line 8 to the extent of any gain on line 9, \$11,086.

11 Multiply amount on line 7 by 2, \$1,582.

12 Excess of amount on line 10 over amount on line 11, \$9,504.

STATEMENT 1.—WAGES, SALARIES, TIPS, ETC.

Employers Name and Address: United States Senate, Washington, D.C. 20510.

Income tax withheld, \$11,091.

Wages, Salaries, Tips, etc., \$44,600.

STATEMENT 2.—DIVIDEND INCOME

Qualifying

T/U/W Theodore Weicker, 13-6083727, \$960.

T/U/A Lowell P. Weicker, 13-6067993, \$1,272.

T/U/A Lowell P. Weicker, 13-6083709, \$793.

T/U/A Lowell P. Weicker, 13-6029250, \$1,903.

T/U/A Benjamin Joy, 04-6007191, \$779.

W. Ventures, 06-6132037, \$53.

Syntax Corp., \$9.

Caterpillar Tractor, \$66.

Halliburton Co., \$58.

Pacific Pwr. & Lt., \$182.

Maryland Cup, \$135.

Colonial Penn Group, \$13.

Friendly Ice Cream, \$28.

IBM, \$80.

Massey Ferguson, \$110.

Merck & Co., \$96.

Heublein, Inc., \$192.

Friendly Ice Cream, \$19.

American Express, \$85.

American Brands, \$280.

White Weld Nominee, \$15.

IBM, \$50.

Heublein, Inc., \$21.
Carnation Co., \$18.
T/U/A Henry F. Godfrey, 05-6060125,
\$1,464.
Harnischfeger, \$99.
Harnischfeger, \$136.
Total dividend income, \$8,916.

STATEMENT 3.—INTEREST INCOME

Earnings from Savings and Loan Association and Credit Unions

ARA Services 4, 5/8 6/15/96, \$139.
Heublein, Inc. 4, 1/2 1997, \$360.
Maryland Cup 5, 1/8 1994, \$359.
Zapada 4, 3/4 1988, \$83.
Total interest income, \$941.

STATEMENT 4.—ESTATES AND TRUSTS

T/U/A Lowell P. Welcker T-127, 13-6029250
Chemical Bank, 277 Park Avenue, New York,
N.Y. 10017, \$2,629.

T/U/A Benjamin Joy 1954, \$280.
T/U/A Lowell P. Welcker, 13-6083709 C/O
John H. Howe, 129 Park Ave., Plainfield, N.J.
07060, \$318.

T/U/A Henry F. Godfrey, 05-6060125 Industrial N/B. Providence, R.I., \$6⁵/₂.

T/U/A Lowell P. Welcker, C/O, John H. Howe, 129 Park Ave., Plainfield, N.J. 07060,
\$1,280.

Total income from estates and trusts,
\$5,159.

STATEMENT 5.—MISCELLANEOUS INCOME

Honoraria, \$4,000.
Advance book royalties, \$3,500.
Total miscellaneous income, \$7,500.

STATEMENT 6.—LONG AND SHORT TERM CAPITAL GAINS AND LOSSES

Date acquired; date sold; sales price; and cost or other basis:

100 US Surgical, May 12, 1976, December 9, 1976; \$1,043; \$1,422; long term, —\$379.
50 Friendly Ice Cream, March 3, 1972, December 29, 1976; \$718; \$1,923; long term, —\$1,205.

25 Friendly Ice Cream, March 7, 1972, December 29, 1976; \$359; \$915; long term, —\$556.

50 Friendly Ice Cream, April 5, 1972, December 29, 1976; \$718; \$1,757; long term, —\$1,039.

25 Friendly Ice Cream, April 26, 1972, December 29, 1976; \$359; \$839; long term, —\$480.

50 Friendly Ice Cream, June 19, 1972, December 29, 1976; \$718; \$1,643; long term, —\$925.

15 Friendly Ice Cream, November 30, 1972, December 29, 1976; \$214; \$452; long term, —\$238.

25 Syntex Corp., May 2, 1975, May 19, 1976; \$704; \$1,068; long term, —\$364.

15 Syntex Corp., August 12, 1975, May 19, 1976; \$421; \$529; long term, —\$108.

100 Graniteville, February 26, 1976, March 5, 1976; \$1,461; \$1,651; short term, —\$190.

100 Colonial Penn Group, August 1, 1974, February 26, 1976; \$2,347; \$4,145; long term, —\$1,798.

200 National Airlines, May 5, 1975, January 22, 1976; \$2,702; \$2,223; long term, \$479.

3M Zapada Corp., 4 3/4 88, April 3, 1974, February 23, 1976; \$1,949; \$2,195; long term, —\$246.

Condominium-Sarasota, Fla., November 3, 1974, December 21, 1976; \$59,550; \$53,221; long term, \$6,329.

Total capital gains or losses, short term, —\$190; long term, —\$530.

STATEMENT 7.—ITEMIZED INTEREST EXPENSE

Putnam Trust Co., \$2,278.
Putnam Trust Co., \$911.
Union Trust Co., \$716.
State National Bank, \$215.
Burke & Herbert, \$1,961.
John Dean, \$600.
Fed. S. & L. Bradenton, Fla., \$4,628.
1st Fed. S. & L. Alexandria, Va., \$6,893.
Senate Employees Credit Union, \$362.
Total other interest expense, \$18,564.

STATEMENT 8.—ITEMIZED MISCELLANEOUS DEDUCTIONS

Safe deposit box, \$12.
Expense of production and conservation of income, \$72.
Total, \$84.
Other business expenses:
Entertainment, \$440.
Gifts, \$763.
Insurance, \$82.
Total, \$1,285.
Total business expense, \$1,285.
Miscellaneous other deductions, \$1,369.

STATEMENT 9.—RECEIPTED CASH CONTRIBUTIONS

Charities qualifying for 50 percent limitation—
Other receipted cash contributions, \$610.
Miscellaneous organized charities, \$120.
Total receipted cash contributions to charities qualifying for 50 percent limitation, \$730.
Total receipted cash contributions, \$730.

STATE OF CONNECTICUT 1976 CAPITAL GAINS AND DIVIDENDS TAX RETURN

Lowell P. and Marie L. Welcker, Jr.
Home Address: Round Hill Road, Greenwich, Conn. 06830.

1. Gain or loss as shown in Line 30a, Page 2, of Form 1040, \$1,000.

3. Total capital gains, \$1,000.

5. Taxable gain before exemption, \$1,000.

6. Exemption: \$200.

7. Net taxable capital gain, none.

8. Enter adjusted gross income from line 15c, Form 1040, only if dividend income is reported on Line 10a of that return, \$62,916.

9. If amount on line 8 is \$20,000 or more, enter dividends from line 10a of Form 1040, \$8,916.

11. Tax Due (7 percent of line 10), \$624.

Dividend income: See statement, \$8,916.

Interest income: See statement, \$941.

CAPITAL GAINS AND LOSSES

Short-term capital gains and losses: See statement, —\$190.

Enter your share of net short-term gain or (loss) from partnerships and fiduciaries, —\$19.

Enter net gain or (loss), combine lines 1 and 2, —\$209.

Net short-term gain or (loss), —\$209.

Long-term capital gains and losses: See statement, —\$530.

Enter your share of net long-term gain or (loss) from partnerships and fiduciaries, \$1,932.

Net gain or (loss), \$1,402.

Long-term capital loss carryover attributable to years beginning after 1969, \$12,488.

Net long-term gain or (loss), —\$11,086.

Summary: Combine lines 5 and 13, —\$11,295.

If line 14 shows a loss—Enter the following amounts: —\$5,752.

Enter here and enter as a (loss) on Form 1040, line 30A, the smallest of: \$1,000.

Computation of alternative tax: Long-term (from Form 4798, Part II or Part V), \$9,504.

CAPITAL LOSS CARRYOVER

Part I—Post-1969 capital loss carryovers to 1976

Section A.—Short-term capital loss carryover—

1 Enter loss shown on your 1975 Schedule D (Form 1040), \$328.

3 Reduce any loss on line 1 to the extent of any gain on line 2, \$328.

4 Enter amount shown on your 1975 Form 1040, \$1,000.

5 Enter smaller of line 3 or 4, \$328.

Section B.—Long-term capital loss carryover—

7 Line 4 less line 5, \$672.

8 Enter loss from your 1975 Schedule D (Form 1040), \$13,832.

10 Reduce any loss on line 8 to the extent of any gain on line 9, \$13,832.

11 Multiply amount on line 7 by 2, \$1,344.

12 Excess of amount on line 10 over amount on line 11, \$12,488.

Part II—Post-1969 capital loss carryovers from 1976 to 1977

Section A.—Short-term capital loss carryover—

1 Enter loss shown on your 1976 Schedule D (Form 1040), \$209.

4 Enter amount shown on your 1976 Form 1040, \$1,000.

5 Enter smaller of line 3 or 4, \$209.

6 Excess of amount on line 3 over amount on line 5, 0.

Section B.—Long-term capital loss carryover—

7 Line 4 less line 5, \$791.

8 Enter loss from your 1976 Schedule D (Form 1040), \$11,086.

9 Enter amount shown on your 1976 Schedule D (Form 1040), 0.

10 Reduce any loss on line 8 to the extent of any gain on line 9, \$11,086.

11 Multiply amount on line 7 by 2, \$1,582.

12 Excess of amount on line 10 over amount on line 11, \$9,504.

1976 CONNECTICUT INCOME TAX STATEMENT 2—DIVIDEND INCOME

Qualifying

(H) T/U/W Theodore Welcker, 13-6083727, \$960.

(H) T/U/A Lowell P. Welcker, 13-6067993, \$1,272.

(H) T/U/A Lowell P. Welcker, 13-6083709, \$793.

(H) T/U/A Lowell P. Welcker, 13-6029250, \$1,903.

(W) T/U/A Benjamin Joy, 04-6007191, \$779.

(H) W. Ventures, 06-6132037, \$53.

(H) Syntex Corp., \$9.

(H) Caterpillar Tractor, \$66.

(H) Halliburton Co., \$58.

(H) Pacific Power and Light, \$182.

(H) Maryland Cup, \$135.

(H) Colonial Penn Group, \$13.

(H) Friendly Ice Cream, \$28.

(H) IBM, \$80.

(H) Massey Ferguson, \$110.

(H) Merck & Co., \$96.

(W) Heublein Inc., \$192.

(W) Friendly Ice Cream, \$19.

(W) American Express, \$85.

(W) American Brands, \$280.

(H) White Weld Nominee, \$15.

(W) IBM, \$50.

(H) Heublein Inc., \$21.

(H) Carnation Co., \$18.

(W) T/U/A Henry F. Godfrey, 05-6060125, \$1,464.

(H) Harnischfeger, \$99.

(W) Harnischfeger, \$136.
Total, \$8,916**.

STATEMENT 3.—INTEREST INCOME

Earnings from Savings and Loan Associations and Credit Unions:

ARA Services, 4⁵/₆, June 15, 1996, \$139.

Heublein, Inc., 4¹/₂, 1997, \$360.
Maryland Cup, 5¹/₈, 1994, \$359.
Zapada, 4³/₄, 1988, \$83.
Total interest income, \$941**.

STATEMENT 6.—LONG AND SHORT TERM CAPITAL GAINS AND LOSSES

Date acquired; date sold; sales price; and cost or other basis:

100 U.S. Surgical, May 12, 1976, December 9, 1976; \$1,043; \$1,422; long term, —\$379.

50 Friendly Ice Cream, March 3, 1972, December 29, 1976; \$718; \$1,923; long term, —\$1,205.

25 Friendly Ice Cream, March 7, 1972, December 29, 1976; \$359; \$915; long term, —\$556.

50 Friendly Ice Cream, April 5, 1972, December 29, 1976; \$718; \$1,757; long term, —\$1,039.

25 Friendly Ice Cream, April 26, 1972, December 29, 1976; \$359; \$839; long term, —\$480.

50 Friendly Ice Cream, June 19, 1972, December 29, 1976; \$718; \$1,643; long term, —\$325.

15 Friendly Ice Cream, November 30, 1972, December 29, 1976; \$214; \$452; long term, —\$238.

25 Syntex Corp., May 2, 1975, May 19, 1976; \$704; \$1,068; long term, —\$364.

15 Syntex Corp., August 12, 1975, May 19, 1976; \$421; \$529; long term, —\$108.

100 Graniteville, February 26, 1976, March 5, 1976; \$1,461; \$1,651; short term, —\$190.

100 Colonial Penn Group, August 1, 1974, February 26, 1976; \$2,347; \$4,145; long term, —\$1,798.

200 National Airlines, May 5, 1975, January 22, 1976; \$2,702; \$2,223; long term, \$479.

3M Zapada Corp, 43/4, 88, April 3, 1974, February 23, 1976; \$1,949; \$2,195; long term, —\$246.

Condominium—Sarasota, Fla., November 3, 1974, December 21, 1976; \$59,550; \$53,221; long term, \$6,329.

Total capital gains or losses, short term, —\$190; long term, —\$530.

BUDGET COMMITTEE ACTION THREATENS COMMUNITY DEVELOPMENT FUNDS FOR 50 STATES AND WOULD BE A DISASTER FOR HOUSING AND CONSTRUCTION JOBS

Mr. PROXMIRE. Mr. President, recently the Budget Committee in reporting Senate Concurrent Resolution 19, setting forth the congressional budget for fiscal year 1978, took two actions which will be a disaster to housing and community development if not overturned, and which will set precedents as to the proper role and jurisdiction of the Budget Committee which will greatly infringe on the rights and prerogatives of the legislative and Appropriations Committee.

FUNDS FOR EVERY STATE CUT

The Budget Committee determined that \$500 million should be cut from the community development block grant funds. It further determined that funds for housing should be cut. In the latter case the effect would be cut back on about 75,000 new housing units. This would mean about 1,500 new starts on the average for each State. That in turn means about 3,000 jobs per State on the average or 150,000 jobs over the country.

WHAT GOOD ARE LEGISLATIVE COMMITTEES IF ACTION STANDS?

The Budget Committee acted in these specific ways before either the authorizing legislation had been passed by the Banking, Housing, and Urban Affairs Committee or the Subcommittee on HUD-Independent Agencies or the Appropriations Committee had determined at what levels of funding and what kinds of housing should be built.

It is one thing for the Budget Committee to set ceilings. It is quite another thing to say where the specific cuts should be made, what proportion of housing there should be in terms of the ratio between new construction and existing units, and the amounts and kinds of units to be built.

What good is the authorizing committee if the Budget Committee without hearings, without detailed testimony, and after spending only a minimum

amount of time on the subject, makes these determinations?

CITY FUNDS AND JOBS AT STAKE

But far more than committee jurisdiction and personal pride is at stake here.

What is at stake is \$500 million in community development block grant funds, carefully worked out by formula to meet the desperate needs of our cities and especially the needs of the older, decaying, central cities.

I ask unanimous consent that a table showing how the \$500 million cut in community development funds would affect each State if the funds were taken from the entitlement cities, be printed in the RECORD at this point.

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

[Dollars in thousands]

State	1978 funding		
	As proposed by administration	With \$500,000,000 cut	Amount of loss
Alabama.....	\$64,095	\$54,575	\$9,521
Alaska.....	5,635	4,999	636
Arizona.....	26,899	22,314	4,575
Arkansas.....	32,743	28,648	4,095
California.....	323,760	275,365	48,395
Colorado.....	28,305	24,882	3,424
Connecticut.....	57,025	53,661	3,364
Delaware.....	8,324	6,932	1,392
District of Columbia.....	32,051	31,150	901
Florida.....	113,210	94,623	18,587
Georgia.....	69,819	60,262	9,557
Hawaii.....	13,383	11,364	2,019
Idaho.....	8,801	7,840	961
Illinois.....	203,472	171,614	31,858
Indiana.....	57,678	49,060	8,618
Iowa.....	33,116	28,540	4,576
Kansas.....	32,496	29,772	2,724
Kentucky.....	50,664	42,271	8,393
Louisiana.....	66,663	54,434	12,229
Maine.....	12,626	11,246	1,380
Maryland.....	54,950	46,235	8,715
Massachusetts.....	99,853	87,396	12,457
Michigan.....	149,323	127,883	21,440
Minnesota.....	59,523	51,598	7,925
Mississippi.....	40,257	34,193	6,064
Missouri.....	83,580	71,013	12,567
Montana.....	8,109	6,938	1,171
Nebraska.....	14,687	12,129	2,559
Nevada.....	4,492	3,747	745
New Hampshire.....	8,025	6,872	1,153
New Jersey.....	108,891	95,692	13,199
New Mexico.....	19,234	17,278	1,956
New York.....	393,743	339,097	54,646
North Carolina.....	69,134	60,291	8,843
North Dakota.....	7,339	6,422	917
Ohio.....	170,559	144,830	25,729
Oklahoma.....	38,258	34,291	3,967
Oregon.....	23,113	19,143	3,970
Pennsylvania.....	224,941	194,059	30,882
Puerto Rico.....	88,260	72,324	15,936
Rhode Island.....	18,916	16,670	2,246
South Carolina.....	33,045	27,194	5,851
South Dakota.....	8,710	7,642	1,068
Tennessee.....	63,221	54,934	8,287
Texas.....	198,039	167,447	30,592
Utah.....	15,711	12,945	2,766
Vermont.....	3,663	3,128	535
Virginia.....	63,538	56,024	7,514
Washington.....	46,854	38,987	7,867
West Virginia.....	24,792	20,193	4,599
Wisconsin.....	52,212	43,447	8,765
Wyoming.....	3,281	2,872	409

Mr. PROXMIRE. Mr. President, this is the most likely way the cut would be made. Every State would lose. Every entitlement city would lose. I also have a printout on the way the cut would affect each one of the entitlement cities. I will not burden the RECORD with this long table but it is available from the Banking, Housing, and Urban Affairs Committee or from HUD who provided it at my request.

150,000 JOBS AT STAKE

Further, Mr. President, this action will cost the country about 150,000 jobs.

There are about two new jobs for each new housing start. There is one direct job in construction. There is also one indirect job for the goods and services which go with a new housing start—refrigerators, air conditioners, insulation, carpeting, draperies, water heaters, and housing and real estate services.

The action of the Budget Committee was specific. The specific funds cut would mean cutting back 75,000 units from new construction, it said. Cut the money and shift the funds from new construction to existing housing units, it said.

That is a disaster. Unemployment in the building trades is still over 14 percent—double the national average. Housing starts, even with the new figures, are 500,000 units below our national goal of 2.6 million units a year. Assisted housing starts would be about 80,000 this year and perhaps as many as 200,000 next year if the bill is not emasculated. But even those starts are 520,000 to 400,000 units short of the assisted housing goal of 600,000 units a year.

So jobs are at stake. The average State would lose 3,000 jobs as a result of the Budget Committee action.

HOUSING A TEMPTING TARGET DUE TO RIDICULOUS BUDGET METHOD

Let me make one final point. The cut made by the Budget Committee was a very tempting one because of the unique way housing is treated in the budget. The new budget authority for housing is based on the 40-year runout costs for new construction. Thus the so-called \$6 billion cut in housing is largely a mirage. For example, an actual outlay of \$150 million translates into \$6 billion of budget authority. Or, conversely, a cut of \$6 billion means a cut in outlays of only \$150 million. This is why housing is such a tempting target.

If the same method were used with respect to the debt, the Budget Committee would have to raise the ceiling from \$467 billion to \$1.3 trillion or by almost 3 times or 180 percent. If the runout costs for the Government obligations the Treasury has sold were in the budget ceiling, in the same way that housing is included in the budget ceiling, we would have to add \$800 billion to the ceiling.

I warned about this last February and I ask unanimous consent that a copy of the statement I made then be printed in the RECORD at this point.

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

Senator William Proxmire (D-Wis) warned Wednesday that "Because of a little-known and absurd new budget procedure housing programs of the federal government may soon take it on the chin compared with other priorities. The reason is that money in the budget for most programs is calculated on a one year basis while new budget authority for the major housing programs is now calculated on a 15-, 20- or 40-year basis."

Proxmire is Chairman of the Senate Banking, Housing and Urban Affairs Committee and Chairman of the Subcommittee on HUD-Independent Agencies of the Senate Appropriations Committee.

"The situation is so absurd that if the obligation of the government to pay back the principal and interest on its outstanding bonds—a solemn, contractual obligation—

were treated the same way housing is treated, \$800 billion would have to be added to budget authority and the Congressional ceiling for budget authority would have to be raised from \$467 billion to \$1.3 trillion or by almost 3 times or 180 percent.

"In the long run there is no way 40-year housing money can compete with one year money for other programs in the budget.

"It is also true that those who devised this phoney budget method of dealing with housing programs were the same people who slapped on the 1973 assisted housing moratorium or carried it out. It was their purpose to destroy the housing programs, and this ridiculous budget method was just one more nail in the coffin.

"Under the new system, which is one of the worst legacies of the Nixon-Ford Administration and its Office of Management and Budget, the odds are raised that housing will be the first program to be cut and the last to be funded. Here's why:

"Suppose the proposed new budget authority upon which Congress sets a ceiling in the Budget Resolution were \$10 billion too high. The \$10 billion could be cut in one of two ways. It could be reduced by a painful cut of \$1 billion in each of 10 different programs—education, military pay, health research or job programs, for example. Or because housing money is calculated on a 40-year basis, a cut of only \$250 million in public housing funds or funds for new construction under the rental program called Section 8 would accomplish the same \$10 billion reduction (\$250 million times 40 years equals \$10 billion).

"Given this choice, the temptation to cut housing instead of other programs will be overwhelming. Small cuts in housing outlays can mean 40 times that amount of cuts in budget authority for other programs.

"Conversely, because an increase in most housing programs must be multiplied by 40, housing will stand at the end of the line when the priorities are determined.

"Housing should be treated like every other program—no better and no worse. But for it to be almost the only budget item to get the 15-, 20- or 40-year treatment will put it in an impossible position to compete with other needs."

Mr. PROXMIRE. Mr. President, on jurisdictional grounds alone the action of the Budget Committee should be reversed. But more important, in the name of the cities and housing and jobs, it must be reversed.

I ask unanimous consent that a copy of a letter to Members of the Senate and signed by the ranking majority and minority members of the Housing Subcommittee of the Banking, Housing and Urban Affairs Committee (Mr. SPARKMAN and Mr. BROOKE) and of the Appropriations Subcommittee on HUD-Independent Agencies (Mr. PROXMIRE and Mr. MATHIAS) be printed in the RECORD.

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

APRIL 20, 1977.

The Honorable the UNITED STATES SENATE,
Washington, D.C.

DEAR COLLEAGUE: We are writing to you to join us in restoring the Administration's budget request for housing and community development in the First Concurrent Resolution on the Budget for Fiscal Year 1978.

As you know, the Budget Committee has reported targets that assume cuts below the President's request of \$500 million in Budget Authority for Community Development and \$6.2 billion for housing assistance to lower income families.

We believe these cuts are unwarranted and should be restored. They not only fly in the face of Carter Administration proposals, but also ignore the recommendations of the Committee on Appropriations and Committee on Banking, Housing and Urban Affairs. They could result in reduced funding for over 500 cities and counties, as well as the loss of 75,000 new housing starts and more than 150,000 construction and related jobs. Accordingly, we shall offer an amendment to restore the Administration's request for \$4 billion in community development and \$32.8 billion in housing assistance when the Budget Resolution is considered on the floor.

We urge your support for this amendment for the following reasons:

1. Our Committees have considered the Administration's request for funding for the community development program and housing assistance to lower income families for Fiscal Year 1978. The cuts proposed by the Budget Committee would seriously jeopardize the new Administration's pledge to achieve the housing goals set by Congress and to help the Nation's cities, counties and smaller communities carry out needed rehabilitation and development activities.

2. The proposed cutback in housing assistance will not reduce budget outlays for housing in either 1978 or 1979, according to estimates prepared by the Congressional Budget Office. (Unlike other Federal programs, budget authority for housing assistance to low and moderate income families is computed by multiplying the program level times the maximum number of years the contract payments may be made. For the housing assistance program, this may be as many as 40 years. This multi-year treatment grossly exaggerates the budget impact of housing programs compared to other programs.)

The proposed cutback in community development assistance will, because of the lead time required, reduce outlays by only \$34 million in 1978 and by \$190 million in 1979.

In short, the proposed budget cutbacks of \$6.7 billion in housing and community development will reduce total budget outlays by only \$34 million in 1978 and by less than \$200 million per year in 1979 and 1980.

3. It was argued during the markup of the Budget Resolution that a cutback in community development funding would not be noticed because there were other program funds being made available (for example, CETA and Public Works). But this argument failed to acknowledge that community development funds were requested by the Administration to carry out a new urban initiative, which is very different from the CETA and Public Works programs.

4. It was argued that housing cuts are necessary if we are to head off massive spending commitment in 1980. But the Office of Management and Budget has given its approval to the spending request for housing and has already taken its future budget implications into account.

5. The Budget Resolution has the objective of setting ceilings for the total budget and for major functions. It is not supposed to set funding levels on a program-by-program basis. Nevertheless, the Committee has, in these actions, not only identified the programs to be cut, but, in the case of housing assistance, has even identified the type of housing that is to be curtailed in HUD's assistance programs.

We believe this action goes well beyond the Budget Committee's proper jurisdiction. We believe that the authorizing Committee has responsibility for programmatic decisions and that the Appropriations Committee has responsibility for program spending. The Budget Committee's action, if not reversed

now, will establish a precedent that will weaken the entire Committee structure of the Senate.

Sincerely,

EDWARD W. BROOKE,

Ranking Minority Member.

CHARLES McC. MATHIAS, Jr.

Ranking Minority Member, HUD-Independent Agencies Appropriations Subcommittee.

WILLIAM PROXMIRE,

Chairman.

JOHN SPARKMAN,

Chairman, Subcommittee on Housing and Urban Affairs.

GOLDWATER'S ADDRESS AT TAMKANG COLLEGE OF ARTS AND SCIENCES

Mr. GOLDWATER. Mr. President, over the Easter recess when the Senate was not in session, it was my privilege and pleasure to have been invited to address Tamkang College of Arts and Sciences in Taipei, Taiwan. This gave me the chance of visiting this most astounding and unique country which has risen from nothing to one of the world's great producers in a matter of just over 20 years. When one asks the question of why, the answer is that these people are free, and one only needs to look across a relatively few miles and see the mainland of China where the people live in abject poverty, deprived of freedom, living under the tyranny of communism.

As I commented in my remarks to the students at the college, I think it is nothing short of criminal the attitude my country has relative to the free Chinese on Taiwan. Our new President and his administration have not yet acceded to the request of the Ambassador of this country for an audience with the State Department or with the President. To the contrary, both the President and the State Department seem to go out of their way to kowtow to the rulers of Red China. There is no way that I can see any benefit to our country arising outside of a little trade by the so-called normalization of relations between Communist China and the United States. They would use this normalization only to bolster their declining prestige among their own people and as sort of a threat that might be waved at the Soviets poised on their border.

I spoke about these things to the students because I could sense their very deep and immediate concern over the fact that an honorable people like the United States had been acting dishonorably and show every sign of continuing to do that relative to our treaties and obligations to friends that we have had for many, many years. I ask unanimous consent that the remarks I made before this college be printed in the RECORD.

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

GOLDWATER'S ADDRESS AT TAMKANG COLLEGE OF ARTS AND SCIENCES

Two years ago, I was here on a sad journey, to say farewell to a friend, a world leader, a gentleman, whose great desires for the ROC obviously are being carried forward—for-

ward in the resolute manner he would have wanted. His pride in his country and his countrymen are now yours. The young of China and your resolute adherence to his concepts of life will make better people of you and—a China you and the world will always be proud of.

My friends often ask me why I have such a respect and affection for China—Free China that is. Well it goes back a long way with us westerners, for the Chinese made great contributions to the building of our land and are still adding daily to our lives. Then when your first young men left their homeland to come to my country to learn to be military aviators it was my pleasure to have been one of their instructors at Luke Air Field in my native Arizona and I have followed their illustrious careers with great pride.

Today I am honored to once again be in Taiwan and to have the opportunity to visit with you. At the outset let me explain to you that in my country there is a law which prevents any American from performing acts of foreign policy with the leaders of other countries. But we have no law which can prevent me, an American from discussing with you concepts of our foreign policy and that is what I want to do today.

It will involve the Republic of China, Communist China and the relationship of my country with both, as it is, as it should be, and I pray, as it will be. But let me, if I can, progress through this subject with as much logic as I can muster. Your concept of living puts forward the family, respect for each other and humankind and the brotherhood of man. Also that faith is the one ingredient without which nothing can succeed. Faith in our word, and in each other. These are the natural philosophies of men dedicated to freedom. They are philosophies not even known to the Communists. The Communists is the enemy of Those Philosophies—These are the basic reasons Communism can never be a permanent substitute for freedom. The basic reason why some day the Chinese who live on the mainland will join you in freedom.

CARTER'S SON

I was amazed to read in your press last week that President Carter, my president who has loudly and consistently and rightly proclaimed his belief in Human Rights would send his son to a part of this world where those rights have not existed for years. My President should have instructed his son to stop in Taiwan on his way back to Washington to see the difference between your freedom and their dominated lives and the results. In fact all Americans who go to the lands of Communism wherever they may be, for whatever reason, should touch base with the land of freedom as they return home.

More, as I progress, let me remind you that free men, you and I, share the words of Confucius "Do not do unto others what you would not have others do unto you." As these words are basic to the philosophy of Confucius, they are basic to the concepts of Christianity and all other creeds of religion. We live by them, or try to, in my country. But are they ever heard in Red China or any other slave country? No, and they never will be.

With those basics before you, I would now like to in as clear a manner as I can proceed to the policies of my country in which you are most concerned and I know you are concerned. You are concerned that neither my President, Mr. Carter nor his Secretary of state Mr. Vance has thus far honored the request of your ambassador in Washington for an audience. And I am concerned. You are concerned not because of the neglect but because it might be an indication that the Carter administration is contemplating an action you feared on the part of President Nixon and Ford, an action

which did not take place—the diplomatic recognition of Red China.

Let us look into the recent past and some solid truths to explore this threat. It will be a threat only if my country has forgotten, and let me remind you there is an old saying "What is past is prologue, study the past." If my country has learned nothing else from the recent past, we have learned that no foreign policy can be followed without strong, understanding and lasting public support. It must rest on consensus. It will come only if that policy becomes public policy, only if its broadness becomes available to open appraisal, scrutiny and approval. There is no place for mystery or secrecy in arranging the final design. My country was humiliated in Vietnam because two presidents refused the fighting man victory and were dishonest in their explanations of the design of the policy. We cannot suffer that again, for if we do, we will cease to be a power, we will be attacked by the jackals of the world.

Now a word about "normalization."

NORMALIZATION

If normalization means rejecting a friendly people with whom we have treaties and agreements, then let me tell you that America respects friends and is proud of its 200 years of honorable recognition of the metes and bounds of treaties if it means, as I believe it to mean, an approach to normal business relations then we should be told that. Americans do not treat honor lightly nor with disrespect. I suggest that it is not our responsibility to pursue normalization, whatever the term means. We did not denormalize, nor did the people on Taiwan, the way of life on the mainland. Let the Peoples Republic of China begin that process by the granting of a free way of life tied to the historic philosophy of Chinese living.

Now at this point in my remarks I remind you that I am only discussing aspects of my country's foreign policy. If these remarks and those which follow seem to advocate, they are the advocacies of one American citizen. So let us proceed.

Your original concern came from an unannounced visit of President Nixon to Peiping. I learned of it flying west from Washington to California over my two-way radio and I was asked to keep my mouth shut. I did for I felt it would form a test of the Soviet attitude. It did test them and as we say "they were shook up." That visit was followed by others by Nixon and Ford. Some 9 or 10 visits of Presidents of my country or their Secretaries of State followed and now we learn that once again we will humble ourselves by kow towing visits to that bastion of slavery, Red China.

I can understand very easily your deep and troubled concern. But let me tell you that after that first visit to Peiping and after each of the others and as late as three weeks ago, Dr. Kissinger assured me that neither the freedom of Taiwan nor the sanctity of our treaties were on the agendas nor were they even discussed, that no agreements have ever been made which would endanger our status quo. Let me emphasize this important point, that up to this minute, in the word of a friend, the former Secretary of State, nothing has altered the situation between my country and Taiwan. So I pray that the glamorous binge is over, that from here on in the load is on the shoulders of the Red Chinese to earn the respect of the world.

NO COMMITMENT

But there is another point of concern on which I will touch—The so called "Shanghai Communique" signed at Shanghai by Nixon in 1972. It is not a treaty having ever received the advice and consent of our Senate. It has no commitment in our law. It is ambiguous and does not state any goal of

diplomatic relations—only two indeterminate words "understanding" and "contact" are the subject of agreement.

This "communique" having never received implementation, has in the acceptance of International Law "Fallen by the wayside." Now before concluding, and I dislike using that word, a brief observation on the "Sino-American mutual defense treaty."

For a little over 100 years the periphery of the Pacific has been the central point of American Foreign Interest. Doubt that? Well, remember that when the unfortunate remark was made in my country causing doubt of that interest, the Korean war resulted. It is not yet over, but the interest of my country in the Pacific remains the same. Not mind you a territorial interest, but an interest of mutuality. An interest to provide the Pacific with our concern over Peace and Freedom. The defense treaty is but a part of that and I have heard nothing in the halls of our Congress nor from Presidents nor from Secretaries of State which indicates any desire to back away from the covenants of that treaty.

So having unburdened myself of the thoughts and concern of one American, let me make one more final observation. The total interest of Red China in whatever is meant by normalization is for their own good. There is nothing mutual in it. They rightly fear the Soviets poised on their North border. Their Government rightly fears a growing reaction of the Chinese who are forced to live under it. So they look to my country. The United States of America in effect joins them as an indication of international acceptance and internal placation.

I feel certain that I speak for the vast majority of Americans when I say "Yes" we want world peace—we want it in every quarter of the world—but we will not formally recognize the enslaving concepts of Communism nor will we engage in the dishonorable act of an abrogation of friendship and mutual respect, with the ROC.

Goodbye for the moment—but a plea from one whose affection for you is unashamedly known and shown. Carry on the teachings of Dr. Sun Yat-sen and the dedicated work of General Chiang Kai-shek.

You stand today as a monument and a tribute to what free people can do.

COURT CURTAILS FCC POWER

Mr. PROXMIRE, Mr. President, I call the attention of colleagues to a recent U.S. Court of Appeals, District of Columbia Circuit, decision involving the Federal Communications Commission. This decision set aside the FCC's rules governing the type of shows that can be broadcast over pay cable television.

This decision needs to be noted because it illustrates the problem of Government regulation of the broadcast industry, a situation which my bill, S. 22, the First Amendment Clarification Act of 1977, is designed to correct.

I introduced S. 22 in January in an effort to provide legislation which would give the United States the full benefit of a free press, electronic as well as printed. Enactment of S. 22 would repeal section 315 of the Communications Act of 1934, which contains the equal time rule and the authorization for the FCC's fairness doctrine.

By eliminating section 315, we can remove Government from where it does not belong—the news regulation and selection business. Fortunately, the courts have already begun to recognize that our current laws allow unwarranted Government regulation of the broadcast indus-

try. The FCC has had some of these unjustified powers removed by court decisions in several recent cases.

Today I am pointing out a case involving the FCC's power to restrict the number and type of television productions that can be shown by cable television. These rules restricted cable television's use of feature films and certain sports events. Ostensibly, these regulations were designed to prevent any siphoning of popular special events from regular television markets.

The court of appeals, however, did not find any evidence indicating the FCC needed any regulatory powers to prevent such siphoning. The court's opinion stated that the FCC had no evidence to support its alleged need to regulate cable television.

The court also found that the FCC had improperly allowed private comments from interested parties with a stake in the issue. According to the court, these comments from private, concerned parties removed the credibility from the FCC's decision process. Consequently, the court instructed the FCC to start over in its evaluation of pay television regulations.

The crux of this court decision is that the FCC has again been found overregulating the broadcast industry. It entered an area in which it did not belong.

Mr. President, one of the reasons I introduced S. 22 was to establish the principle that there is no inherent difference between the print and broadcast media when it comes to first amendment freedoms. We have long allowed the print media to operate without Government regulation, but we have never extended the same right to the broadcast media, despite their long record of responsible reporting, programing, and service to their respective communities.

Government regulation of the broadcast industry has impaired television and radio's ability to provide the best possible news coverage. The real loser in this situation is the American people.

An editorial in the Wall Street Journal of March 29 criticized this situation while praising the court's decision restricting FCC power. The editorial pointed out:

Few federal agencies engage in more dubious activities than the Federal Communications Commission, and that's saying a lot. In the exercise of its congressional mandate it has all too often infringed on both the antitrust laws and the First Amendment guarantee of free speech.

The editorial praised the court decision for striking down an FCC misuse of power in an area where it did not belong. The editorial and the court agreed that the FCC had indulged in overregulation of the broadcast industry.

Mr. President, this type of court decision can help to improve the situation, but it cannot solve the entire problem of overregulation. We must take the FCC out of the regulation business by eliminating the fairness doctrine and the equal time rule. Only then will broadcasters be on an equal footing with the print media under the first amendment.

I ask unanimous consent that the Wall Street Journal editorial of March 29 and

a Washington Post article of March 26 describing the court's decision be printed in the RECORD.

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

[From the Washington Post, Mar. 26, 1977]

COURT VOIDS FCC RULES ON PAY TV: THREE-JUDGE PANEL CRITICIZES REASONING BEHIND REGULATIONS

(By Timothy S. Robinson)

A federal appeals court here yesterday set aside the Federal Communications Commission's rules restricting the type of shows that can be broadcast over pay cable television.

The rules among other things, prohibit cable TV from showing feature-films more than 3 but not less than 10 years old and certain sports events such as World Series and football games shown on regular television within the previous five years. The rules also limit the number of regular season sports events and all types of series shows that can be offered.

In overturning the 2-year-old regulations, the three-judge U.S. Court of Appeals sharply criticized the FCC's reasoning behind the TV regulations, the agency's justification for policing the content of cable television, and the manner in which the specific cable TV rules were adopted.

The court found that the FCC had improperly heard private comments from parties involved in the pay cable television issue. It told the commission that its proceedings were so tainted with these secret comments that it should start anew in considering any pay television regulations.

It is unclear what immediate effect the ruling will have on the burgeoning cable television industry. The use of coaxial cables, instead of standard airwave broadcasting techniques, allows companies to provide to home television viewers, for a small monthly fee, a wide range of special events that are not available on commercial television channels.

Approximately 1 million persons already subscribe to more than 350 cable television systems across the United States, according to FCC and cable television industry representatives.

In the Washington metropolitan area, about 5,400 persons subscribe to Reston's struggling cable television company to view regular programming from Washington and Baltimore's television channels as well as local Reston programming and first-run movies.

Cable television industry representatives praised yesterday's ruling, which appears to re-open the whole spectrum of the types of programs that can appear on their outlets.

"We're elated with the decision. We think it's a true reflection with what we've said all along—the FCC should not be constraining the marketplace," said National Cable Television Association President Robert Schmidt.

An FCC spokesman declined comment on the lengthy opinion late yesterday, saying the agency's attorneys were studying it.

The stated purpose of the FCC rules was to prevent popular special events from being "siphoned" away from the regular television markets in competitive bidding situations between regular networks and pay cable television companies.

In its unsigned opinion, the U.S. Court of Appeals said there was no evidence as to such "siphoning" and that therefore the FCC had no evidence to support its alleged need to regulate the pay cable television industry.

Even if the agency had the specific authority to regulate pay cable television and the evidence to do so, it acted improperly in passing the rules to prevent "unfair competition" between conventional and cable

television, the court added. The Justice Department also had challenged the FCC's rules.

The court said that "at a minimum the commission, in developing its cable television regulations, was required to demonstrate that the objectives to be achieved by regulating cable television are also the objectives for which the commission could legitimately regulate the broadcast media."

The court found further that the FCC "had in no way justified its position that cable television must be a supplement to, rather than an equal of, broadcast television. . . . We cannot fathom how the commission reached the conclusion that the balance here should be struck in favor of regulation" of the cable television industry.

The three judges—U.S. Circuit Court Judges J. Skelly Wright and George MacKinnon and U.S. District Court Judge Stanley Wiegel—also found that the rules violated the First Amendment by "serving no purpose" in prohibiting the showing of certain events.

Much of the court's opinion focused on the alleged improper contacts between parties in the case and the FCC commissioners and staff. Others not directly involved in the case—including members of Congress, members of the trade press and representatives of various performing arts groups—also made questionable contacts to discuss alone and in confidence rather than in public the merits of the rules being reviewed by the FCC, the opinion said.

[From the Wall Street Journal, Mar. 29, 1977]

CHIPPING AT THE FCC

Few federal agencies engage in more dubious activities than the Federal Communications Commission, and that's saying a lot. In the exercise of its congressional mandate it has all too often infringed on both the antitrust laws and the First Amendment guarantees of free speech.

It is thus gratifying to see that a federal appeals court in Washington has declared unconstitutional and improper certain FCC restrictions on the type of program materials cable TV companies can acquire. It is to be hoped that this will be the first step in a thorough rollback of the FCC's authority—and, more importantly, congressional interference—in the program content of electronic forms of communication.

The FCC itself has had some misgivings in recent years about how much power it should have over program content. The FCC commissioners have been in a better position than anyone to see the constitutional difficulties that arise when Congress tries to set up a mechanism for restricting the exercise of free speech in a limited area of communications. The concept that the airwaves belong to the public is a justification for technical regulation of broadcasting but wears thin as rationale for rules on program content. When it comes to cable TV there is not even the public ownership argument, except to the extent—not at issue in this case—that cable companies pull some of their programming from broadcasts on the airwaves.

The FCC restrictions on cable that the appeals court rejected are very remote indeed from the public airwaves doctrine. They are mainly designed to protect on-the-air broadcasters from direct competition from cable companies for programming material. They limit the ability of cable firms to bid for first-run movies and certain major sports programs.

In part, the decision rested upon a failure of on-the-air broadcasters to demonstrate that they would in fact be damaged by greater competition from cable TV for program material. The court held that the FCC had taken no pains to find out what the effect of open competition would be.

But it also held that the FCC rules infringing on the constitutional guarantee of free speech and this finding, to the extent that it is upheld by the Supreme Court and extended to other specific actions by the federal government, has importance well beyond the television industry.

The right of free speech is not a guarantee to broadcasters, newspapers, magazines and the like but to the American people. As electronic communications technology advances, opening up ever more ways of communicating, it becomes increasingly infringing with the free flow of information. Cable TV offers some special opportunities for communication, as do a number of other electronic forms. Congress finds it almost irresistible to try to make its influence felt in this area. It is hoped the courts will continue to erect barriers to that urge.

FINAL FEDERAL ELECTION COMMISSION REGULATIONS

Mr. CANNON. Mr. President, on Wednesday, April 13, 1977, the regulations of the Federal Election Commission were formally promulgated as final regulations.

I ask unanimous consent that the formal notice of the Federal Election Commission, which appeared in the Federal Register on April 13, 1977, be printed in the RECORD.

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

[Title 11—Federal Elections, Chapter 1—Federal Election Commission, (Notice 1977-23)]

PROMULGATION OF REGULATIONS

Agency: Federal Election Commission.
Action: Final Regulation.

Summary: This rule establishes the effective date for Commission regulations implementing the Federal Election Campaign Act of 1971, as amended, that were published earlier. The delay in setting the effective date is the result of the Congressional review period required by statute for Commission regulations.

Effective Date: April 13, 1977.

For further information contact:

Daniel J. Swillinger, Assistant General Counsel, (202-4060).

Supplementary information: The Commission, by this notice, is promulgating its regulations interpreting the Federal Election Campaign Act of 1971, as amended. The regulations were published in proposed form on May 28, 1976, June 25, 1976 and July 9, 1976 in the FEDERAL REGISTER. The regulations were adopted by the Commission and transmitted to the Congress on August 3, 1976, as required by 2 U.S.C. § 438(c), and 26 U.S.C. §§ 9009(b) and 9039(b). The regulations were published in the FEDERAL REGISTER on August 25, 1976 at 41 FR 25932. Because the 30 legislative day review period did not run prior to Congressional adjournment, the regulations were resubmitted to the Congress on January 11, 1977, containing amendments to the August 10, 1976, at 41 FR 38522 and October 18, 1976 at 41 FR 45952 and subsequently adopted by the Commission.

The 30 legislative day period having run on March 30, 1977, the Commission now promulgates the regulations as published on August 25, as amended by the notices of September 10 and October 18. Reprints of the FEDERAL REGISTER publication may be obtained from the Commission's Office of Public Information, 1325 K Street, N.W., Washington, D.C. 20463, (202) 523-4068.

VERNON W. THOMSON,
Chairman for the Federal
Election Commission.

11 CFR Chapter I is adopted, effective April 13, 1977, as published on August 25, 1976 (41 FR 35932), with the following changes:

PART 102—REGISTRATION AND ORGANIZATION OF POLITICAL COMMITTEES

1. Section 102.9 is amended by revising (c) (3) (iii); the introductory text of (c) (4); and (c) (4) (ii) to read as follows:

§ 102.9 Accounting for contributions and expenditures.

(c) * * *
(3) * * *
(iii) The particulars of the expenditures; and

(4) When a receipted bill is not available, the treasurer may keep—

(ii) The bill, invoice or other contemporaneous memorandum of the transaction supplied to the committee by the payee containing the same information as referred to in paragraph (3) of this paragraph.

2. The second sentence of § 102.10 is revised as follows:

§ 102.10 Petty cash fund.

* * * If a petty cash fund is maintained, it shall be the duty of the treasurer of the political committee to keep and maintain a written journal of all disbursements, including the particulars of each disbursement from the fund. Such a change would make this section consistent with § 102.9(c) (3) (iii) as revised in subparagraph (1) above.

PART 104—REPORTS BY POLITICAL COMMITTEES AND CANDIDATES

3. In § 104.2(b) (9), the text beginning with "together with the amount, date, and purpose * * *" is deleted and the following substituted therefor:

§ 104.2 Form and content of reports.

(b) * * *
(9) * * * together with the amount, date and particulars of each such expenditure and the name, address of, and office sought by, each candidate on whose behalf such expenditures were made.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

4. Paragraph (c) (2) of § 114.4 is revised as follows:

§ 114.4 Nonpartisan communications.

(c) * * *
(2) A corporation or labor organization may distribute or reprint (in whole) any registration or voting information, such as instructional materials, which have been produced by the official election administrators for distribution to the general public. A corporation or labor organization may distribute official registration-by-mail forms to the general public if permitted by the applicable State law. The registration forms must be distributed in a nonpartisan manner, and the corporation or labor organization may not, in connection with the distribution, endorse, support, or otherwise promote registration with a particular party.

PART 134—EXAMINATIONS AND AUDITS; REPAYMENTS

5. Paragraph (c) (2) of § 134.3 is revised as follows:

§ 134.3 Liquidation of obligations; repayment.

(c) * * *
(2) If on the last day of candidate eligibility there are net outstanding campaign obli-

gations, any matching funds received thereafter may be retained for a period not exceeding 6 months after the end of the matching payment period in order to liquidate those obligations. However, as of the date when the amount or amounts of matching funds received after ineligibility equal(s) the amount of the candidate's net outstanding campaign obligations, the candidate shall be obliged to repay to the Treasury that portion of any unexpended balance remaining on that date in the candidate's accounts (less the matching payments so received) which bears the same ratio to such balance as the total amount received from the matching payment account bears to the aggregate of all contributions and matching funds deposited in all the depositories through that date. Repayment shall be made within 30 days thereafter, but not later than 6 months after the end of the matching payment period.

[FR Doc.77-10890 Filed 4-12-77;8:45 am]

SMITHSONIAN WINS APRIL "GOLDEN FLEECE" AWARD

Mr. PROXMIRE. Mr. President, my "Golden Fleece of the Month" award winner for April is the Smithsonian Institution, which spent nearly \$89,000 of public funds in producing a dictionary of Tzotzil, an obscure and unwritten Mayan language spoken by 120,000 corn-farming peasants in southern Mexico.

To make matters worse, this dictionary records the specific dialect spoken by only about 10,000 members—or a mere one-twelfth—of this already small group.

To top it off, there are no Spanish definitions in the dictionary and thus, as acknowledged in the volume's introduction, it is essentially useless to even this tiny band of peasants.

All this adds up to spending the taxpayers' money in a way that does not make sense in any language.

Mr. President, as Senators know, I make monthly "Golden Fleece" awards for the biggest or most ironic example of wasting Federal tax funds. These monthly awards are followed by a "Fleece of the Year" winner in late December.

I should point out, too, that I am a member of the Senate Appropriations Committee, which oversees the Smithsonian Institution's budget.

An attempted justification for this expenditure of public funds includes the following statement from the dictionary's introduction:

General dictionaries of obscure languages are not fashionable, but if the understanding of human cultural behavior is the goal of anthropology, and if language is, in a sense, a "mirror for man," the pragmatic and semantic investigation of man's socially patterned linguistic habits is surely relevant.

Yet that same introduction contains other statements which raise serious doubts about the wisdom of spending tax dollars on such a project. Let me cite some specifics.

First, the dictionary's introduction, which was written by the same person who compiled the volume, contains this passage:

I have been asked how I secured the information in this dictionary. And aside from the techniques described for the botanical section, I have no answer. I know that sober

and drunk we laughed and groaned and chatted in "the true language" for ten days and ten years, in museums, and on mountain trails, shivering in icy San Cristobal rooms, and basking beneath a Zinacantan sun.

To say the least, this description of "research technique" makes me wonder about the worth of this volume and certainly about spending public funds to support it.

Second, the dictionary's researcher made this comment in the introduction about the absence of Spanish definitions:

My main regret is that this dictionary bears heavy witness to the school of imperialistic anthropology—lacking Spanish definitions, it could have but one use for the Zinacantecs, the same alluded to discretely by Don Juan, "You know what we do with paper in Mexico."

This remark speaks for itself. I, for one, do not think we should spend public money to produce "paper" for that purpose.

And finally, the compiler of this volume, in the "acknowledgments" section, uses the phrase "soon to collect dust on library shelves" in referring to this tome. That helps me make my final point. I am not saying the dictionary is useless or without merit. But we must have a set of priorities when it comes to spending public funds. The shortcomings of this work and its limited utility make it, in my view, not worth the public money spent, however, worthy it might be as the object of funding from other sources.

I recognize, of course, that some of the statements I have quoted were made tongue-in-cheek. And I certainly appreciate the candor and sense of humor underlying these remarks. But this does not help much in justifying the Federal funds that were spent on this project.

My criticism, I should emphasize, is of the Smithsonian's lack of judgment in spending taxpayers' money for this purpose and in no way reflects adversely on the competence and skills of the scholar who produced this work.

Let me point out, too, that the Smithsonian Institution has recently been criticized by the General Accounting Office for creating two private corporations to convert millions of the taxpayers' dollars into "private money," which it then allegedly spends outside the reach of Federal restrictions. One of those corporations provided over half the grant money for this dictionary project. This strikes me as a good example of what the GAO report might have had in mind.

I do not know how to say "We've been had" in Tzotzil, but that about sums up my feelings when I learned that Federal funds had been used to help produce this dictionary. For that reason, the Smithsonian Institution is more than deserving of the "Golden Fleece" award for April.

SUPPORT OF MOREHOUSE COLLEGE

Mr. TALMADGE. Mr. President, the Georgia General Assembly, while in session in Atlanta, adopted a resolution

which, for myself and my colleague, Senator NUNN, I bring 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:

A RESOLUTION

Commending and urging the support of Morehouse College; and for other purposes.

Whereas, the number of physicians and dentists in rural and urban inner city areas of Georgia are far too few for adequate health care to be given to the people of Georgia who reside in these areas; and

Whereas, existing medical schools are not producing physicians in numbers sufficient to meet the health needs of Georgia's inner city areas and rural communities; and

Whereas, it has been learned that Morehouse College is developing a program in basic medical science which will satisfy some of the requirements of the M.D. degree; and

Whereas, Morehouse College has the will and ability to develop a quality program in basic medical sciences which will substantially increase the number of physicians who will dedicate themselves to serving as primary care physicians and family practitioners in areas of greatest need; and

Whereas, Morehouse College has expressed its intention to exert every effort in the accomplishment of this goal and, further, intends to do all things necessary to develop the above-mentioned program into a degree-granting institution.

Now, therefore, be it resolved by the General Assembly of Georgia that this body hereby commends the administration, faculty and staff of Morehouse College for their concern and commitment in the area of medical education, and hereby pledges its support to the efforts of Morehouse College in the development of the needed financial resources for land acquisition, construction of facilities, curriculum development and other needs for this new medical school, which will train more physicians for our underserved poor and minority communities.

Be it further resolved that this body endorses the campaign for program, endowment and construction funds for the developing School of Medicine at Morehouse College and has evidenced such support by providing funding in the amount of \$1,000,000 in the Appropriations Act for Fiscal Year 1978, which funds are contingent upon the availability of federal funding for the establishment of such School of Medicine.

Be it further resolved that appropriate copies of this Resolution be transmitted to the Honorable George Busbee, Governor of Georgia; Liaison Committee on Medical Education of the Association of American Medical Colleges; the National Medical Association; the Medical Association of Georgia; the Georgia State Medical Association; the Atlanta Medical Association; the Medical Association of Atlanta; the Assistant Secretary of Health, Education and Welfare; the Administrator, Health Resources Administration; the Chief of the Institutional Resources Branch of the Department of Health, Education and Welfare; the Subcommittee on Health, Senate Committee on Labor and Public Welfare; the Subcommittee on Health and Environment; and the House Committee on Health and Ecology.

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 six such notifications were received between April 8 and April 12, 1977.

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.

S. 1303: THE LEGAL SERVICES CORPORATION ACT AMENDMENTS OF 1977

Mr. CRANSTON. Mr. President, I am especially proud to be an original sponsor of S. 1303, the Legal Services Corporation Act Amendments of 1977, introduced yesterday by the distinguished chairman of the Subcommittee on Employment, Poverty, and Migratory Labor (Mr. NELSON). The bill contains many provisions on which I collaborated with the Senator from Massachusetts (Mr. KENNEDY), another original sponsor. We are joined by those most steadfast friends of Legal Services, our chairman of the Human Resources Committee, the Senator from New Jersey (Mr. WILLIAMS) and the ranking minority member of the committee, the Senator from New York (Mr. JAVITS), as well as by our newest majority member, the Senator from Michigan (Mr. RIEGLE).

Mr. President, I was deeply involved in congressional efforts to create the corporation, chaired the confirmation hearings for the present members of the board of directors of the corporation, and have worked to achieve a sufficient level of appropriations for the corporation to enable it to address meaningfully the task for which it was created—providing access to the legal system and equal justice under the law for 29 million low-income Americans.

The corporation's task is a profoundly important one. As Thomas Ehrlich, president of the Legal Services Corporation, stated before the House Judiciary Committee's Subcommittee on Courts, Civil Liberties, and the Administration of Justice:

Equal access to justice and equal justice under law are fundamental promises by our society to all its citizens. The obligation to live according to the law must carry with it the right of access to the institutions that make and enforce laws, and to fair treatment by those institutions. If political liberty means anything, it must mean that.

Mr. President, the history of the legal services program for the poor is a story of a struggle for survival. By 1970 it had

become clear to many of us that partisan political pressures threatened to tear the program asunder. It was equally clear that the program could no longer continue as part of the executive branch. Thus, interest increased in support of the establishment of a new, independent public corporation—not an agency of the Federal Government—to fund legal services programs. A very long and hard battle was fought. The Legal Services Corporation Act of 1974 finally emerged from that struggle.

The Legal Services Corporation that was created by that act has now been operating for almost 2 years. Although no program can operate without difficulties, I can say without exaggeration that the corporation has been a resounding success. The legal services program is no longer immersed in controversy. It is no longer under concerted attack from any source. The energies of legal services attorneys and involved bar groups have been able to be directed full-time to the goal of providing legal services for low-income Americans.

Mr. President, a basic congressional goal in creating the corporation—to insure that the legal services program remained free of partisan politics—has been realized. The corporation is accountable directly to Congress. Policy is set by the board of directors, who have proven themselves to be responsible, moderate citizens who are committed to working with the program to assure its purposes are attained. The corporation and those directly administering legal services projects are able to base their decisions regarding the use of resources on the merits. Thus, the mechanism of the corporation has brought stability and success to the legal services program.

As a result, the legal services program is now a sound and healthy one. Obviously, I do not mean to imply that equal access to our system of justice is now a reality for America's poor. The road that we must travel to achieve that goal is a very long one. But we have made a substantial beginning on our long journey, and it is a journey that we will complete. The enactment of the Legal Services Corporation Act Amendments of 1977 is the next step down the road that we must travel. The amendments proposed in this bill include three provisions designed to smooth that road. I will briefly describe them.

Mr. President, the bill contains authorization of appropriations levels of \$225 million for fiscal year 1978 and such sums as may be necessary for the succeeding 4 years. Although the fiscal year 1978 authorization level of \$225 million is, if fully funded, a substantial increase over this year's appropriation to the corporation of \$125 million, it would provide for services to only a fraction of those eligible and in need of services; it is consistent with the increases recommended by the corporation and the administration; and it is much less than the levels recommended in the bill reported by the House Judiciary Committee to the full House, which authorizes \$238 million for fiscal year 1978 and \$300 million for 1979.

Thus, the increase recommended by our bill for 1978 is a moderate increase for a proven, cost-effective program. In fact, the corporation has completed field evaluations of all of its programs and has found that, with few exceptions, they are operating on a sound professional basis.

In addition, Mr. President, the corporation's authorizations were extended for 5 years in order to assure the corporation, the programs it supports, and the clients it serves, of a stable, on-going program. We believe, as does the corporation, that sound planning can only take place in such a context—we have thus proposed in this bill a longer term authorization in order to remove the program from the continuing uncertainty in which it has operated. The corporation and its board of directors—as well as the Congress—recognize the need for continuing accountability to the Congress and regular review by the Congress. This need can and will be met, however, without the burden of frequent authorization proceedings.

Second, the bill removes the restriction against the corporation's issuing grants or contracts to perform training, research, technical assistance, or clearinghouse activities. This provision was requested by the corporation and is also contained in the House committee's bill. The corporation does not anticipate that this amendment will alter the basic structure of its Office of Program Support or Research Institute on Legal Assistance, the corporation's offices that now perform most of these functions. The amendment would, however, provide greater flexibility and would allow the corporation to insure that every activity it performs is carried out in the most economical and efficient way possible.

Third, the bill would mandate that three of those appointed to fill vacancies in the board occurring before July of 1978 must be eligible clients. The President will have 11 nominations to make during that period. In addition, one of the five appointments to be made before January 1, 1978, must be an eligible client. The bill would also require that the membership of the board be generally representative of the organized bar, the client community, attorneys providing legal assistance, and the general public. There are presently no members of the client community on the board and no women on the board, and we believe that it is imperative that this situation be rectified.

Finally, Mr. President, the bill clarifies that legislative and administrative representation by a paralegal supervised by an attorney on behalf of an eligible client is permitted under the present act and is governed by appropriate legal canons. The bill would also explicitly recognize the principle that legal services attorneys should be constrained by professional standards regarding solicitation of clients to the same extent—but to no greater extent—than private attorneys.

Mr. President, I believe that the Legal Services Corporation Act Amendments of 1977 make moderate and necessary improvements in the present act, and

move us closer to equal access to our judicial system for all Americans. I urge the enactment of S. 1303.

THE GENOCIDE CONVENTION AND THE SENATE ETHICS CODE

Mr. PROXMIRE. Mr. President, we in the Senate have just finished passing a long-awaited code of ethics. The bill was necessary and helpful in recognizing our continuing commitment to every level of morality.

Yet we refuse to vote on a treaty—the United Nations Convention on Genocide—whose moral ramifications go far beyond the U.S. Senate. In turning away from this treaty, we are neglecting our commitment to the most fundamental level of human morality—that of a guaranteed right to existence. For over 25 years we have refused to ratify the Genocide Convention, a treaty that would make the intent to destroy a national, ethnic, or religious group an international crime.

That such a treaty is needed is unquestionable. The murder of 6 million Jews in Nazi Germany is only the most obvious example of a frightening attempt at genocide.

Mr. President, at a time in which we act to set standards for our own conduct, I would urge that we consider standards of international conduct. The Genocide Convention gives voice to the world's outrage and concern over acts of genocide. In the interest of peace and safety throughout the world, in the hopes of eliminating all future crimes against humanity, I ask that my colleagues join me in support of this vitally important treaty.

HONORING BOB WILLIAMS OF CLEVELAND, OHIO

Mr. GLENN. Mr. President, on Friday, April 29, 1977, many distinguished Clevelanders will join together to honor Bob Williams, an outstanding journalist. It is most fitting that this tribute to Mr. Williams has as one goal the establishment of a scholarship fund for a minority student in journalism.

Bob Williams represents the very best of Cleveland. He joined the Cleveland Call and Post in 1942 and was a key figure at that paper until 1968 when he joined the Cleveland Press as a reporter and columnist. During his distinguished career, he won many awards, including three for outstanding achievement from the National Newspaper Publishers Association.

On behalf of the entire State of Ohio, I am most happy to join in paying tribute to this fine gentleman who has given such excellent service to the community, State, and Nation.

RHODESIA'S TIME

Mr. CASE. Mr. President, the Washington Post on April 19 carried an editorial concerning the situation in Rhodesia. The statement by the Post is, I believe, a significant one. It asks

whether an internal solution inside Rhodesia is a possible alternative of a civil war in that country among the conflicting black factions.

It has been an open secret for some time that the black factions outside Rhodesia, supported and backed by the so-called frontline African states—mainly Mozambique, Zambia, and Tanzania—are opposed to one another. Indeed, the situation is so fraught with peril that there is even a strong possibility that the leaders of these guerrilla factions, most prominently Robert Mugabe, Joshua Nkomo, and Rev. Ndabaningi Sithole, do not have the support of their own organizations. One result of a forced settlement could be a multisided power struggle that might result in a civil war with outside backers taking different sides.

The alternative of an acceptable transfer of power involving the popular Bishop Abel Muzorewa ought not to be overlooked. Given the proper backing from the West and with arrangements suitable to protection of the white minority in Rhodesia, it may be possible to work something out. The key ingredient, though, may be some positive indication of political support from both the United States and Great Britain. A recent Foreign Relations Committee staff report pointed in this direction in suggesting an American temporary mission to Rhodesia which could perform a moderating role between the black organizations there, notably Bishop Muzorewa, and the Smith government. It is not too late to consider heading in this direction.

The Post editorial deserves careful study and I commend it to my colleagues.

I ask unanimous consent that it be printed in the RECORD.

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

RHODESIA'S TIME

The premise of the latest British effort to negotiate a settlement of the racial conflict in Rhodesia is that the situation has changed since January, when the latest effort collapsed. It's an understandable premise. True, in the battlefield, things are about the same: guerrillas are inflicting painful but far from crippling losses on the whites, who can probably hang on for some time. The British have a few new wrinkles in their diplomacy but nothing to alter the basic cause of its ineffectiveness, national weakness. There is, however, a new American President, one who, though untested, starts with a certain credibility among black nationalists. This is what lends interest to the newly announced American readiness to co-sponsor a fresh conference on Rhodesia, if the British (as expected) decide to convene one, and to participate in its actual work.

Given the evident American unwillingness to offer more than words and some money, which is what the last administration offered to no avail, it has to be asked, nonetheless, what purpose will be served by a more prominent American role. It is all very well for Washington to proclaim a commitment to Africa's wellbeing, to peaceable settlement of disputes, and to multiracialism. But will this slow down the guerrillas, who may feel that by fighting they can reap all the power rather than just a share? Will it induce Jan Smith to entrust the white community's welfare to "guarantors" far from the scene and demonstrably reluctant to act? Is it worth a trip

to Geneva merely to hold the British government's coat at a new conference?

In fact, a conceivable result of the British-American approach to an "international solution," one including the guerrillas based outside the country, is an intensified drive by Mr. Smith and Bishop Abel Muzorewa to reach an "internal solution," one made with "moderate" blacks at home. Last January, Secretary of State Vance, new in office, dismissed "the so-called internal solution." But suppose Mr. Smith and the Bishop, who is not a puppet but a politician with broad popular support, hatched a quick-majority-rule plan that allowed participation in internationally sanctioned elections even by the guerrilla elements now proscribed. And what if the probable alternative was a sequence beginning with a new conference and ending in a rout of whites, a black civil war, and economic ruin?

Perhaps it will turn out for the worse whatever is now done. But we think there is ample reason to encourage Mr. Smith and moderate nationalists to try to make it come out better, if they can.

FEDERAL INCOME TAX—WHO HURTS

Mr. JAVITS. Mr. President, the income tax deadline has come and gone, and yet the flood of letters from my constituents complaining about the rate of income tax is still at record levels.

From both the macro and the micro point of view, taxes are high. The ratio of personal income taxes to GNP is expected to rise sharply during fiscal year 1978; this ratio will climb from a recent average of 8.3 percent to a full 11 percent—a 32-percent growth rate—by 1982 if our tax laws stay the same.

From the individual point of view, high marginal tax rates of 40 percent or more are paid by millions of middle-class taxpayers whose only reason for having to pay such high rates is that they are earning a living wage. In fact, according to statistics from the Advisory Commission on Intergovernmental Relations, families with average incomes have had greater percentage hikes in both their Federal personal income taxes and their total tax burden than families with twice the average U.S. income.

This fact must work as a substantial disincentive for people to save; since interest rates on savings accounts scarcely keep up with the rate of inflation before taxes. In the higher income levels and higher tax brackets—where millions of professionals find themselves in the 50-percent bracket and higher—the high marginal tax brackets restrain investment and many people have pulled out of the stock market and have opted instead for nonproductive investment vehicles: land, art, precious stones, et cetera.

In this context, I commend to my colleagues an article in the Washington Post, which appeared over the recess and illustrates the tax burden dramatically. It points out that the total tax take for a family with an average income climbed 92.4 percent between 1953 and 1975 and now totals some 22.7 percent of its total income. Although the chief culprits in this tax rise were the social security tax—it climbed 436.4 percent—and the State-local personal income tax—the figure here is 533.3 percent—the fact is that personal income taxes also climbed by

more than a quarter and still take the largest bite out of pretax income.

The average family has been most hurt by tax hikes, according to the figures published in the Post. Families with twice the average income had their taxes rise 49.1 percent between 1953 and 1975, and families with four times the national average income saw their tax bills go up 46 percent. Moreover, the point is clear: we are sending more and more of our incomes to the Government, as inflation pushes us into higher tax brackets and as Government strives to keep its books in balance.

One policy recommendation clearly presents itself. We must seek a better solution in personal income taxes. This tax is the largest one directly affecting the consumer. Reducing personal income taxes on a permanent basis should increase after-tax rates of return and thus encourage consumers to spend and save more.

I ask unanimous consent that the article from the April Washington Post be printed in the RECORD.

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

THE "CHEAPEST OF ALL TAXES" STILL HURTS (By Peter Millus)

When the House Ways and Means Committee reported out the first income tax bill under the 16th Amendment to the Constitution, it predicted:

"All good citizens . . . will willingly and cheerfully support and sustain this, the fairest and cheapest of all taxes."

The committee had every reason to believe what it wrote was true. That early income tax was only 1 per cent of the first \$20,000 of taxable income and gradually rose to a maximum of only 7 per cent on all income over \$500,000.

Today, however, the cheer has gone out of taxpaying. The 1 per cent tax is a thing of the past; the Internal Revenue Code has become a bulky joke. The income tax has few defenders—and this is April 15, the day the tax is due.

Yet in some respects, the income tax has a worse reputation than it deserves.

The national tax burden—the percentage of national income taken by federal, state and local taxes combined—has increased tremendously in the last 25 years. But the federal income tax has increased less than other major taxes; by some measures, it has hardly increased at all.

The Advisory Commission on Intergovernmental Relations, an agency here, has calculated that in 1953 the average family had an income of \$5,000 and paid 11.8 per cent of it in direct taxes of all kinds—federal, state and local income, federal Social Security, state and local sales and local property taxes.

By 1975, according to ACIR, the average family's income had risen to \$14,000—and governments were taxing away 22.7 per cent of that income directly, nearly twice what they took in the 1950s.

In percentage terms, the state and local income burden rose the most—533 per cent—followed by the Social Security tax (436 per cent) and state and local sales taxes (117 per cent). Next came local property taxes, at 81.8 per cent. The federal income tax was last, at 26.3 per cent.

In absolute or dollar terms, the Social Security tax rose the most. In second place, in roughly a tie, were the federal income tax and local property taxes.

Measured another way—for the population as a whole, as distinct from the average fam-

ly—the federal income tax burden has remained virtually unchanged for the last 25 years.

Left to itself, inflation would increase this burden. Inflation means higher incomes, which automatically move people into higher tax brackets. But Congress has periodically cut income taxes in various ways to offset this effect. Thus in 1953 federal income taxes were 10.2 per cent of total national personal income—and in 1975 they were 10 per cent.

These constant percentages mask some important distributional changes, however. The biggest income tax cuts have gone to low-income families, millions of which have been moved off the federal income tax rolls in recent years. To make up for this, income taxes on average- and upper-income families have been allowed to creep up a little.

In this sense, the federal income tax has become more progressive—but most experts say the total federal tax structure has not. This is because the Social Security tax has gone up so much, while the corporate income tax has come down, at least as a percentage of federal revenues.

The Social Security tax is generally regarded by economists as regressive—a tax that, in relative terms, falls harder on the poor than the rich. The Social Security tax in the early 1950s was 1.5 and then 2 per cent for employee and employer on the first \$3,600 of each year's wages. Today it is 5.85 per cent on the first \$16,500. Social Security collections were about 7 per cent of federal revenues then. They have soared to a little more than 30 per cent today.

The corporate income tax, by contrast, is thought to be borne largely by corporate stockholders, who tend to be in the upper-income regions. The corporate income tax produced 29 per cent of revenues 25 years ago and produces about 15 per cent now.

There are two other important shifts that have taken place in the national tax structure over the last 25 years.

First, state and local taxes taken together have increased almost twice as fast as federal taxes.

That is another way of saying it is not the federal government that has grown so much in this period, but state and local govern-

ments. State and local taxes were about 30 per cent of all taxes collected in the early 1950s. They are now about 42 per cent, approaching half.

There also has been a change in the mix of state and local taxes, in that income taxes have gone up in relative importance while the property tax has come down.

State and local governments also are using federal grants to finance more and more of their activities. These grants now make up about 20 per cent of total state and local revenue, as against about 3 per cent in the early 1950s.

The federal money comes mainly from the federal income tax. In this sense, state and local government today is being financed by a more progressive tax mix than in the past.

But that is a minor comfort. According to ACIR, in 1975 the average family still paid 4 per cent of its income in local property taxes—\$1 out of every \$25. It paid 9.6 per cent in federal income taxes, or roughly \$1 out of every \$10.

"The fairest and cheapest of all taxes" has become the biggest, and it hurts.

DIRECT TAX BURDENS BORNE BY AVERAGE- AND UPPER-INCOME FAMILIES, 1953 AND 1975

Type of tax	Family with average income			Family with twice average income			Family with 4 times average income		
	Tax as percent of family income		Percent increase, 1953-75	Tax as percent of family income		Percent increase, 1953-75	Tax as percent of family income		Percent increase, 1953-75
	1953	1975		1953	1975		1953	1975	
Total	11.8	22.7	92.4	16.5	24.6	49.1	20.2	29.5	46.0
Federal personal income tax	7.6	9.6	26.3	12.8	14.7	14.8	16.6	21.1	27.1
Social security tax	1.1	5.9	436.4	.5	2.9	480.0	.3	1.5	400.0
Local residential property	2.2	4.0	81.8	1.8	3.2	77.8	1.7	2.5	47.1
State-local personal income	.3	1.9	533.3	.9	2.9	222.2	1.2	3.7	208.3
State-local general sales	.6	1.3	116.7	.5	.9	80.0	.4	.7	75.0

Note: Estimates for average family earning \$5,000 in 1953 and \$14,000 in 1975 assuming all income from wages and salaries and earned by 1 spouse. Estimates for twice the average family: Family earning \$10,000 in 1953 and \$28,000 in 1975 and assumes that earnings include \$105 (interest on State and local debt and excludable dividends) in 1975 and \$25 in 1953; also assumes the inclusion of net-long term capital gains of \$1,040 in 1975 and \$350 in 1953. Estimates for 4 times the average family: Family earning \$20,000 in 1953 and \$56,000 in 1975 and assumes that

earnings in 1965 (interest on State and local debt and excludable dividends) in 1975 and \$265 in 1953; also assumes the inclusion of net long-term capital gains of \$6,400 in 1975 and \$1,730 in 1953.

Source: Advisory Commission on Intergovernmental Relations.

CHILD PORNOGRAPHY

Mr. ROTH. Mr. President, the lucrative but immoral business of child pornography exists and continues unharassed. The wretched practice of displaying children in explicit sexual acts must, for the welfare of our children, be stopped.

To help combat the dissemination of child pornography, I have introduced S. 1011 and S. 1040 which make it a felony to cause or knowingly permit a child under age 16 to engage in specified sexual acts if the person has reason to know that the child's sexual conduct could be photographed or transported in interstate commerce. The bills also make it a felony for any person who knowingly transports or ships child pornography through interstate commerce or receives for the purpose of selling or sells any photograph or film depicting a child engaging in a prohibited act.

Mr. President, until a few months ago, I never realized the magnitude of this type of child exploitation. Unfortunately, the majority of the American public remains unaware of the subject of child pornography. Children are being bought and sold as if they were commodities instead of human beings.

A recent article in the Washington Star outlines some of the problems and traumas experienced by children who are

victims of child pornography. There is no room in society for sexual entrepreneurs who lust after money at the expense of innocent children.

Mr. President, I direct my colleagues' attention to portions of this article and hope they will join in the outcry to end this mockery of public decency. Mr. President, I ask unanimous consent that the article be printed in the RECORD.

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

CHILD PORN: IS THE ISSUE FIRST AMENDMENT FREEDOM?

(By Michael Satchell)

"What put me to work," said Lloyd Martin, "was one picture. It was of a man about 30 and maybe an 8-year-old boy performing sex. The look on that boy's face. . . . No amount of words can describe it. It wasn't fear. It was more a look of 'somebody help me.' . . ."

Martin is the head of a special six-officer unit within the Los Angeles Police Department that deals with sexual exploitation of children. His outrage was spawned by one of the more insidious developments in an old and vexing question—when is erotic material truly obscene?

An estimated \$1 billion-a-year industry that has thrived by creating new fads and demands, each more explicit and perverse than the last, pornography has now reached what many consider to be its absolute limit—the use and abuse of young children.

Unfettered by regulation, pornography has

grown more varied and efforts to control it have failed. That is due to confusing obscenity statutes and to the fight by such groups as the American Civil Liberties Union (ACLU) which believe censorship of such material violates the 1st Amendment protecting free speech.

Now, with children being filmed and photographed in hardcore sex acts, a wide range of individuals and agencies is beginning to organize and fight the trend.

Several States have hurriedly introduced legislation aimed at banning child pornography. None has yet been passed. One bill has been introduced in Congress and a second is being drafted.

For law enforcement officials who have grown largely ambivalent about porn prosecution, and for liberals who abhor censorship in any form, the issue of child pornography teeters on the cutting edge of the 1st Amendment, a litmus test of what is or isn't truly obscene.

"Just a few years ago, it was straight sex between couples," said Robert Kendall, a Justice Department attorney specializing in obscenity prosecution. "Then we escalated to explicit ejaculation, then groups of three and four people, then bisexuality, S&M, bestiality, urination and defecation, then snuff."

"Now, we're going through a very bad stage. Children. In order for pornography to survive, there must be a new product. They'll do anything to make that almighty buck."

While public and judicial attention—and outrage—have largely been focused on such highly visible and well publicized smut vehi-

cles as the movie "Deep Throat" and the magazine *Hustler*, child porn in the past year or so has moved into the adult bookstores and porno mail order houses largely unmolested by the law. Today, it accounts for as much as 10 percent of the market by some informed estimates.

It has done so largely because of public ignorance, and the fact that obscenity laws, a gray area at the best of times, makes no distinction between kidporn or any other kind.

"The average person has no idea of what's on sale in porno shops because they never go in them" said the LAPD's Martin.

"It's such a distasteful subject that the news media generally doesn't want to touch it. We believe child porn alone is a multi-million-dollar portion of the industry and it's getting bigger. This isn't consenting adults. These are confused, frightened children. To me the crime has no equal."

Dr. Judianne Densen-Gerber, a New York psychiatrist, lawyer and social activist, has been touring the United States recently, shocking community groups by screening a child porn film and displaying hard-core magazine examples of the trend.

An unblinded zealot on this particular subject, her aim is to stir public outrage against this material, not hard to do when she opens her suitcase full of kidporn magazines and screens a film of a young brother and sister pathetically attempting intercourse and other sex acts.

"On occasion, I've recommended pornography for my patients and I've even enjoyed erotic material myself," she said. "But this stuff isn't 1st Amendment material. I'm not going to answer some limousine liberal's free speech argument. I don't think I have to."

"Common sense tells me that this goes way beyond free speech. This is mutilation of children. These aren't consenting adults. They're victims. The 1st Amendment isn't absolute, and if I have to give up a portion of my 1st Amendment rights to stop this stuff, then I'm willing to do it."

Her comments were echoed by a colleague, Fred Cohen, executive director of The Odyssey Institute, an agency founded by Densen-Gerber to help the socially disadvantaged. Odyssey, which specializes in drug addiction and child abuse, is in the forefront of the campaign against child pornography in New York.

Said Cohen: "We have come up against civil libertarians who hate what we are doing and take the adult side that there must be total freedom. We don't care what the adult reads, but what about the trauma to the children involved? The child's rights must take priority."

Authorities say tracking down those producing the books and films is extremely difficult and sometimes impossible. Police argue that if the distributors and salesmen can be quickly and effectively prosecuted, they will refuse to handle child porn, and if no one is willing to sell it, the producers will be forced to quit making it.

The 1st Amendment dilemma was put to Alan Reitman, associate director of the American Civil Liberties Union, which recently felt obliged to publish a position paper on its attitude toward child pornography.

An ACLU committee studied the question, viewed examples of kidporn and decided that while it is all right for authorities to prosecute those producing the material, the ACLU does not support prosecution of porn distributors and adult bookstores selling it.

"There is an important principle of free communication," argued Reitman, emphasizing that he personally found the material repugnant. "If you start making distinctions (between degrees of pornography), you weaken the principle and open the door to further censorship."

Asked about the contention that it is extremely difficult to track down the producers of this material, and that police are generally forced to concentrate on the national distributors and adult bookshop owners, Reitman said:

"Then the police will just have to try harder."

Authorities around the country contacted by The Washington Star said that at virtually any big city adult bookshop, and probably all porn mail order houses, one can view peepshow films or buy books and movies involving children as young as four or five. Police raids tend to push the stuff temporarily behind the counter, but it quickly reappears when the heat is off.

New York Dist. Atty. Robert Morgenthau last week assured a visiting reporter that Times Square, following a series of police raids, had cleaned its shops of child porn. Morgenthau was wrong: Three of the area's dozens of porn shops were visited randomly and each had a selection of hardcore peepshows and movies, along with books involving children.

In the District, one of the few jurisdictions with a law explicitly covering the "lewd exhibition" of children's genitals, both the Justice Department's Kendall and a D.C. police spokesman were equally confident that child pornography wasn't being sold in the capital. A quick survey of 14th street NW turned up child porn books and movies.

Elsewhere, the story is much the same. "It's wide open," complained Nick Ivarone of the Chicago police department. "I've got stuff purchased in this city involving little boys and girls that would make you sick."

Said Robert Leonard of Flint, Mich., president-elect of the National District Attorneys' Association (NDAA): "You can't believe this thing. It's fantastic. We've just formed a special nationwide task force of district attorneys to try and come to grips with it and our preliminary survey shows that it seems to be just about everywhere. I believe prosecution of pornography ought to have a low, if any, priority. But this stuff is a whole different ball game."

Not surprisingly, child porn emulates adult fare, from simple nudity to extreme perversion, with bestiality apparently the only area yet to be exploited.

Magazines such as *Lolliots*, *Nature Boys*, and *Moppets* and *Teens* purport to be of "cultural, scientific, educational and sociological" value. Prepubescent and early teenage girls and boys are photographed in awkward poses designed for maximum exposure of the genitals . . . all under the guise of being sexually healthy nudist-type publications.

Others, such as *Naughty Horny Imps*, *Children Love*, *Chicken Hawks* and *Pre-Teens* and *Older Men*, along with movies with similarly suggestive titles, make no such pretense. They show explicit sex acts between young children of both sexes, and between children and adults, both homosexual and "straight."

The combinations and the activities seem limited only by the pornographer's imagination and the limits to which he, or she, are willing to exploit the children. The kids themselves often seem confused, and in the movies, can sometimes be seen looking off camera, waiting for instructions on how to proceed.

Amazingly, even these items do not push the new outer limits of porn. Two books obtained by Densen-Gerber are virtual primers for incest and pedophilia, actually encouraging it.

One book contains full color photographs of a girl about seven or eight and a man represented as her father. An accompanying

pseudo-sociological text extols the joys and virtues of incest "in this enlightend age" with detailed instructions on the physical techniques required to accomplish it. The child's bewildered expression throughout the magazine speaks volumes in support of Densen-Gerber's campaign.

The other publication is simply titled "Lust For Children" and chronicles, in graphic, full-page drawings and text, the adventures of a child molester who spots two young girls in a park. Written and drawn entirely from the man's point of view, it details how he buys them ice cream, lures them to his house, plays various games to win their confidence, then sexually abuses them.

One part of the story instructs the reader to ignore any struggle or protest from the children, stating that little girls are naturally promiscuous and such protest really means they are enjoying it. The message throughout is that child molesting (that expression is never employed) is harmless and fun. The book concludes with drawings of two laughing children happily accommodating their new-found "friend" in a variety of sexual activities.

Although none of those campaigning against child porn claim to have seen any definitive cause-and-effect studies, they say common sense indicates that such books as "Lust For Children" can only encourage the activity they portray.

The LAPD's Lloyd Martin agrees. "Every case (of child molesting) we've ever made out here, the guy's had this material," Martin said. "Take one man who picked up a 5-year-old girl in the park. The guy had two briefcases containing 10 rubber dolls, candy, a tube of Vaseline and a stack of books including *Lolliots*, *Moppets* and one called *Daddy Loves Little Girls*."

Author Robin Lloyd says that during his research for his book on boy prostitution, he collected 264 different boy and girl porn magazines being sold in adult bookstores nationwide, some so exclusive that they dealt with such things as homosexual acts between identical twin brothers.

In Los Angeles, where much of this material is thought to be produced, police conducted a study last year and concluded that over 3,000 youngsters under the age of 14 were being exploited sexually in the city.

"Children have become commodities and are bought, sold and traded for the financial gain of the involved adults," the Los Angeles report states. "Every conceivable sexual act is committed upon these young people, including acts of sado-masochism."

Police investigating the problem believe the children used in kidporn come from various sources. The younger ones, particularly girls, are provided by their parents—drug addicts, porn performers themselves, most often parents having incestuous relationships with their children.

The young teens are sometimes runaways or streetwise youngsters lured into the trade. Some are sent by unwitting parents to religious summer camps run by homosexuals. The children are drawn into the activity, then become too frightened or ashamed to tell their parents. And some children are simply victims.

"We find now that practically all child molesters take polaroid pictures of their victims for their own enjoyment, and for sale," Martin said. "Then a lot of fathers performing incest on their sons or daughters will let them be used in films, or will exchange photographs with others, and these will end up being published."

Last January, a Security, Colo., couple was charged with selling their 12-year-old son for \$5,000 for sexual purposes to a Texas man who took the boy to Los Angeles. A social worker in Rockford, Ill., was jailed last year after permitting a pornographer to film his three foster sons. The fee: \$150 per child.

Boys and girls from broken and problem homes, runaways or kids allowed to wander without parental supervision are often lured into the trade.

"These kids are easy targets" said Martin. "Their home situation is deplorable. Money doesn't mean much to a lot of these kids. What they crave is love and affection."

Equally depressing is the ultimate effect of this activity on the children themselves. Those studying the problem feel the children will suffer lasting harmful effects and—just like battered children who grow up to beat their own infants—will probably grow up and become sexual abusers themselves.

Said Dr. Vincent Fontana, a child sex abuse expert at New York's Foundling Hospital: "There is a great deal of psychological scarring of these kids, and God only knows where they will end up . . . drug addiction, alcoholism, sexual acting out. As these kids grow up, they're going to have real problems."

Densen-Gerber agreed. "We know psychiatrically how destructive this inappropriate sexuality is to our children. It leads them to join our deviant population of drug addicts, prostitutes, teen-age parents and criminals," she said.

Authorities say that perhaps 70 percent of the child porn market now involves young boys—"chickens" in the vernacular—and adult male homosexuals. A vast and well-organized network caters to the "chicken" trade with books, movies and boy prostitutes.

Robert Leonard, the NDAA's president-elect, said investigations into well-organized boy prostitution and porn rings are currently under way in Michigan, Louisiana, Tennessee, Pennsylvania, Rhode Island and Virginia.

Several of the rings have operated out of religious-type camps. In Tennessee, the Rev. Claudius Vermilye Jr., an Episcopal priest operating a farm for wayward boys, was charged recently with staging homosexual orgies with the boys and photographing the action for sale to magazines.

Off Traverse City, Mich., a phony religious group set up a camp on North Fox Island in Lake Michigan and flew upwards of 200 boys out to the island for the pleasure of well-heeled homosexuals. In New Orleans, it was a Boy Scout leader staging similar activity with members of his troop.

"On 42nd Street in Times Square and at 53rd and Third Avenue you can watch the hawks waiting to pick up the kids," said Lt. Martin Kennedy of the police public morals division. "You see kids 10, 11 years old. They come downtown from the Bronx to make a buck. These kids take an awful risk—you should see some of the creeps picking them up."

The Los Angeles police study estimated that some 25,000 juveniles under 17 are currently involved in the "chicken" trade in the city. "When we get to them, they usually break down and cry," Martin said. "They are very relieved to be out of it. They often are too scared and ashamed to tell their parents what they've been doing."

There is a distinct sense of anger and frustration among police and prosecutors over the difficulties of prosecuting porn's newest trend. Sexually abusing children is, of course, a very serious crime, but tracking down the offending book and movie producers to press such charges is monumentally difficult.

They point to the obstacles. Pornographers, especially those involved in the seamier aspects such as kidporn, are transient and anonymous. The stuff is quickly produced in private homes or rented motel rooms. Incriminating records aren't kept.

The children have little idea of who is on the other end of the camera, and often it may be their own parents. The distributors operate from a maze of constantly changing

phony corporate fronts, with post office box numbers, false names and addresses and the best lawyers money can buy.

A measure of the frustration can be gauged by examining some recent court cases in the obscenity area. Larry Flynt was recently sentenced to serve between 7 and 25 years for publishing Hustler, a magazine specializing in explicit pictures of nude women that in no way approached the fare available in much of the kidporn literature.

In New York and Los Angeles, several cases involving felony distribution of child pornography are pending but three recent court decisions involving hardcore child porn illustrate the disparity in sentencing obscenity defendants.

In San Francisco, the owner of the Kearny cinema was arrested for showing a 45-minute movie, "Young Lolitas Or Youthful Lust," which featured two girls aged about seven and eight having intercourse and oral sex with adult men and women. The man pleaded guilty to a charge of contributing to the delinquency of minors and was placed on probation for two years.

New York police, tired of seeing porno book store salesmen fined \$50 or \$100 on misdemeanor charges, set up an elaborate undercover adult bookstore in Times Square in an effort to gather evidence against the major distributors. Among eight persons charged with felony distribution of obscene materials, which included child books and movies, was Edward Mishkin, 62, described by the New York District Attorney's Office as "New York's Porn King." Mishkin, with a lengthy record of pornography convictions, pleaded guilty to a felony charge that carried a maximum of seven years in jail. The judge ordered him to spend 25 weekends behind bars.

Chicago authorities took several bookstore owners to court for selling hardcore sex films of children and adults. A three-judge panel found the Illinois obscenity statutes too vague and the cases were thrown out of court.

Today, only six states have laws prohibiting obscene performances by minors. As the tide of child porn rises, several state legislatures are attempting to evade 1st Amendment questions and the cloudy legal aspects surrounding obscenity prosecution and write specific laws prohibiting this particular aspect of child abuse.

HOTLINE FOR INVENTORS IS A PHONE CALL TO TECHNOC

Mr. STEVENSON. Mr. President, the following article, which appeared in the Washington Post on April 11, 1977, touches on a critical area of science and technology policy: Matching technological developments with potential users of that technology. It is clear that economic development depends heavily on technological development, and if technology is to serve humanity as effectively as it might, such matchups must exist as early in the development of new technology as possible. A principle concern of the Commerce Committee's new Subcommittee on Science, Technology, and Space will be an examination of questions related to technology innovation and transfer. Mr. President, I ask unanimous consent that the Washington Post article 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, Apr. 11, 1977]
THE HOTLINE FOR INVENTORS IS A PHONE CALL TO TECHNOC

(By Barbara Bright Saguier)

Jim Decker of Modesto, Calif., listed an immersion freeze-heat peeling process for fruits and vegetables on Technoc, Control Data's technology exchange subsidiary. Within a few months, he had negotiated licenses for the new process in Norway, Poland, Spain, Japan and the United States.

"The Poles," said Decker, "are interested in the process to french-fry potatoes and ship them to a Western European market; a Norwegian company is interested in the process for fish."

The Technoc listing cost him only \$68 and a few telephone calls. The process inventor, Decker estimates, soon will be earning \$200,000 to \$300,000 annually from the sales of his quick-freeze immersion machine.

Ed Harvey of Arlington, Va., an electrical engineer and a maker of wooden toys, searched Technoc for queries on wood-working. He found that a group of woodworkers in Caracas, Venezuela, were seeking a process for bending wood without its splitting or cracking.

Harvey's answer to the query required only a week's research here among literature from chemical companies and the USDA, but he provided the Venezuelans with information unavailable in Caracas and earned himself about \$350 for the effort.

Matching a technological process and its potential user is the aim of Technoc, a technology transfer operation that is the first to make use of a worldwide computer network.

The technology data is banked and retrieved from the Control Data Corp.'s \$1 billion Cybernet network, which has more than 5,000 computer terminals in more than 150 cities in 15 countries.

Technoc was set up a year ago to take advantage of that network and to foster Control Data president William Norris' personal interest in technology transfer. According to Ralph Sheehy, a Control Data spokesman, the purpose of communicating technologies is to prevent time being wasted by "a re-invention of the wheel."

Sheehy calls Technoc "a yellow pages of technology." An inventor of a new process or technique can list his brainchild on Technoc for a year at \$100 for a 1,000 character description. Someone looking for the service can search the Technoc data bank, using a telephone or telex connection to a computer terminal, for an average charge of \$8 to \$10, according to the time involved.

If a searcher finds a process he believes will be useful or a query he believes he can answer, the fee is usually \$50 for a contact.

In a single year of operation, Technoc has listed some 11,000 different technologies from 270 countries, according to Sheehy.

The Soviet Union has 47 listings. About 10 U.S. agencies—including NASA (with 37 technologies), the Energy Research and Development Agency, the National Science Foundation and the Maritime Administration—are users of Technoc.

The French atomic energy committee has listed descriptions in energy, chemistry, metallurgy and pollution control. Volkswagen in West Germany has described a portable solar radiation collector and a new pulse measurement instrument for medical use. India has described how to produce baby food from buffalo milk and caffeine from tea waste.

Listings on the Technoc data bank are described not as products but as processes. A search for the Technoc system using the key words "fish . . . freeze . . . food", for

example, turned up the process that Decker listed.

Control Data spokesman say they have no way of knowing how many searchers have used the Technotec system. Philip J. Bifulk, president of Technotec, said that revenues from the Control Data subsidiary are included in the company's product-line category, which last year showed a profit of \$500 million. "We do not break down revenue figures below that level," he said.

According to Bifulk, more Americans are looking for foreign technology than there are foreign countries looking for American technology.

Most exchanges on Technotec are still domestic, however. Recently the technology transfer system arranged a waste exchange service in the Minneapolis-St. Paul area to match up companies that have unwanted waste products with those that have a use for the same waste products.

Zinc sludge slurry, from an electro-plating company, was the first item listed—and the next day a paint manufacturer was searching the computer data bank for a waste product he could use as a source of zinc for pigments. He found it: zinc sludge slurry.

MEDICAL CARE

Mr. JAVITS, Mr. President, as the Congress grapples with the rising costs of health care, I believe we must not lose sight of the terrible burden that these costs place on our Nation's older citizens. The causes of cost increases are highly complex and arise from a combination of factors including open-ended, cost-based reimbursement, proliferation of unproven services and technologies, lack of effective planning, rising expectations and consumer demands, and many others.

I believe it is grossly unfair, however, to ask the elderly, when they are living on fixed incomes and are particularly vulnerable to inflationary pressures, to underwrite these mounting costs out of their own pockets after a lifetime of work. I commend the efforts of my colleagues Senators CHURCH and WILLIAMS to roll back the Medicare hospitalization deductibles and long-term care coinsurance rates to 1976 levels, and I favor other reforms of Medicare such as requiring physicians to accept "assignment" and not bill additionally Medicare beneficiaries for the care provided.

A recent commentary in the New York Times details poignantly the financial plight of the elderly and dramatizes the need for Medicare reform.

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

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

[From the New York Times, Mar. 3, 1977]

MEDICAL CARE

(By Richard Phalon)

Medicare has proved to be something of a Catch-22 for people over age 65. It was originally designed to help take up some of the slack left by private health-insurance plans. Rising medical costs have so eroded the value of Medicare, however, that private health insurance has become more important than ever.

One sign of that is the number of individuals who rely on outside coverage to fill

the increasingly large gaps left by Medicare. According to the Health Insurance Institute, some 12 million people over 65 carry one form of health insurance or another. That works out to about 52 percent of the 23 million Americans who carry Medicare cards.

It's easy to understand why outside health insurance has become so important. Medicare was not meant to cover all hospital and doctor bills. Over the years, however, it has increasingly picked up less of the burden in a trend that continued to gather momentum with changes in the law that became effective Jan. 1.

Both the hospital and doctor-fees segments of the coverage work on a system of deductibles and co-payments. A decade ago, for example, the deductible on hospitalization—the amount individuals had to pay before the Federal coverage took over—was \$40. Effective Jan. 1, the deductible went to \$124, up almost 20 percent from a year earlier.

Co-payments—the amount of money individuals have to lay out as their share of hospital bills—have been rising, too. After the \$124 deductible has been met, Medicare pays all the ordinary costs of a semiprivate room, covering drugs, laboratory tests, X-rays and the like, for the first 60 days in a hospital. From the 61st to the 90th day, the patient has to make a co-payment of \$31 a day, up from \$26 last year and from \$10 a day a decade ago.

Beyond the 90th day, a patient can draw on a once-in-a-lifetime reserve of an additional 60 days. The co-payment on those days rose on Jan. 1 from \$52 to \$62 each, a long, painful way from the charge of only \$20 a day that applied in 1968.

Thus, even with the help of Medicare, a hospital stay of five months could mean out-of-pocket costs of \$4,650.

Getting insurance to cover the gaps in Medicare is no longer so easy as it once was. Many insurers, including most Blue Cross/Blue Shield organizations, offer packages that cover the deductibles and co-payments or slip into gear after Medicare benefits have been exhausted.

The Guardian Life Insurance Company, for example, has been selling a gap-filling policy that picks up the co-payments from the 61st through the lifetime reserve days, and, among other extras beyond that point pays up to \$60 a day for room and board for another year.

According to Gerald Parker, vice president for health insurance, Guardian did well with the policy until 1974, when "we began to take a real shellacking." Then costs rose so quickly that the company began to show "six-figure losses."

The New York State Insurance Commissioner approved a 25 percent rate increase in 1975 and an additional 50 percent increase last year. The annual cost of the policy—\$116 in 1966—has jumped to \$216 a year and the company is no longer selling to all comers.

Blue Cross and Blue Shield of Greater New York has also had to ask for rate increases to cover the higher cost of deductibles, and—like Guardian Life—has been limiting new enrollments in its Senior Care "medigap" plan to individuals who already carry standard Blue Cross policies.

That will change some time this spring, when Blue Cross plans to open its subscription books for one month to new enrollments. The date has not been set. The cost of the policy will go from \$18.72 quarterly to \$24.21 quarterly on March 1.

The benefits on Blue Cross medigap policies vary from state to state. The Greater New York plan, for example, both picks up the hospitalization deductible and provides help beyond the lifetime reserve days.

Very few policies of any kind, however, are designed to cover all of the costs of a catastrophic illness, and the shrinking avail-

ability of medigap coverage suggests that the best time to buy supplementary health insurance is before age 65.

RADIO FREE EUROPE AND RADIO LIBERTY

Mr. JACKSON, Mr. President, it is heartwarming for us in the Senate to receive evidence of the effectiveness of programs we support. One such bit of evidence came recently when Vladimir Bukovsky, the heroic Soviet human rights advocate, said in Munich that he had kept abreast of the events outside his prison walls by listening to Radio Free Europe/Radio Liberty, Inc., on a makeshift receiver which he secretly built while imprisoned.

While RFE/RL continue to be jammed by the Soviets and certain East European countries, the message gets through to audiences eager to exercise their right to a free flow of information as recognized in the Helsinki accords.

In this connection, Mr. President, I believe by colleagues will be interested in an April 7, 1977, story in the Washington Post by Michael Getler, and an April 9, 1977, editorial from the Washington Star, which discuss the current activities and needs of RFE/RL.

I ask unanimous consent that these two articles be printed in the RECORD.

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

[From the Washington Post, Apr. 7, 1977]

U.S. BROADCASTS REACH SOVIET JAILS

(By Michael Getler)

MUNICH, April 6—Vladimir Bukovsky has spent almost a third of his 34 years in Soviet prison camps and "hospitals."

In one of those camps during 1968 and 1969, the exiled Soviet dissident said in an interview here today, he was able to hear the U.S.-sponsored Radio Liberty broadcasts on a make-shift radio that had been built secretly in the camp.

The Carter administration has asked Congress for \$45 million in additional funds to double the power of transmitters used by Radio Free Europe (RFE) and Radio Liberty as well as the world-wide facilities of the Voice of America.

Soviet efforts to block these broadcasts by electronic jamming "covers the big cities," Bukovsky said, "but it doesn't work so well in the suburbs where this camp was. We could hear quite well."

Bukovsky, who was freed last December in exchange for the release in Chile of jailed Communist leader Luis Corvalan, was here yesterday to talk with employees of Radio Liberty, which broadcasts to the Soviet Union, and Radio Free Europe, which beams broadcasts at five other East European Communist countries.

Bukovsky said his short visit was meant to offer advice to the stations on the content of the broadcasts. But his remarks about being able to hear an otherwise jammed broadcast in the suburbs dramatizes the complicated electronic battle being fought daily in the airwaves between the United States and the Soviet Union over these broadcasts.

The Voice, which is an official part of the U.S. government, sticks mostly to presentation of world news and explanation of U.S. government policies and is not jammed by the Soviets or its allies.

The recently combined RFE/RL operations, however, draw frequent criticism from the

Soviet Union and its allies. They broadcast in 22 local languages—news that is frequently suppressed by local censors or that focuses on the internal affairs and arguments of Communist nations.

The stations, transmitting from West Germany, Portugal and Spain, have been repeatedly denounced by Soviet Communist leader Leonid Brezhnev as a flagrant interference in internal affairs, and are strongly supported by President Carter as one of America's "most valuable instruments" in its commitment to the free flow of information and ideas.

The Radio Liberty broadcasts to the Soviet Union are heavily jammed. The RFE broadcasts to Czechoslovakia and Bulgaria are also heavily jammed as, to a lesser extent, are those to Poland. Only Rumania and Hungary do not jam them.

Most of the transmitters are some 20 years old and are widely viewed as underpowered and outmoded.

The Carter administration's plan to modernize this equipment involves replacing four old 10 kilowatt transmitters in West Germany with 250 kw transmitters and antennas and to add seven of the more powerful 250 kw transmitters in Portugal.

The idea is to help break through the areas of heaviest jamming, to carry the signal further to other areas of Eastern Europe, and to make what is a weak signal now to listeners in some areas stronger and thus more "attractive."

Increasing the power from 10 kw to 250 kw does not mean a 25-fold increase. It means, explains engineering director Earnal Campbell, increasing the original signal sent to listeners by some 15 decibels.

In simple terms, Campbell explains, a single decibel is the slightest change in sound level that a person can perceive.

Campbell says trying to counter more powerful broadcast transmissions with more powerful jamming is not a simple matter.

For one thing, it is hard to black out a large geographic area, which explains why the Communist countries try to focus on the cities. With the higher power, however, the outskirts of places like Prague, Czechoslovakia, are viewed as certain to have better reception.

In addition, at certain hours of the day, transmission from west to east has certain atmospheric advantages that cannot be fully offset by jammers trying to push electronic energy in the opposite direction at the same frequencies.

The RFE/RL broadcasts from West Germany are sent via the low-end of the shortwave radio band. Identical broadcasts are made from Portugal using the high-frequency end of the shortwave band, bouncing the signals off the ionosphere and into Eastern Europe.

The high-frequency broadcasts are harder to jam than the low-frequency, and would present even more of a problem with more powerful transmitters.

RFE claims it now reaches some 13 million listeners daily and RL between 3 to 4 million. They say listener ratings have held up despite data from various monitoring techniques that shows that the currently low-powered signal has been declining in relative strength in the last 10 years in some areas as more powerful stations have come on the air.

In 1957, Campbell says, there were less than 10 transmitters of 200 kw or more. Today, he says, there are about 250.

Assuming that Congress approves the money, Campbell estimates it will then take almost three years before the first new station is operating.

The stations also face a potentially sticky situation with the Bonn government, which must approve the new transmitters near here. Bonn has always gone along in the past, but Brezhnev is expected to visit here later this

year and is expected to lean on the Germans to oust the U.S.-sponsored stations, which were run with heavy CIA involvement until Congress took over support in 1971.

Strolling through the newsroom here today, Bukovsky said that as important as the U.S. stations were, "they were not perfect."

He said that at times a year or two ago he felt they pulled some punches by not broadcasting the names of arrested dissidents or backing away from discussion of Soviet problems because the State Department regarded it as interference.

"I came here to help," he said. "To tell them to mix information and diplomacy, to keep in mind they are speaking with people and not governments and not to be more timid than President Carter."

Bukovsky, perhaps inadvertently, used the same word Carter did when the President met with the Russian exile last month at the White House and told him that as president he would not be "timid" in his public statements.

Carter's proposal last month for the new equipment came on the heels of a sharp blast from Brezhnev over the President's stand on human rights, making the RFE/RL proposals even more infuriating than they would normally have been for the Soviet Union.

The study that led to the proposal was begun by the Ford administration and officials here prefer to think of the timing of the Carter statement on the eve of Secretary of State Cyrus R. Vance's recent trip to Moscow, as "a historical accident."

[From the Washington Star, Apr. 9, 1977]

AMPLIFYING THE VOICE

In the mounting evidence of President Carter's seriousness about human rights, nothing is more welcome than the White House request to Congress for substantial increases in United States-sponsored radio broadcasts to the Soviet Union and Eastern Europe. The President's request is for doubling the transmitting capacity of Radio Free Europe and Radio Liberty and for enlarging Voice of America capacities some 25 per cent.

These offspring of the Cold War have had many ups and downs of popularity, both in this country and abroad, since they were established in the Fifties. To begin with, they were missionary messengers, taking the gospel of democracy to the Iron Curtain benighted, and Americans were all for them.

Then, in the early Seventies, a CIA connection came out, and enthusiasm cooled. Even before that, there had been criticism of the approach. There was too much justifying of American foreign policy. It was said, and too little objective reporting of either world news or life in the United States.

Meanwhile, countries where there were American transmitters chilled and thawed as the ideological tone of their governments changed. The chief examples were Portugal and Spain, where the acceptability of American broadcast installations changed with a succession of political upheavals.

The one constant in the situation was in the audiences. Soviet bloc governments kept protesting and Soviet bloc citizens kept listening.

Radio Liberty and Radio Free Europe have shaken off the CIA label in the last few years. They have also changed their approach to one that stresses straightforward news and news analysis rather than anything tainted with apologetics.

The Voice of America is still charged with explaining official United States policy and with helping non-Americans to understand American ways. Even in the VOA, however, the emphasis is less narrow and self-justifying now than it used to be. The point of all these broadcasting operations is no longer to sell anybody a viewpoint, but to ease tensions by an exchange of ideas.

As American overseas information officers

have grown more sophisticated about their work, it has become increasingly clear to them that straight, factual accounts of what's going on in the world make their case better with closed-off Communist societies than elaborately tailored persuasion. And that merely keeping up awareness of life in the outside world for these people is a powerful nourishment to the spirit of freedom.

President Carter is to be applauded for being so perceptive about the way these programs fit in with his hope of encouraging human rights around the world. His proposal to start new such programs beamed at Africa and the Western Pacific compounds the good news.

THE FAIRNESS DOCTRINE

Mr. BAYH. Mr. President, I call the attention of the Senate to an extremely important ruling of the Federal Communications Commission made on April 7 in response to a complaint which Senator ABUREZK, the Energy Action Committee, and I filed last August.

We contended in our complaint that the networks and several television stations had violated the FCC's fairness doctrine by repeatedly airing oil company advertisements regarding the integration of the oil companies without extending time to others to offer an opposing view. Though the FCC found only one station in violation of the doctrine, its ruling upholds the principles of our position and is of immense importance. It will put stations and networks on notice that in the future so-called institutional advertising must be examined for political content, and when such content exists, other views must also be aired.

Mr. President, many of the very important issues of public policy which will be debated in Congress in the years to come will directly affect many of the largest corporations in the world. Those corporations cannot be permitted to tip the scales of the debate on those issues by instituting self-serving media blitzes. This is exactly what we experienced regarding the oil divestiture issue, and this FCC decision will help insure that we do not have such an experience again.

Mr. President, I ask unanimous consent that articles from the Washington Star and the Wall Street Journal regarding this decision be printed in the RECORD. I also ask unanimous consent that the text of a letter from James F. Flug, executive director of the Energy Action Committee, to the presidents of the three major television networks be printed in the RECORD. This letter contains a very articulate discussion of the many serious issues which are raised by the increased incidence of oil company issue advertising and merits the attention of all Members of Congress.

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

[From the Wall Street Journal, Apr. 8, 1977]

TV STATION IS TOLD TO GIVE OTHER SIDE OF "OPTION" AD ISSUE

WASHINGTON.—The Federal Communications Commission put broadcasters on notice that they must also cover the other side of an issue when they air "option" advertisements.

The FCC found that a television station here violated the commission's fairness doctrine when it carried a large number of Tex-

aco Inc. ads defending integrated oil companies but didn't adequately air the views of those who want to break up the major oil companies.

The ads were challenged by the Energy Action Committee Inc. and two Democratic Senators, Birch Bayh of Indiana and James Abourezk of South Dakota. They contended that WTOP-TV, owned by a Washington Post Co. subsidiary, had broadcast 53 Texaco commercials that opposed divestiture legislation without letting the other side present its viewpoint.

The FCC ordered WTOP-TV to give proponents of divestiture legislation airtime to make their case. The commission calculated that the 53 Texaco commercials totaled 41 minutes, while the station gave only five minutes in news reports to the progress of the divestiture legislation in Congress. The five minutes of news broadcasts didn't "afford a reasonable opportunity for the adequate presentation of contrasting views" the FCC said.

At the same time, the FCC rejected challenges the Energy Action Committee had filed against the American Broadcasting Co. and National Broadcasting Co. television networks and against an NBC-owned station here. The group claimed that they had likewise, violated the fairness doctrine by carrying the Texaco commercials.

But the commission said the Texaco ads weren't carried as extensively on those networks and WRC-TV as on WTOP-TV. NBC also resented considerable news and public-affairs programming on the divestiture issue that gave balanced coverage, the FCC said.

James F. Flug, director of the Energy Action Committee, said the commission's decision gave proponents of oil company divestiture a chance to be heard on television. "Broadcasters will now be responsible for looking beyond the surface of the subtle pseudo-psychological commercials to find the real political messages they contain," he said.

A spokesman for WTOP-TV said he wouldn't comment until he read the FCC decision.

Noting that it wasn't a party to the proceedings, Texaco said, nonetheless, that it was "disappointed" by the reports of the ruling "since Texaco considered that advertisement to be a message providing information to the American public on how the company's operations serve the needs of its customers."

The FCC said that while the Texaco commercial didn't explicitly mention divestiture, it implicitly dealt with the issue by asserting that an oil company "like Texaco" could put many parts of the oil business together efficiently and economically.

[From the Washington Star, Apr. 8, 1977]

WTOP RULED IN VIOLATION OF FAIRNESS
(By Stephen M. Aug)

The Federal Communications Commission has ruled that the Washington Post's television station here, WTOP-TV (Channel 9), has violated government fairness standards for broadcasters because of an oil company's commercials.

The ruling is being hailed by groups that want to break up the oil companies, and they say they're going to go further: They'll try to convince the major networks to take some oil company advertising off network news programs.

The FCC decision—by a 6-1 vote with Commissioner Margita White dissenting—results from a complaint filed last August by two Democratic U.S. senators, Birch Bayh of Indiana and James Abourezk of South Dakota, and the Energy Action Committee against WTOP-TV, the ABC and NBC networks and WRC-TV here.

The complaints contended that the networks and stations had broadcast repeatedly

Texaco Inc. advertisements aimed at convincing the public that legislation to break up the oil companies was unwise and should be defeated.

Because the commercials advocated only one side of a controversial issue of public importance, the two senators and the energy group argued, the broadcasters were required by the FCC's Fairness Doctrine to offer time to others to give an opposing view.

The commission's decision, handed down yesterday, said that indeed the commercial advocated only one side of the issue of breaking up the oil companies, but that with the exception of WTOP-TV the commercials were broadcast only a few times.

In the case of WTOP, the FCC noted, the station had aired the commercials 53 times for a total of 41 minutes. In its defense the station said it had broadcast contrasting views. But the FCC found that this comprised about five minutes worth of network news reports which "merely discussed the divestiture issue in general terms."

As a result, the FCC said, the station had not adhered to its obligations to be fair. It gave the station 10 days "to fulfill its obligation of presenting a balance of opinion on this issue."

James Lynagh, manager at WTOP-TV, said yesterday that no decision had been made on how the station will comply with the FCC order. "We have not received anything but a copy of the press release," Lynagh said, and "until we have time to read the commission's full determination and review it I will have no comment."

The Texaco commercials in question were also broadcast by WMAL-TV (Channel 7) here, owned by Washington Star Communications Inc. However, WMAL last August agreed to air contrasting views and no complaint was filed against it.

James F. Flug, director and counsel at Energy Action, said the FCC decision "strikes an important blow for the public interest." He said, "No longer will the major oil companies be able to hide behind the facade of 'institutional advertising' as they try to sell the American people on the oil industry's point of view on controversial public issues."

Flug said his group intends to take the matter further. He said Exxon Corp. and Gulf Oil Corp. both have become major sponsors of network news and public affairs programs.

APRIL 8, 1977.

DEAR _____:

Since your network newscast Thursday night omitted any mention of the important fairness decision released that day by the Federal Communications Commission, we wanted to be sure that you were aware of it, to offer our assistance to you in implementing it fully, and to raise a broader issue of mutual concern suggested by the rising tide of oil company issue advertising on news and public affairs programming.

The new Commission ruling establishes clearly that, even though what purports to be an "institutional message" relating to the operations of an oil company does not explicitly mention a controversial public issue by name, an obligation under the Fairness Doctrine arises when the assertions in the ad address the "essence" of the issue and "espouse the view" of those on one side of the issue.

In looking at the extent of the Fairness obligation in such circumstances, the Commission drew a line between the broadcast of a "handful" of issue spots and the repeated broadcast of such advertising. In considering the fulfillment of the obligation through news and public affairs programming, it reiterated the distinction between "mere reportage of fact" and news reports that "discussed the merits and advocated" views opposed to those of the ads.

As you probably have noticed, during the

pendency of the FCC proceeding regarding the Texaco anti-divestiture ad, oil industry "institutional" advertising, especially on news and public affairs programs, has increased sharply. Exxon now regularly sponsors entire network news shows and all or parts of weekend interview shows. Gulf is placing its ads on news shows on all three networks. Texaco has continued its "institutional" spots, primarily on entertainment programming.

Many of these purportedly "institutional" ads, as did the Texaco "puzzle" ad, address issues which lie at the heart of hotly debated public energy policy questions, such as strip mining, horizontal and vertical divestiture, oil and natural gas pricing, the viability of renewable energy sources, the safety of supertankers. And some of them take positions advocating one side of these issues. These are difficult and complex issues in any context. They are more so when addressed subtly—if not subliminally—and with a soft sell. It is understandable that, like the Texaco ad, they might slip through unnoticed and untagged with a Fairness flag after an "acceptability" process conducted in New York by communications lawyers unfamiliar with current energy debates in Washington and across the nation.

Although we cannot at this point forego any Fairness claims which the repeated broadcast of this advertising might already have generated, our strong preference would be to treat the circumstances of the recent past as history, to draw instruction from them, and to work together with you—and the oil industry—to establish standards and procedures that meet the needs and rights of the networks, the oil industry, and the public.

In particular we suggest that you:

1. Re-assess the "institutional" ads recently placed by Exxon, Gulf, Texaco and/or other major oil companies on your network to determine whether they implicitly address controversial energy issues.

2. Provide us with transcripts of these ads so that we can also review them and assist you in identifying any controversial issues implicitly addressed.

3. As to ads repeatedly broadcast which implicitly address controversial issues of public importance, consider whether there has been adequate presentation of contrasting views, and if not, how best to do so without interfering with the news judgment of your news editors and correspondents.

4. Arrange to meet with us—in the presence of oil company representatives if you wish—to discuss how we—and they—can keep your legal or acceptance staffs apprised of current energy issues and the essential sub-issues involved, whether and how we can help you identify implicit issues in proposed ads so that you can fully assess their Fairness implications before they are aired, and how we can assist you in meeting any currently unmet Fairness obligations that you discover.

But beyond any technical questions of the Fairness Doctrine, or formal obligations under FCC rulings, the growing presence of oil company "advocacy" or "issue" ads on news and public affairs programming raises a broader set of very difficult and very sensitive questions for your industry, questions that go to the maintenance of your credibility, protection of the appearance—as well as the fact—of independence, and preservation of your rights to make your own news judgments.

It is my purpose in this area merely to raise those questions, not to prejudge them, nor to advocate answers. The television people to whom I have informally talked agree that these issues merit further and wider consideration within the networks.

Citing examples is perhaps the best way to approach them:

A network newscast sponsored entirely by Exxon, which used most of its spot time to extol the Alaska pipeline, on a night when the lead story showed the President and Secretary of State in Alaska extolling the pipeline, and another story covered the industry's point of view on the natural gas issue;

Another Exxon-sponsored newscast in which two commercial spots, and one of the filmed news stories, covered the industry's point of view on the high cost of oil and gas exploration;

A Sunday interview show with the President's energy advisor, sponsored in part by Exxon with a "message" ad giving the company's position on some of the very issues addressed by the reporters and guest;

Inauguration Day 1977, perhaps the most-watched news night of the year, when Americans could not see coverage of the event on any network newscast that evening without also seeing at least two, and in two cases three, issue-type ads from Gulf Oil;

You and I know, because we know and trust the producers and editors and correspondents on those shows, that in no way is their news judgment, their approach, their selection of material or interviewees, in fact affected by the identity or the opinions of the sponsors. In most cases they do not even know who the sponsors are or what positions those sponsors espouse in their commercials on a particular night.

Yet the news staffs themselves must feel as uncomfortable as I do for them when they encountered examples like those above. For they know that protection of their credibility requires not only the fact of integrity and independence, but, just as important, the appearance of these qualities in full strength. If there is an appearance of conflict of interest, either when an oil company is a major sponsor of a newscast or interview show covering energy issues, or when a particular oil company "message" ad relates to the subject matter of a particular news story or interview, then the credibility of the network, the show, and the correspondents all suffer, because a question may be raised in the viewer's mind as to whether the program content has been affected by the sponsor's positions, especially those advocated in its commercials.

And conversely, what can the editors and correspondents think when, in the exercise of their best professional judgment, they have constructed a story, or a series of stories, that provides a fair, balanced, objective presentation of a complex energy issue, only to find that their work appears on a show with an oil company issue commercial. In reality, proponents of one viewpoint have been able to purchase additional time (occasionally longer than the news story itself) to expound their position slickly, subjectively, and self-servingly. Should news judgments be superceded by advertising judgments?

More broadly—and more painfully—from your point of view, should Exxon/Gulf/Texaco/Shell/Mobil/Arco/Amoco, which together, the polls say, have the lowest public credibility of any institution in American life, be able to purchase a piece of—by rubbing up against—the credibility of Cronkite/Chancellor/Brinkley/Reasoner/Walters, who have the highest trust ratings in our land. And should the network newscasters be required to have their high standing diluted and sullied by their identification with thoroughly untrusted issue claims of "Big Oil." Do these circumstances contribute to public cynicism and discouragement by feeding the American suspicion that nothing is safe from the blandishments and economic power of the major oil companies.

Expressed one last way, should the American people have their access to the day's news, in its most timely and convenient form, conditioned on their willingness to see and hear repeatedly, constantly, incessantly,

one industry's point of view on a whole range of debatable issues—not just as to whose motor oil is better—but as to basic facets of our lives—energy, economics, environment.

Some of these questions apply to the advertising of others besides the large, integrated oil companies, but the oil industry's current and future ad campaigns deserve special and immediate attention because:

They have, as a practical matter, unlimited resources to buy expensive TV time, and they are buying more than any other group in America to get their non-product messages across;

On April 20 there will begin an extended national debate on energy issues that may involve hundreds of billions of dollars of additional profits to these companies, major restructuring of their business, major shifts in their power and practices.

With the stakes for them and for the American people so high, we can expect the companies to use every available avenue of persuasion and propaganda to the fullest. You and the other networks will thus be placed in a difficult position—do you accept growing amounts of the lucrative advertising no matter what the potential consequences to your own stature? Or do you stop now and anticipate these sensitive ethical dilemmas, addressing and resolving them before they create further problems?

Again, I do not propose answers now. Perhaps we are talking of an "airline crash" type arrangement where energy issue ads are automatically withheld if there are energy issue stories. Perhaps we are talking about limiting the number of spots that any one sponsor can have on a news or public affairs program. Perhaps we are talking of limiting commercials on news programs to product advertising. Perhaps we are talking about a real test of the Mobil-type arrangement where the issue advertiser agrees to pay for equivalent response time, or about more free access time for all—on or off news programs. We may be talking about all, some, or none of these. But, I think it is vital that you be talking about them now—within your own network, with other networks, with the oil companies, with us, and with the public.

I stress again that in this area—beyond Fairness—you and we need not be talking to the FCC. For these questions persist even if the full panoply of Fairness rules are not triggered, and even when the total network programming over time, by Fairness standards, could not be found "unreasonably" unbalanced. These questions arise because particular newscasts or programs, or series, or ad campaigns create discomfort, dismay, and distrust that is not easily alleviated by other programming on other days or on other shows. These are concerns that are—or should be—mostly yours, but they are ours derivatively; for when your credibility and stature suffer, when your news organizations feel or look compromised, the public has one less place to go for the truth, or for a fair attempt at discerning truth.

Please give us a chance to discuss these matters further when you have had a chance to discuss them among yourselves. But please don't wait too long—April 20 is just around the bend.

We appreciate your attention to these requests and your patience at their length.

Looking forward to meeting with you.

Sincerely,

JAMES F. FLUG,
Director and Counsel,
Energy Action Committee.

UNEMPLOYMENT IN THE CONSTRUCTION INDUSTRY

Mr. JACKSON. Mr. President, on April 19, 1977, I met with several hun-

dred of the nearly 4,000 delegates gathered here in Washington for the National Conference of the Building and Construction Trades Department, AFL-CIO. We discussed at some length the persistent problem of high unemployment in the construction industry and more specifically how the current energy situation has aggravated this already serious dilemma.

Mr. President, I would ask unanimous consent that the statements of Mr. Martin J. Ward, general president, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and Mr. Roy Johnson, general president of Roofers and Waterproofer International, be printed in the RECORD.

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

STATEMENT BY MARTIN J. WARD, TO THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. Chairman and members of the committee, I am Martin J. Ward, general president of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada.

My international union is made up of some 330,000 craftsmen who live and work in every State and virtually every community in the Nation. We are one of the 17 unions that together comprise the Building and Construction Trades Department of the AFL-CIO.

I am here today representing the nearly 4,000 delegates to the department's national conference some of whom are here in this room with us.

These delegates, in turn, represent over 4 million workers who belong to their local unions.

More than 17 percent of those workers are without jobs. In some parts of the country construction industry unemployment is even worse—reaching levels of 40 and 50 percent of the construction work force.

Yes, more than employees in any other industry, we have a vested interest in legislation that can put all Americans back to work and in legislation that can help restore the nation's economic health and guard against future economic disaster.

Today, it is my task to speak to your committee about one problem that demands your attention and cries out for your remedial action: the continuing energy crisis. It is a crisis that threatens to become a calamity with every passing week of inactivity and non-response.

We have been urging the development of a concerted, comprehensive national energy policy at least since the OPEC oil embargo dramatized the crisis nature of energy shortages three years ago.

I hardly need tell you gentlemen that no meaningful steps have been taken to bring about that national energy policy.

However, the new administration has proposed to move toward such a policy and has revealed its plan to consolidate energy activities into a single department. This has long been one of our recommendations and we fully support the President's proposal.

But mere consolidation will not begin to face up to all the energy-related problems we have failed to come to grips with over the past years.

Even as we meet here this morning the White House can be presumed to be busy putting the final touches on President Carter's energy message scheduled for tomorrow.

For the past week or so the papers have been filled with leaks, rumors and specula-

tion about the content of that message. Much of what I have read is encouraging and some is disturbing. But, no matter what the message will say, the burden of decisions concerning our energy future will fall heavily on the members of this committee and, ultimately, on your colleagues in the Congress.

When OPEC imposed its oil embargo three years ago the nation was stunned at the realization that we were grossly dependent upon foreign countries for much of our energy supply. Together we resolved then to strive for energy independence.

But last year when I came to this committee we were more dependent on foreign nations than ever before. And this year we are still more dependent.

During one week early this year, U.S. oil production of 8.1 million barrels compared with average daily imports of 8.2 million barrels.

Oil imports now constitute one-third of all oil consumed in this country. By 1985, if we continue to drag our feet in developing alternative fuels, that could grow to 50 percent. Even more disturbing is the fact that more and more oil is being brought in from OPEC countries. At the time of the 1973 embargo, about 16 percent of our oil was coming from that area of the world. In 1976, that figure is up to 25 percent and moving higher all the time. In terms of total oil imports, the OPEC cartel provided 48 percent in 1973. Despite our proclaimed energy independence goals, that figure climbed to 59 percent in 1975.

We continue to live in a state of economic anxiety, still not knowing when another embargo or another huge price rise will again produce desperate shortages of fuel to run our industries and our automobiles and to heat our homes.

We know we are running out of domestic oil and natural gas. Production of our own crude oil is lower than it has been for a decade. And we were given a vivid and tragic reminder of the natural gas shortage during this winter's prolonged cold weather.

Yet we continue to look to oil and natural gas for 76 percent of the Nation's energy consumption.

When are we going to stop whistling past this graveyard? When are we going to launch a meaningful national program or self-reliance?

A program of self-reliance is essentially three pronged.

First, conservation of all forms of energy particularly energy produced by our dwindling supply of oil and natural gas.

Second, the full development of nuclear power as a primary source of energy production.

Third, all measures necessary to promote the use of coal in the production of energy.

Conservation simply means the efficient use of all forms of energy. But such use obviously requires leadership from the Federal Government and wise legislation by your committee and the Congress.

Conservation means the manufacture of automobiles that get more mileage per gallon of gasoline, retrofitting of existing homes and buildings and the construction of well insulated homes and buildings that drastically reduce energy consumption, the designing and production of home appliances that use only small quantities of energy.

And conservation does not mean a no-growth policy. On the contrary, an effective conservation program should release more energy for the benefit of the economy as a whole.

But, gentlemen, while on the subject of conservation, I want to urge you to be wary of proposals to conserve energy by raising prices. Such tactics have proved ineffective for both natural gas and oil in the recent past. And where gasoline is concerned, higher

prices can have devastating impact on the less advantaged of our citizens.

Conservation is essential to a comprehensive energy program. But we believe that Congress and the administration can find ways to promote conservation that will call for equal sacrifice from all our citizens.

In any event, conservation will not, by itself, come anywhere near solving the energy problem, and that brings us to coal and uranium.

The United States holds about 450 billion tons of coal reserves. This is more than 700 times the Nation's annual consumption of about 600 million tons. Forbes magazine said this coal reserve is "Ten times as much energy as is contained in Saudi Arabia's oil and 2.6 times as much as is available from the entire world's supply of oil."

The Energy Research and Development Administration has estimated that we will need at least 1.2 billion tons of coal a year to reach the goal of energy independence.

As I said last year it would be criminal for this country to allow its rich coal deposits to go unused in the face of the economic disaster that energy shortages would bring down on all of us.

We must use all available means to get the coal to the boilers of industry and to our power-generating plants.

A generation ago, coal provided 48 percent of our energy; today it's down to 20 percent. Yet coal comprises 81 percent of our domestic fuel resources.

We have the technology to mine the coal, to transport it, to burn it and to use it to decrease our dependence on foreign fuels.

But there are problems with which this committee is deeply familiar.

Strip mining will have to be performed with minimum or zero damage to the environment. Sulfur emissions must be reduced to harmless levels. Transportation techniques must be effective and economically feasible.

This Congress must enact legislation that can surmount these obstacles. The 94th Congress, in fact, made some progress but your efforts were either incomplete or blocked by Presidential veto.

We urge you to enact another strip mining bill without delay. It is clear that control of pollutants and development of transportation methods are mere abstractions until we begin to mine the coal that is needed so desperately.

Once a strip mining bill is approved, I hope this Congress will pass legislation clearing the way for the construction of pipelines to carry coal in a slurry mix from the mines to the utilities.

Railroads will not be able to handle the volume of coal that this Nation will need in the years ahead. Pipelines are a proven method of coal transportation and will provide healthy competition for other modes of transporting coal to the boilers.

If we make full use of our coal resources the job of moving the mined coal will be enormous.

Americans for Energy Independence recently cited one example. They pointed out that electric utility companies are now building coal-fired power plants in Texas, Arkansas, and Louisiana. Then they said, "To fuel only these plants after they fire up in the mid 1980's coal trains one mile long will have to leave western coal fields every hour, around the clock, every day of the year."

Gentlemen, as president of the union whose members will build these pipelines, I can assure you that they will be effective in delivering coal economically and safely. Furthermore, I am convinced that public utilities will be inspired to increase plant capacity for producing electricity once they know pipelines will be available to provide them with fuel.

Before I close by setting forth the specific energy resolutions adopted by our national

conference I want to say a few things about the third of our three-pronged program of energy self-reliance—nuclear power.

As of January 1, 1977, there were 64 nuclear-powered electrical generating plants in operation. They were producing about 9 percent of our total consumption of electricity.

This productivity will increase dramatically in the decades ahead if we will finally take the steps that are necessary to decrease the lead time involved in nuclear plant construction.

There is some indication that the administration will propose measures to reduce lead time. We hope Congress will act on such legislation promptly.

In addition to the 64 plants on line, another 72 reactors are under construction, 19 have been authorized to begin limited work, and 65 are on order.

It happens that my union accounts for about 25 percent of the man-hours of work on a nuclear power plant. Along with other skilled building tradesmen, many of our men are out of work and itching for the opportunity to build these power plants.

It is in their best interest and in the nation's best interest to get on with the job.

General President Johnson will go into nuclear energy questions raised by recent announcements from the administration.

I would simply like to suggest to the committee that it carefully weigh the supposed risk in developing plutonium against its undisputed benefits to energy and the economy.

It is a hazardous material. But, in our weapons development program, hundreds of tons of plutonium have been handled with safety and security for the past thirty years.

We should not, out of unexamined fear, foreclose any of our long-range energy options.

Strong, bold leadership is desperately needed to help find solutions to our present energy crisis. Legislation for national planning of energy research and development is long overdue. To help meet our energy needs, the Building and Construction Trades Department and its affiliated international unions specifically urge:

1. That Congress adopt President Carter's plan to consolidate energy activities into a single department that would absorb ERDA, FEA, and the FPC. Such a restructuring is badly needed and would provide a more efficient mechanism for creating and implementing energy policy.

2. That Congress enact the Coal Pipeline Act of 1977 (H.R. 1609 and S. 707) to clear the way for the construction of coal slurry pipelines which are essential to the development of our domestic coal reserves.

3. That Congress adopt H.R. 38 and S. 36 to provide loan guarantees for the development of synthetic fuels. Vast coal and oil shale resources which can provide domestic supplies of gas and oil exist. Development is ready to commence if financing can be assured. Minimal governmental involvement through loan guarantees will ensure this development.

4. That Congress adopt H.R. 18 which would expedite the siting and licensing of nuclear power plants. Unpardonable delays as long as five or six years are postponing energy projects and causing large cost increases.

5. That measures be enacted which would expand the Nations uranium enrichment capacity to assure an adequate supply of fuel for nuclear power plants. Congress must assure the scheduled completion of the Clinch River breeder reactor and further develop the breeder reactor program.

6. That measures be enacted which would close the nuclear fuel cycle by developing licensable and commercially viable facilities for the reprocessing of spent fuel and the storage of radioactive wastes and recycling of plutonium.

7. That Congress adopt measures to remove the incentives which presently are encouraging American companies to build refineries overseas.

8. That Congress enact legislation to promote energy conservation in new buildings and the retrofitting of old building to achieve better thermal efficiency.

The building trades industry has been impacted more than any other by our country's failure to resolve its energy problem. This department stands ready to cooperate in any way to help find a solution. It is absolutely imperative that all Americans work together for this country's energy security and economic prosperity.

ENERGY

(By Mr. Roy M. Johnson)

Mr. Chairman and members of the Committee, my name is Roy Johnson and I am General President of Roofers and Water-proofer International.

As President Ward stated, we are here representing the approximately 4,000 delegates gathered here in Washington, D.C. for the National Conference of the Building and Construction Trades Department, AFL-CIO. While addressing myself toward energy, many of my remarks will concern Nuclear Energy.

Out of the confused debate that has developed with respect to the energy crisis, one concept seems to gain more and more acceptance. Everyone seems to agree that we should not waste our energy. As a result, a lot of folks think that we must reduce our national annual growth rate.

What is not yet apparent, however, even to many sincere and concerned policy-makers, is that the total energy consumption of our nation must continue to increase in the future, even if we establish extraordinarily successful spartan conservation programs. We obviously can and must eliminate wasteful practices in energy consumption. There is a point, however, beyond which further reduction will seriously impact the job market.

There is absolutely no moral justification for policies that would cause increased unemployment because of energy shortages. So, while energy waste can and must be eliminated, we must never allow one man's concept of conservation to be the cause of another man's unemployment.

At the present time, the building industry is in a depression with unemployment over 17 percent of our total work force. We in the Building and Construction Trades Department fully realize that if there is to be a reduction in unemployment, there must be reasonable growth in the supply of energy. We need to get on with the job of building energy facilities.

As responsible citizens, sort out the facts with respect to our energy future: it becomes more and more obvious that one of the greatest strokes of good fortune this nation has experienced is to have our nuclear industry as well advanced as we find it today. It is ready now to provide much of the energy this nation will need during the next fifty to seventy-five years. If we did not have a large block of nuclear energy available to us for the coming decades, this country would be in critical danger.

Nuclear energy is the safest, cleanest, cheapest, most reliable energy source available. Our conclusions about the safety of nuclear power stations are based on the many years of operation and the large number of our members involved with nuclear power. Not one of our members has died because of radiation exposure. We have had no reports of our members receiving bodily harm from exposure to radiation or radioactive materials. Building tradesmen who construct, operate, and maintain the nuclear plants along with their families are among the population living closest to the operat-

ing power reactors. There have been no reported cases of radiation damage to our members' families.

The safety record of the nuclear power industry is excellent, despite the fact some critics continue to play the "what if" game. I simply don't understand those people who become so obsessed with hypothetical hazards of nuclear energy that they refuse to face the facts. A majority of Americans obviously agree. Anti-nuclear initiatives have been overwhelmingly rejected by voters every time they have appeared on the ballot.

Between April 1, 1974 and October 1, 1975, a total of 180,000 megawatts were postponed or cancelled. These cutbacks have impacted the construction industry particularly hard. A recent study has shown that more than half-a-million annual construction jobs will be lost over the next five years on account of these cut-backs. This represents an annual loss of as much as \$7 billion in wages. If the electrical utility industry could get its construction program back on its feet, the total number of unemployed in the construction industry might be reduced by as much as 12 percent.

There are various causes for the delays in construction of nuclear power plants, such as tedious licensing procedures and intricate environmental regulations. As I previously mentioned, anti-nuclear referendums and initiatives have also attempted to slow development, but thanks in good part to the state and local Building and Construction Trades Councils, these initiatives have been defeated every time they have appeared on a ballot.

One of the biggest reasons why nuclear power plants are not under construction is that, where funds for capital investment are concerned, the public utilities are going broke. Electric utilities require more investment capital than any other industry—\$4 in investment for each \$1 of revenue. The bulk of the desperately needed construction cancelled or delayed over the past year was a direct result of the industry's inability to raise capital funds.

The utility industry has always been highly capital-intensive and therefore catches the full effects of inflation and the skyrocketing interest rates that go with it. In a recent study conducted by the Technical Advisory Committee of the Federal Power Commission, it was concluded that an average six percent growth over the next fifteen years will require the utilities industry to somehow muster \$650 billion for construction. This is more than four times its existing investment and compares with about \$145 billion spent in the last fifteen years when growth was over 7 percent.

The Building and Construction Trades Department is particularly alarmed by recent short-sighted proposals to postpone the Clinch River Breeder Reactor and other experimentation on the reprocessing of spent fuel. The only proven technology for significant additional electrical energy in the period after the 1990's is the breeder reactor. Our country can only retain this option by keeping strong the organizations we shall likely have to call on to supply breeder reactors.

The Building and Construction Trades Department questions the basic assumption regarding the extent of our uranium resources in the recent report of the Ford Foundation study group. We believe the U.S. supply of uranium may be so limited that there will be a need to install breeder reactors commercially by the turn of the century if we are to continue using fission energy for addition electrical power. A prestigious committee of the National Academy of Sciences has so concluded in a just completed estimate of our assured uranium supply. Since only the future will tell us what our actual uranium resources are, prudence dictates that we take no steps now that would fore-

close our option to operate breeders commercially by the end of this century. There is, in fact, no slack in our schedule for arriving at commercialization—either as regards breeder demonstration or as regards the demonstration of commercial reprocessing. Both are required before the climate will be right for utility executives to commence commercial orders of breeder reactors and from that point it will be another ten years before the first commercial breeders begin to operate.

The design, construction and operation of the Clinch River Breeder Reactor is our only vehicle over the next few years for creating and maintaining the necessary industrial infrastructure to support a commercial breeder program. A major cutback in the CRBR Program, or a pause in it, would be exceedingly difficult to carry out without destroying the considerable infrastructure that has already been put in place over a number of years. If we were to decide later to resume our preparations for a commercial breeder, we would no longer be able to operate breeder reactors in the year 2000, should that be necessary.

In conclusion, we too are concerned about the possible proliferation of nuclear weapons states, as it could be spurred by the civil use of plutonium. We are certainly aware of the possible contribution of the U.S. moratorium on reprocessing and breeder commercialization to your negotiations abroad. We know that such a moratorium would be at very high costs to our energy future.

DUDLEY D. MILES

Mr. BAYH. Mr. President, I was deeply saddened to learn of the untimely death of Dudley D. Miles at the age of 51 on the evening of April 5 and I join my colleagues and his family in mourning his passing.

Dudley Miles began his career as an attorney in Rawlins, Wyo. He came to Washington 16 years ago to serve as legislative director on the staff of Senator Gale McGee, a position he retained for 10 years. For the past 6 years, Dudley was the chief clerk of the Subcommittee on Agriculture Appropriations and it was in this capacity that I came to know him.

My service on the Senate Appropriations Committee began in the summer of 1972 and I soon recognized that Dudley was extremely competent and well versed in the intricacies of the agriculture budget. Over the years as a member of the Agriculture Appropriations Subcommittee, I had come to rely on Dudley's experience, wise counsel, and helpfulness. Along with his demonstrated professional ability to handle the work of subcommittee, Dudley always retained a warm and cheerful disposition even when the pressures of his work were extreme.

I will miss Dudley in the coming years, and I extend my deepest sympathy to his wife and their three children for the untimely loss that they have suffered.

(This concludes additional statements submitted today.)

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The time for morning business having expired, the clerk will state the pending business.

TAX REDUCTION AND SIMPLIFICATION ACT OF 1977

The assistant legislative clerk read as follows:

A bill (H.R. 3477) to provide for a refund of 1976 individual income taxes, and other payments, to reduce individual and business income taxes, and to provide tax simplification and reform.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. The question is on agreeing to the motion to recommit, with instructions.

Mr. ROBERT C. BYRD. Mr. President, I am in no position to say what the outcome of the action on this bill will be, or when it will be concluded. I am hopeful, however, that the final action on the bill can be reached this week. I do not know whether it can be or whether it will be, but I hope that it will be.

I merely take this opportunity to say that rollcall votes are very likely daily tomorrow and Friday on this measure. Certainly if the Senate is to conclude action on it by Friday, it would mean that there would be rollcall votes Friday, and probably they would occur up until the latter part of the afternoon.

If I learn anything more definitive as the day goes on, I will attempt to bring such information to the attention of my colleagues, but for now I think the likelihood is that there will be rollcall votes Friday and that there is some hope that action can be completed on this measure Friday. If action cannot be completed on it Friday, I would still anticipate rollcall votes throughout the day on Thursday and Friday.

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. BELLMON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BELLMON. Mr. President, I ask unanimous consent that Mike Maloof of Senator GRIFFIN's staff be granted floor privileges during the consideration of the tax bill.

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

Mr. BELLMON. 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. KENNEDY. 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. KENNEDY. I ask unanimous consent that Carey Parker of my staff be granted the privilege of the floor during the consideration of this measure.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll and the following Senators answered to their names:

[Quorum No. 16 Leg.]

Allen	Byrd, Robert C.	Kennedy
Baker	Curtis	Long
Bellmon	DeConcini	McClure
Bentsen	Dole	Sasser
Burdick	Goldwater	

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of the absent Senators.

The assistant legislative clerk resumed the call of the roll.

Mr. ROBERT C. BYRD. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. APOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HART), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. MAGNUSON), the Senator from Montana (Mr. MELCHER), the Senator from North Carolina (Mr. MORGAN), and the Senator from Florida (Mr. STONE), are necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUE), is absent on official business.

Mr. STEVENS. I announce that the Senator from Indiana (Mr. LUGAR), the Senator from Maryland (Mr. MATHIAS), the Senator from Illinois (Mr. PERCY), and the Senator from Delaware (Mr. ROTH), are necessarily absent.

The result was announced—yeas 82, nays 3, as follows:

[Rollcall Vote No. 101 Leg.]

YEAS—82

Allen	Cranston	Hayakawa
Baker	Culver	Heinz
Bartlett	Curtis	He'ns
Bayh	Danforth	Hollings
Bellmon	DeConcini	Jackson
Biden	Dole	Javits
Bentsen	Domenici	Kennedy
Brooke	Durkin	Laxalt
Bumpers	Eagleton	Leahy
Burdick	Ford	Long
Byrd,	Garn	Matsunaga
Harry F., Jr.	Glenn	McClellan
Byrd, Robert C.	Gravel	McCure
Cannon	Groff	McGovern
Case	Hansen	McIntyre
Chafee	Haskell	Metcalf
Chiles	Hatch	Metzenbaum
Church	Hatfield	Mov'n'han
Clark	Hathaway	Muskie

Nelson	Sarbanes	Stevenson
Nunn	Sasser	Talmadge
Packwood	Schmitt	Thurmond
Pearson	Schweiker	Tower
Pell	Scott	Wallop
Proxmire	Sparkman	Williams
Randolph	Stafford	Young
Ribicoff	Stennis	Zorinsky
Riegle	Stevens	

NAYS—3

Goldwater	Johnston	Weicker
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NOT VOTING—15

Abourezk	Humphrey	Melcher
Anderson	Inouye	Morgan
Eastland	Lugar	Percy
Hart	Magnuson	Roth
Huddleston	Mathias	Stone

So the motion was agreed to.

The PRESIDING OFFICER. With the addition of the Senators who did not answer the quorum call, a quorum is now present.

Mr. CURTIS. Mr. President, I ask unanimous consent that Bob Lyon and Gene Larimore, of Senator THURMOND's staff, have the privilege of the floor for the duration of the debate and votes on the tax measure.

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

Mr. CURTIS. Mr. President, I yield to the distinguished Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent that Judy Hefner, of my staff, have the privilege of the floor throughout the consideration of the tax bill.

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

Mr. CURTIS. Mr. President, I yield to the distinguished Senator from Wyoming.

Mr. HANSEN. Mr. President, I ask unanimous consent that Linda Gould, of my staff, have the privilege of the floor during the consideration of this measure and votes thereon.

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

Mr. CURTIS. Mr. President, I yield to the distinguished Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Caroleen Silver, of my staff, have similar privileges.

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

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that Ed Beck and John Brooks, of my staff, have the privilege of the floor during the consideration of this measure.

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

Mr. CANNON. Mr. President, I make the same request with respect to Aubrey Sarvis, of my staff, and Chester Smith, of the staff of the Committee on Rules, Administration and Standards.

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

Mr. HASKELL. Mr. President, I ask unanimous consent that Samantha Senger and Robert Liberatore, of my staff, have the privilege of the floor during the consideration of this measure.

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

Mr. BARTLETT. Mr. President, I ask unanimous consent that Mike Rausch and Ed King, of my staff, have the privilege of the floor during the consideration of this measure.

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

Mr. SCHMITT. Mr. President, I ask unanimous consent that Ed Ryan, of my staff, have the privilege of the floor during the consideration of this measure.

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

Mr. CURTIS. Mr. President, I yield to the distinguished chairman of the Committee on Finance, Mr. LONG.

Mr. LONG. Mr. President, I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CURTIS. Mr. President, I wish to speak briefly on the pending motion.

There is in the bill before us an extension and increase in the investment credit. There is also a new provision referred to as a job credit. These proposals are designed to create additional jobs in the United States. If they fail to create any jobs, the cost will be zero.

It happens that I was not an early advocate of the investment credit. Any proposal has some distinct questions and problems involved, but I have seen it operate, and I believe that it is a very useful weapon in promoting our economy and providing jobs for people.

This is how it works: If a businessman or a farmer or a company wished to buy new equipment, he would get a certain tax credit, 10 percent, for having purchased that equipment.

If a weekly newspaper in the State of Nebraska decides to buy a new printing press, yes, they get a tax credit for that. But who gets the benefit, the real benefit? The workmen who are called upon to produce the raw material that goes into a printing press, the workmen who manufacture and design the printing press, the workmen who transport it, and the workmen who install it. Yes, some more activity will be created in the financing and the insuring of this new machine.

If the investment credit does not work, if it is not a sufficient incentive to set these things in motion, no credit is allowed.

When we spend money on other types of projects, we hope for results. In this, one is assured of favorable results or no credit is given; no money flows out of the Treasury.

In the bill before us, this investment credit is increased by two points, from 10 percent to 12 percent.

At this time, I am not going to discuss all the details as to the definition of equipment, and so on, but that is what is at stake here.

The motion of the distinguished Senator from Arkansas (Mr. BUMPERS), which is cosponsored by the distinguished Senator from Massachusetts (Mr. KENNEDY), would strike this from the bill. Make no mistake about it: This is not a provision for the benefit of the taxpayer alone. Coming back to the illustration I stated, if a weekly newspaper buys

a new printing press, they have to pay for the printing press. They may have to finance it and pay over a long period of time. This is a little inducement to get them to do that because it will put people to work and promote the economy.

It is true that it is an artificial stimulus, in a sense; but with the high tax rates, Government regulations, and all the roadblocks thrown in the way of enterprise, sometimes we have to resort to these things.

There is another provision, which is new, that we are trying out for 1977 and 1978, and that is called the job investment credit.

It provides that any company that will create a new job, that will add a new employee, will get a credit for it. It is based very much on the same philosophy as the investment tax credit. It has been brought into being because there are some industries that are labor-oriented and not oriented very much to machines. Those companies that cannot expand and buy new machines are sort of left out of the investment credit idea, and this jobs credit relates primarily to businesses and industries that are labor-oriented.

The bill also is written so you cannot have both. You have to choose between the additional investment credit and the jobs credit.

I do not know whether it is going to work. I think it will. There has been evidence submitted by many small businessmen over the country that they would hire additional people if they could get a little credit on their tax. As a matter of fact, I believe it is correct that this proposal originated with organizations of small businessmen, is that not correct, may I ask my chairman?

Mr. LONG. Mr. President, if the Senator will yield—

Mr. JACKSON. Mr. President, will the Senator yield for a unanimous consent request?

Mr. CURTIS. I yield.

Mr. JACKSON. Mr. President, I ask unanimous consent that Mr. Keith Martin, of my staff, be granted the privileges of the floor during the consideration of H.R. 3477, and I thank the Senator.

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

Mr. CURTIS. Now, I yield to my distinguished chairman.

Mr. LONG. Mr. President, one of the small business organizations, the National Federation of Independent Businesses, which is the largest of the group, and the other small business organizations are very enthusiastic about this proposal for the jobs credit for employers who hire more people in their businesses.

As I indicated yesterday, I have received postcards from businessmen who wrote in to say they would hire more people if they had this jobs credit. I will discuss that at greater length later on.

Here are 115 responses from businessmen. There were 2,077 form letters mailed out and 115 replied, which, I think, is a pretty good response to a form letter, a 5 percent response. Most people who mail out form letters and hope people will send a card back do not expect

anything close to that high a response, but 115 wrote back and about 95 percent of those who wrote back said they would hire more people.

I undertook to have people in my office call these people; to go on down the list and call them. On the average these small businesses said they would hire two additional people, and they told us what they would hire them to do.

Mr. CURTIS. I would like to ask the Senator a question.

Mr. LONG. Yes.

Mr. CURTIS. Suppose their plans fall through and they do not hire someone. Does the Treasury lose?

Mr. LONG. If they do not hire anybody it does not cost the Treasury one red cent.

Mr. CURTIS. Does the distinguished Senator agree with me that the pending motion is to strike from this bill something whose primary purpose is to give jobs to people who do not have a job now?

Mr. LONG. That is the whole idea of it. Most of these jobs would be in small businesses. They would go to people who have little hardware stores—here is a letter from a man with a hardware store who would hire one new employee, for example. Here is a fellow who has a lumber supply yard, and he says he would hire one more. So it goes on down. Some of them would hire as many as 10. Here is a fellow, for example, in the tire supply business. He says he would hire between four and five employees, and so it goes. It averages out to two and a half persons per those employers who wrote in. This is just a small sample.

Mr. CURTIS. I have here the endorsement of the Associated General Contractors, a labor-intensive group, that would hire a lot of people, and they favor this.

Mr. LONG. Keep in mind that most of the people who would be getting these jobs are either on the unemployment rolls now or else on the welfare rolls.

Mr. CURTIS. Yes.

Mr. LONG. Or else they are getting food stamps, so it is not a net cost to the Government. The Government would save money and make money by these people being employed in the small businesses.

Mr. CURTIS. I thank my distinguished chairman.

Mr. BENTSEN. Mr. President, will the distinguished Senator yield for a comment?

Mr. CURTIS. I would be happy to yield.

Mr. BENTSEN. I recall in the debate yesterday one of the proponents of this motion to recommit was saying that an employment tax credit would have an inflationary impact on the economy. Nothing could be further from the truth because what you are talking about is a tax credit to lower the cost of labor. You put people back to work at the same time. You help increase productivity. The investment tax credit provides more modern machinery, more up-to-date capacity to produce products.

We are saying that we should give a tax credit to the labor-intensive companies.

I heard one of the arguments that this results in the hiring of people of a lower wage scale. What is wrong with that? Are not those some of the people we are having the toughest time finding jobs for? These are some of the people who are the least skilled. That is really who we would like to be helping in this situation because we are seeing a lot of them who would much rather have a productive job than be on welfare.

I think one of the most denigrating things you can say to an individual in this country is that society has no productive role for him to fill. But here we have a balanced tax package where we take care of the capital-intensive company and we take care of the labor-intensive company, in trying to put people back to work.

I have supported public service jobs. It costs from \$8,000 to \$12,000, but too often those are dead-end jobs and do not really add to productivity. But here's a job where you do it through the private enterprise system, where that often leads to further advancement and to a permanent job. I think it is a much better way to approach the problem.

Mr. CURTIS. I thank my distinguished friend.

He has mentioned something that I think merits a bit of emphasis. He points out that this will lead to jobs for people of low income and minimum skills. Now, if someone will give a person who has never had a job, who has never been trained, who has had no experience in reporting for work, a job, and he gets a little credit on his tax bill for it, it is very possible that that individual who is employed and whom the employer takes time to instruct and help, will lead into a position where he is a productive employee, and many jobs will open up to him.

Mr. President, I am about to yield the floor, but this point I want to make as this debate proceeds in the next day or two in reference to this motion, and that is this: We are making a big mistake if we are carried away by a lot of debate and allegations that this is a loophole. It is not. It is a straight-out plan to spend a little money to put people to work in the private enterprise section at a per capita cost many times below what it would cost to put them in a Government-created job.

Mr. President, I yield the floor.

Mr. HASKELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HASKELL. Mr. President, I shall speak briefly on the motion made by the distinguished Senator from Arkansas. What he seeks to do, of course, is to refer the bill, as I understand it, to the committee with instructions to report it out, deleting both the investment tax credit and the jobs credit sections.

Reluctantly I have to oppose my friend from Arkansas on this matter, and I shall briefly state my position.

Mr. President, it seems to me that the economic problem facing the country today is really not one of lagging business activity. All we have to do is look at the annual reports and the quarterly earning statements of listed companies

that are being issued and see that business activity, indeed, is very good for those people.

The problem is really one of persistent unemployment at a time of high business activity, and this has been a problem now for more than 28 months, with unemployment in excess of 7 percent. As a matter of fact, it is now 7.3 percent, which means there are 7 million-plus people looking for jobs who cannot find them.

This may well be a new factor in our economic history, this concurrence of high business activity with persistent unemployment, and if it is I think we have to attack the real problem. The problem is unemployment.

I opposed early the administration's economic package since I believed that what they were doing was trying to stimulate general business conditions which I thought was the wrong approach.

I do not believe, really, that the big companies need any additional assistance; therefore, if the Senator from Arkansas had sought merely to delete the 2 percent investment tax credit I certainly would be on his side. But I cannot join him when at the same time he seeks to eliminate the jobs credit.

Mr. President, before the Senate at the moment is a bill from the Finance Committee which would give a credit of a little over \$1,000 for a new employee hired but does not provide a so-called cap to limit the total amount of credit any one company can take. The purpose of a cap is to be sure that the very large companies of the Nation do not get a disproportionate amount of the credit. Right now, as the business provision of this bill is structured, the biggest corporations in the country by increasing unemployment could still benefit by taking the optional investment credit.

It is my view that, by and large, the tax code has favored large business at the expense of both middle-sized and small business.

As a matter of fact, I think I am correct when I say the effective tax rate of corporations with assets in excess of \$100 million is something in the neighborhood of 34 or 35 percent as opposed to the statutory rate of 48 percent. The small business, on the other hand, being labor intensive and not being able to take advantage of the various and sundry benefits that an equipment intensive business takes, pays the full statutory rate.

The jobs credit, as I intend to seek to amend it, would do two things. It would give a substantial credit for putting someone to work. A substantial credit would be \$2,100. This would be a real inducement to people to put people to work.

We have over 7 million people out of work, and we need an inducement for the private sector to do what we are doing in the public service jobs program in the public sector. At the same time I would put on a cap; that is, a company could not take more than \$100,000 in credit.

That will eliminate the very large companies from taking full, unlimited advantage, and it will give more advantage to the smaller companies.

Mr. LONG. Mr. President, will the Senator yield at that point?

Mr. HASKELL. I certainly will yield.

Mr. LONG. Is it not true that most of these people whom we are hoping to put to work are people who are unemployed at the present time?

Mr. HASKELL. The Senator is correct.

Mr. LONG. So if they are unemployed they are either drawing food stamps or unemployment insurance payments or drawing welfare payments. Am I correct?

Mr. HASKELL. The Senator is correct.

Mr. LONG. Some of these poor souls, of course, are youngsters, many of them less privileged, who never had a job in their lives. We hope to get them their first job. With regard to all those people, is it not true that when we have to pay them to hold hide and hair together, anyway, we have to pay some kind of a welfare payment, food stamps or something to help keep them going along, and that it would be cheaper to pay them a subsidy to put them to work rather than pay them for doing absolutely nothing?

Mr. HASKELL. I certainly agree with the distinguished chairman of the Finance Committee that by getting people off the unemployment rolls we are getting economic benefit from their efforts which we are not getting when they are unemployed.

Mr. LONG. Can the Senator think of any worse injury one could do to young people in their formative years, young people who are not able to go through college or who went a year or two in college and for some reason could not keep it up and dropped out, than to have them going on year after year trying to find a job somewhere and being turned down? What does it do to these people's morale? What does it do toward their view of society when they have never really known what it is to get a job and bring home a paycheck even though they have tried?

Mr. HASKELL. Of course, it is devastating and, as I am sure the Senator will agree, it is equally devastating for a man or a woman with a family to support to be out of a job, unable to get a job, and depending upon unemployment insurance.

Mr. LONG. Rather than a person receiving, let us say \$2,000, to try to live on welfare, is it not far better for that person to get a job where he or she is making \$4,000 or \$5,000, low paying job though that may be?

Mr. HASKELL. It certainly is.

Mr. President, the Senator is absolutely correct. If a person can be gainfully employed and receive a living wage, it is much better than receiving a substandard subsistence-maintenance level welfare payment. And that is the Senator's point, as I see it.

Mr. LONG. And it also conditions those persons both in their attitude toward their neighbor and their feeling toward themselves; it gives them a little confidence to think they can make it, that they have a chance to make something out of themselves in this great free enterprise system of ours.

Mr. HASKELL. The Senator is correct.

Mr. LONG. I thank the distinguished Senator.

Mr. HASKELL. I thank the chairman of the committee very much for these observations and questions.

AMENDMENT NO. 198

Mr. President, I point out that the amendment that I shall propose does have a cap of \$100,000 and does give the \$2,100 credit for each new employee.

I ask unanimous consent to have printed in the RECORD at this point a copy of the amendment which I submit for printing.

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

AMENDMENT NO. 198

On page 90, line 19, strike out "25 percent" and insert in lieu thereof "50 percent".

On page 91, line 2, strike out "25 percent" and insert in lieu thereof "50 percent".

On page 91, between lines 14 and 15 add the following and reletter (c), (d), and (e) accordingly:

(c) TOTAL CREDIT LIMITATION.—The amount of the credit allowable by section 44B for any taxable year shall not exceed \$100,000.

Mr. HASKELL. We are not discriminating against middle-sized business because, for example, with my \$100,000 cap a firm employing 2,500 people could have a 5 percent growth in employment and still get the maximum. So we are not cutting out, by my proposed amendment, a great segment of American business. We are only cutting out the very large ones.

I echo what the distinguished chairman of the Finance Committee has said previously, that this jobs credit is supported not only by those who are unemployed—obviously it is supported by them—but it has the tremendous support of all small business organizations with which I am familiar.

It is for this reason, because I think we can make of the jobs credit something substantial and something the country needs, I am forced to oppose the distinguished Senator from Arkansas.

I thank the Chair.

Mr. LONG. 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. KENNEDY. 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. KENNEDY. Mr. President, yesterday's action by the Senate deleting the \$50 tax rebate for American consumers, but retaining the special tax incentives for business raises a simple question of equity for the average citizen and the good faith of Congress in maintaining a proper sense of proportion between individual and corporate taxes.

I also have serious reservations about both the economic justification for the business tax incentives and the merits of the two provisions themselves—the new jobs credit and the investment credit increase.

But the issue before the Senate now is primarily the equity issue. Simply put, it is not fair to kill the rebate for millions

of average taxpayers and families, while enhancing the lucrative tax breaks already available for business. In the present posture of the bill, the Senate would be smashing the Easter eggs we had promised the average citizen, but offering a new golden Easter egg to business. That is not fair, and I hope that the Senate will pull back from its present course by adopting the motion that Senator DALE BUMPERS and I have proposed to delete the business tax breaks from the present bill.

To proceed with the business tax cuts at this time would be especially inflammatory for another reason—the growing burden of Federal taxes on individuals in recent years would be increased still more drastically. Once again, Congress is being asked simply to cut business taxes, while leaving individuals to the increasingly heavy share of Federal taxation they have had to bear.

As the figures indicate, two factors are involved—the sharp decline in the cor-

porate share of the Federal income tax, and the massive increase in social security taxes borne by workers. The figures tell the story. Over the past two decades the ratio of corporate to individual income taxes has steadily declined from 71 percent in 1954 to 31 percent in 1976. During the same period, the ratio of social security taxes on individuals to corporate income taxes has mushroomed astronomically—from 34 percent in 1954 to 224 percent in 1976. Retaining the business tax cuts in the present bill would exacerbate this undesirable trend and send an unfortunate new signal to the hard-pressed average taxpayer.

Mr. President, I ask unanimous consent that a table showing the historical ratio of the corporate income tax, the individual income tax, and the social security tax may be printed in the RECORD.

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

Declining corporate share of Federal taxes

Fiscal year	Indiv. inc. taxes \$B	Corp. inc. taxes \$B	Soc. Sec. Taxes \$B	Ratios (percent)	
				(3):(2)	(4):(2)
1954	29.5	21.1	7.2	71.5	34.1
1960	40.7	21.5	14.7	52.8	68.4
1968	68.7	28.7	34.6	41.8	120.6
1976	131.6	41.4	92.7	31.5	223.9

Mr. KENNEDY. Mr. President, although the primary issue in the current debate is the issue of fairness to the average citizen, there are also substantial reasons for rejecting the business tax incentives in the current bill on the basis of economic arguments and the dubious merits of the provisions themselves. For example:

Economically, it is difficult to argue that the economy no longer needs the stimulus of the rebate, but continues to need the business stimulus. The latest Commerce Department survey indicates that capital spending will increase by 12 percent in 1977. As many experts have suggested, the level of business investment in recent years has a good deal less to do with the increase in the investment credit from 7 percent to 10 percent and now to 12 percent, than with the overall state of business confidence in the economy. In this view, investment has been held back lately because of the rebate and associated business fears of inflation. To this extent, the decision to drop the rebate will itself be a stimulus for investment, restoring business confidence and making the 12 percent investment credit redundant.

As a member of the Joint Economic Committee, we heard from Dr. Arthur Burns in the early part of this year, warning about the dangers of the tax rebate in terms of its inflationary signal. The message went out very clearly from Dr. Burns to the business community that if Congress enacted a tax rebate, there would be significant additional pressure for inflation in this country. I did not agree with the substance of Dr. Burns' point, but the alarm he sounded

was heard by business. Many of us think that the alarm was a self-fulfilling prophecy, so far as business psychology was concerned. We have now taken steps to effectively dampen those fears of inflation, by eliminating the rebate. So, we have eliminated a significant psychological block for the business community, and I would expect a corresponding improvement in business attitudes and morale, which are likely to be reflected in business investment decisions.

The fresh confidence of the business community in this particular area, based on the relief that it has now received from the inflationary pressures of the tax rebate, will allow business to move forward without the need for additional tax cuts.

In addition, many economists also feel that increased consumer demand, rather than an increase in the investment credit, is the key to increased investment. Unless the demand for goods goes up, firms will be reluctant to increase their capacity to produce.

The strengthening of the economy in the first quarter this year—a key factor in the decision to drop the rebate on the ground that a consumer stimulus is no longer needed—is also persuasive evidence that the proposed business tax incentives are no longer needed either, since strengthening consumer demand will itself be an adequate business incentive.

On the merits, there is little evidence to justify proceeding with either the jobs credit or the investment credit at this time. In this situation, the wisest course would be to refer action on such incentives until they can be examined as

part of the administration's forthcoming comprehensive tax reform proposals, especially the proposals for capital formation. To prejudge these issues now would be a step in the wrong direction.

I think all of us are very sensitive to the importance of developing appropriate mechanisms for new capital formation. It is one of the most important and serious questions that we are facing in this country. It relates to the entire competitive situation of our industries. As the chairman of the Subcommittee on Antitrust, I know that there are few factors which have a greater impact in terms of the growth of competitiveness in our economy than the availability of new capital. Obviously, the investment credit has as one of its important justifications the formation of new capital. But I think it is appropriate that we also consider alternatives for the development of new capital, especially since the results of the boost in credit from 7 percent to 10 percent in 1975 are so unclear. There is no real case for a further boost to 12 percent, which would simply be piling on new and unwarranted tax relief for business at this time.

I also recall the extensive study by the Library of Congress in 1976, which laid out very clearly what is lost through tax expenditures and what results are achieved in new capital formation from various tax incentives. The investment credit is extremely inefficient, producing only 40 cents of new investment for each dollar of revenue loss. An incremental investment credit, with the incentive based upon expanding investment over prior years, has a much more constructive and positive impact on new capital formation according to the Library of Congress study, with up to \$2 of new investment produced for each \$1 of revenue loss.

We are also asked in this proposal to accept the current investment credit, without the opportunity to consider the concept of a refundable credit. I have had a chance to talk with the chairman of the Committee on Finance about that concept, and, perhaps later in the debate, we can talk about the refundable credit.

With respect to the jobs credit, the extraordinary complexity of the credit and the low level of the credit itself suggest that it is an unwise addition to the Internal Revenue Code. Since the credit is worth only about \$600 to a firm hiring a \$10,000 worker, it is simply a windfall to firms that are hiring for other reasons. In addition, the 103 percent employment growth factor as a test of eligibility—the credit is available only for employment growth of more than 3 percent above the prior year—means that the credit will be of dubious value in declining or less rapidly growing regions of the Nation.

We talked about that yesterday in terms of the various regions of the country. The Northeast region averaged 1.5 percent employment growth over the past decade. It fails to survive the 3 percent cutoff in order to qualify for the jobs credit. Certainly, there will be some firms in New England that will be able to take advantage of this proposal, but on the whole, they will not.

In terms of the Middle Atlantic States, the average growth is .8 percent. The

Midwest has a similar problem, with growth in the 1 to 2 percent range. Yet, in the southern part of this country, the average is 3.2 percent. So they will be able to take advantage of the jobs credit. But large parts of East and Midwest will not.

The jobs credit program, therefore, has important implications in terms of its regional impact. How can we say we are going to provide some important new incentives for jobs? Should we not be sensitive to some of these other factors, particularly when the credit does not help regions of the country that are experiencing the most serious problems of unemployment and the recession? Certainly, that is a matter that ought to be considered.

Mr. BUMPERS. Will the Senator yield for a question?

Mr. KENNEDY. Yes, I am glad to yield for a question.

Mr. BUMPERS. In recent weeks, I am sure the Senator is aware that there has been a great deal of talk in the country by various interest groups with the President about the depressed television industry or the depressed garment manufacturing industry and the shoe industry. Of course, to that, we can add at least American Motors as far as the automobile industry is concerned.

Industries like that, which have been on the decline, that are not investing in capital equipment, and certainly laying off people rather than hiring them, are the industries that need help more than any in the country. Can the Senator tell me what help they would get under this provision?

Mr. KENNEDY. I cannot see any help whatsoever, I say to the Senator. Certainly not in the shoe industry. We have seen heavy loss of employment over the past few years. We have seen serious reversals in other areas, in textiles, in television production, in my own State.

There is little in this particular proposal, Mr. President, that would be beneficial to those industries.

(At this point Mr. MATSUNAGA assumed the Chair.)

Mr. KENNEDY. I do think if we move toward making the investment credit refundable, it would have some advantage to more rapidly growing and newer industries, and it would have obvious advantages to older industries that have been struggling through the economic recession.

As the Senator from Arkansas has pointed out, the investment credit, the great bulk of it, goes to the largest corporations. The jobs credit program is also, basically, a windfall proposal for firms, especially the largest firms, that will receive it, particularly as it has been altered from the House proposal. So I must say that I agree with the implication of the question of the Senator from Arkansas. I really cannot see how this is going to benefit employment situations in my own State, and I doubt very much whether it will benefit any other part of New England.

Mr. BUMPERS. If the Senator will yield further, this is not in the form of a question but just an observation for informational purposes.

Yesterday we heard about what a great benefit this is going to be to the small service station operator and the corner drug store, the small furniture dealer, and so on. I have a table here which indicates that in 1975, if this additional 2 percent investment tax credit had been in effect—I do not know how the costs were extrapolated. We are talking about a cost of about \$2.4 billion. I think the Senator would find it interesting that if this 12-percent investment tax credit had been in effect in 1975, 10 percent of that additional 2 percent would have gone to four corporations; namely, A.T. & T., Exxon, General Motors, and U.S. Steel. Based on their 1975 investment tax credits, they would have gotten about 10 percent of the total amount that we are getting ready to dole out to industry if this motion is defeated.

Mr. KENNEDY. Under the present law, I believe A.T. & T. received \$750 million in the investment credit for 1975. They are the largest recipient of the investment credit. I think General Motors is No. 2, with \$95 million, Exxon is No. 3 with \$59 million, and U.S. Steel is No. 4 with \$51 million.

It is interesting that we hear a great deal about how this jobs credit is going to help small business, how it will help the small service firms. But when you look at who it really is that we are talking about with the jobs credit, we are talking about Sears, Roebuck, we are talking about Montgomery Ward, and other giant firms. They will not be hiring new workers because of this jobs credit, but they will not mind receiving the windfall in their tax returns.

I think it is appropriate that we lay out exactly what the facts are in this situation. I welcome the chance to do this with the Senator from Arkansas.

With respect to the investment credit, there is no evidence of the effect on investment of the 1975 increase in the credit from 7 to 10 percent. In this situation, Congress would simply be shooting in the dark by increasing the credit to 12 percent at this time.

It is interesting that in the debate yesterday, there was very little discussion about how the investment credit worked in 1975, as a way of justifying the increase to 12 percent in 1977. The limits on the credit and the fact that it is not refundable means that many firms are unable to use it, especially the small firms, the new firms, the rapidly growing firms, and the firms whose profitability was undermined by the recent recession. I personally believe the investment credit would have an entirely different impact if it were refundable.

In addition, as the level of the credit rises, increasing numbers of firms become ineligible for its benefits. Thus, because of the limits on the credit and the fact that it is not refundable, many firms are unable to use it, especially small firms, new firms, rapidly growing firms, and firms whose profitability was undermined by the recent recession.

By whatever measure—equity for taxpayers and consumers, the state of the economy, or the details of the proposed incentives—the business tax reductions in the pending bill have no justification.

I also wish to bring to the attention of my colleagues in the Senate the new figures announced this morning about the state of our economy.

The first quarter GNP, I note this morning, showed real growth of 5.2 percent. In the fourth quarter of 1976, it was 2.8 percent. So the GNP growth rate has gone from 2.8 percent to 5.2 percent.

There are some cautions, obviously, by economists that 5.2 percent may not be as glittering as it looks at first glance. But it is certainly a sign of better growth than anyone had expected.

It is an encouraging sign for the future, and it is in that atmosphere, in that climate, that we are asked to retain these tax incentives for business.

Mr. President, I think that the basic issue we are facing this afternoon is equity. We cannot lose track of that issue, we have repealed the \$50 rebate for the 87 million Americans, on the ground that there is now no economic justification for the rebate. But we know that countless people could have used it, especially the low income families who paid extraordinary energy bills over the winter.

In my part of the country they have paid energy bills 35 percent higher because of the harshness of this winter over a year ago. There is the same kind of increase in Ohio, and in Illinois, the heartland of this country.

People who have experienced the burdens of unemployment and recession, who are faced with a difficult time, were promised the \$50 rebate. Yet in a matter of moments yesterday, the Senate of the United States wiped that out. It wiped that out, and it wiped out the hopes for all those individuals for this modest sum. And at the same time we debated for hours yesterday afternoon whether to continue the tax breaks for business and industry. I think we have our priorities reversed.

At the end of last year and in the early part of this year, there was no one suggesting that the economy needed incentives for industry. No. We proposed a balanced program for business and consumers. But what we are facing here today, by failing to vote in favor of the Bumpers-Kennedy motion, is an unbalanced program for business alone.

That is the issue, no matter how we disguise it, no matter how many small businessmen and women we talk about taking advantage of the jobs credit program, no matter how we talk about increased productivity through the investment credit. There is only one issue and that is the issue of equity.

I wonder how the Members of this body are going to tell their constituents saying, "Mr. Citizen, you are not going to get your \$50 rebate, but we are going to provide an investment credit to the wealthiest corporations and companies in this Nation."

I hope that people are going to be able to justify their votes to their constituents, how their vote reduced the corporate taxes of this country, while increasing taxes to the American public.

That is effectively what we are saying if we do not vote for the Bumpers-Kennedy motion, because as a result of this

particular measure the amount of taxes to be paid by individuals is going to increase, and the amount that is going to be paid by corporations is going to decrease.

If we look at how that balance has gone over the period of the last few years, people in my State are saying, "That is enough, why should we keep paying more and more and more in Federal taxes, while in most instances the major companies or corporations, the most powerful ones, are bearing a lighter load."

Mr. President, this situation that we are faced with now, with the continuation of the business incentives, is basically inequitable.

It does not make sense from an equity point of view, it does not make sense from an economic point of view, and it does not make sense from a tax expenditure point of view. It just does not make sense.

I am extremely hopeful that this motion will be carried here this afternoon.

Mr. President, let me summarize again briefly, because so much attention has been given to the jobs credit in this debate, the six major arguments against it:

The employment tax credit provisions passed by the House and approved, in modified form, by the Senate Finance Committee are defective because both the House and Senate versions are incremental credits; employment must increase over the prior year's level by at least 3 percent to qualify an employer for the credit. This incremental feature would:

First, in and of itself, exclude nearly one-half of all employers and 35 percent of the total labor market from the benefits of the program;

Second, discriminate against businesses which for any reason cannot expand their employment;

Third, deny the employment stimulus effects to slow growing regions—such as the Northeast and Midwest and slow-growing industries;

Fourth, provide rapidly growing companies and new companies with a competitive advantage in hiring labor and in selling products;

Fifth, tend to be destabilizing in the economy, since taxes are reduced when the economy is expanding and increased when the economy is contracting; and finally

Sixth, make it possible for some substitution of part-time for full-time employment to occur; the result will be no increase in total hours of employment, but merely a sharing of the work. A firm could fire one \$10,000 a year full-time worker, and hire two \$5,000-a-year part-time workers, and get the advantage of the credit.

For all of these reasons, I hope the jobs credit will be rejected.

Mr. President, let me sum up by a literary reference. In Coleridge's famous poem, the Ancient Mariner sinned by killing an albatross, and had to wear it around his neck in penance. The business tax incentives have become an albatross around the neck of Congress, and they should be deleted by the Senate.

Mr. BENTSEN. Mr. President, a lot has been said here about a big bonus be-

ing given to business without any attention being given to the individual. But we ought to look at the facts in this bill.

We have \$14 billion in tax cuts for the individuals in fiscal 1978. We have \$2.4 billion in tax cuts for business in fiscal 1978.

Forty-seven million taxpayers in this country get a tax cut through the increased standard deduction. We also simplify the tax returns for millions of U.S. taxpayers.

We raise the standard deduction for individuals to a flat \$2,200. We raise it for the married couple to \$3,200. This is a substantial tax cut for the American people.

What has happened in the last 3 months that caused the change of position on the proposed tax rebate?

Consumer spending is up. What we are concerned with today is unemployment and inflation. They are twin problems, and we should not neglect one for the other.

What we tried to do with the employment tax credit is to encourage labor intensive companies to hire people.

What we tried to do with the investment tax credit is to encourage American business to modernize its manufacturing capacity.

Where is one of the most industrialized parts of our country? In the Northeast.

Where do we have some of the most antiquated manufacturing capacity? In the Northeast.

What should they be trying to do about it? Modernizing, so they can become competitors in the world markets to hold those jobs and to create jobs.

When they talk about growth and the employment tax credit, and the figures that are cited, they are overall employment figures. But where will most of these people be hired? They will be hired in service industries. And what has happened to the growth of service industries in a State like Massachusetts? Last year there was an increase of 3.3 percent in that State.

What are we talking about in terms of costs for the American taxpayer? We are talking about public service jobs. We are talking about \$8,000 to \$12,000, often a dead-end job.

I voted for public service jobs because I would rather pay a person for working than to pay him for not working. I think one of the last things we can do to a person is tell him society has no productive role for him.

I would much rather do it by the private enterprise system, if we can; where, hopefully, they will have a permanent job and add to productivity.

What we are talking about is trying to fight inflation. If we go back to 1973 and 1974, we saw some of the same things that are beginning to happen here. Today they are talking about the manufacturing capacity having moved up from 78 percent to 82 percent. That does not tell the whole story. That is the overall average. That does not tell you individually what is happening in this industry or that industry.

However, back in the fall of 1973 and in the spring of 1974, we began to see bottlenecks appear in this industry or

that industry and then the leapfrogging of prices from one industry to the other. Yet, you could cite percentages of productive capacity that were certainly far below 100 percent of what had been utilized.

Some of the archaic production that was not competitive should be replaced. American business has not done its job in replacing the antiquated capacity in this country. One of the problems has been cash flow, and that is happening around the rest of the world. How are they doing in replacing their manufacturing? Far and away above what the United States has done. We are the lowest of any major industrialized nation in the world today in replacing productive capacity in this country.

This is a bill that has equity, and this is a bill that gives most of the rewards and the tax cuts to the individual consumer; but at the same time it makes a long-term commitment in the way of investments for American business to do the job it should do and to be competitive in the world: \$14 billion in tax relief for individuals in fiscal 1978; \$2.4 billion in tax cuts for business in fiscal 1978.

The permanent increase in the standard deduction will result in a revenue loss of \$7.6 billion in fiscal 1978. An extension of the individual tax cuts results in a revenue loss of \$6.8 billion in fiscal 1978.

I might add that that increased standard deduction benefits about 47 million taxpayers as a permanent tax cut, while the business provisions are only temporary. The increased standard deduction will make about 3.7 million taxpayers nontaxable. It is clearly a great relief to the individual.

The increase in the investment tax credit and the new jobs credit will help moderate inflation. I heard it said earlier that this actually was going to add to inflation by giving an employment tax credit. Think about that. We are talking about a tax credit for hiring an employee, above the 103 percent base. Follow this line of reasoning—that that is going to add to cost. How do you follow that? If you say to American business, to small business, "We are going to cut the costs of your labor," how does that add to cost? It seems to me that that cuts cost; and in a competitive society, that is passed on to the consumer.

If we say to American business, "We are going to give you an investment tax credit so you can lower the cost of your machinery by 12 percent, the cost of production," that is passed on to the American consumer in a competitive society. That lowers cost.

Let us look at this employment tax credit. If this were not so, then I say that we have a panacea here, because we have a way to finance the Treasury. We have a way to take care of all the deficits, if this does not lower costs, by giving this kind of tax credit.

What we should do is put a \$600 surtax on the hiring of any employee, because that must work the other way. That is what must really cut inflation, if you follow their line of logic. Since it does not cut inflation or does not affect inflation to lower costs, then let us add a surtax on every employee who is hired, and let us

finance the budget that way. But obviously that is not the case. That shows how illogical some of this argument is on the part of the opposition.

The cruelest tax we have today—and it has been said time and time again—is the tax of inflation. That is what we are trying to combat, and we are trying to help small business.

I heard the argument made that the investment tax credit was not going to be utilized properly by service stations and by mom and pop stores, and I think that is right. That is why we have given them an alternative here with an employment tax credit.

I heard some of the people from the Treasury Department argue against the employment tax credit. They said it is going to mean that people of lower incomes are going to be hired, I am delighted. Those are the kinds of folks for whom we have trouble getting jobs, because generally they have been people with lower skill and training. If we look at the classified sections of newspapers, we see many jobs open. But they are skilled jobs; they are jobs that require a lot of training; they are technical jobs. That is not so true in the service industry. In the service industry, there is a tendency to hire more people of lower skills. This means that a lot of people can stand taller, can get off welfare, can lead productive roles, can support their families.

I think this bill is a major step forward and is a balanced bill.

I recently returned from Mexico, where I met with the President of Mexico and the Secretary of Commerce. We talked about business investments, trying to help create jobs there, trying to solve the flow of illegal aliens into our country. We were talking about what it costs for a stove, what it costs for a refrigerator. Those items were two or three times the cost to the American consumer. Why? Because they are not competitive in their manufacturing capacity, because they have raised the tariffs and the barriers to foreign competition, to U.S. competition. That kind of competition is one of the real disciplines on business.

For our business to be able to compete, they have to have the cash flow, and that means an investment tax credit or employment tax credit, so that they can be competitive in world trade, so that we can see that our balance of trade is protected, so that we can see that our dollar is protected.

Mr. President, I believe the arguments are strong in this regard, and I hope that the Senate will overwhelmingly defeat this motion to recommit.

Mr. President, the Finance Committee bill provides substantial tax relief for individuals through the increased standard deduction and the extension of the general tax credit.

In fact, the Finance Committee bill provides over \$14 billion in tax relief for individuals in fiscal 1978 as a result of the increased standard deduction and the extension of the existing tax cuts. This compares to only \$2.4 billion of tax cuts for business in fiscal 1978. The permanent increase in the standard deduction will result in a revenue loss of \$7.6

billion in fiscal 1978 and the extension of the individual tax cuts results in a revenue loss of \$6.8 billion in fiscal 1978.

I might add that the increased standard deduction which benefits about 47 million taxpayers is a permanent tax cut while the business provisions are only temporary. In fact, the increase in the standard deduction will make about 3.7 million taxpayers nontaxable. Thus, it is clear that a great bulk of the relief in this bill goes to individuals.

The increase in the investment tax credit and the new jobs credit will help moderate inflation.

The cruelest tax of all these days is inflation. What we are trying to do with the business tax cuts is help small business, and we are trying to help make our manufacturing capacity more competitive in the world so that prices can be lower and we can hold down inflation.

What you are seeing in an increase in the investment tax credit and adoption of an employment tax credit is not something that contributes to inflation. It is something to try to bring about more productivity; to try to bring about more efficiency, to make us more competitive in world trade and to try to make the dollar sounder. That is a better solution, really, than a public service job. I would rather see a fellow paid for working than for not working, but too often public service jobs are dead-end jobs and not productive jobs. But these jobs that we get people into in the service industry are productive jobs and most of those will be by small business. And that is why small business has fought so hard for this concept.

I just came back from Mexico where we met on trade problems with the President of Mexico and the Secretary of Commerce, and they are telling me they had to pay several times what we pay for a stove or refrigerator. One of the reasons is that they are not competitive in world markets. They have built up trade barriers to try to protect local manufacturers. We have the same temptations in this country to build up barriers to protect local manufacturers.

One of the problems you have in this country is that we have been putting a very small percentage of money back into manufacturing capacity compared to other industrial nations in the world, and the country next to us is England, and you can see what kind of trouble they are in today.

Now, there is talk about having 82 percent of our manufacturing capacity utilized today. That really does not give you a true representation because that other 18 percent is the least efficient, the most unproductive; that is the part they put aside first. Business has been dragging its feet on modernizing its manufacturing capacity in this country.

Back in 1973 and 1974 we noticed bottlenecks developing in our economy, in our manufacturing capacity, and there was an immediate increase in inflation.

That is my concern today. When we get above 82 percent capacity, unless we get manufacturers in this country to modernize and increase their manufacturing capacity we are going to see those bottlenecks develop again. Who is going

to pay for it? The consumer is going to pay for it by increased inflation, and that is the sort of thing we ought to be fighting to prevent today, and why I strongly support what I think is a really balanced tax package.

In the past decade there has been a significant increase in the rate of growth of the labor force—the people who either have jobs or are looking for them. Between 1966 and 1976, the labor force grew by 19 million workers, compared to an increase of 9 million between 1956 and 1966. This growth in the labor force has not been matched by a corresponding increase in the rate of growth of the amount of plant and equipment; therefore, the growth rate of the amount of plant and equipment available for each employee has declined significantly. This has reduced the growth of labor productivity—the amount produced per hour worked—and the decline in the growth rate of productivity has reduced the growth rate of real wages.

It is desirable to increase investment to forestall a repetition of the shortages which occurred in certain capital-intensive industries in 1973 and 1974 and which contributed to the high rate of inflation in those years. The affected industries included chemicals, steel and paper along with other industries producing materials used as input by other industries. A high rate of investment in the next few years will help prevent the recurrence of this problem.

In recent years our economy has grown more slowly than that of most other industrial nations. A recent economic study of eight industrialized nations indicates that between 1960 and 1973, annual growth rates ranged from 3.8 percent in the United Kingdom to 10.9 percent in Japan, Canada, France, West Germany, the Netherlands, and Italy all experienced growth rates between 4.8 and 5.9 percent. The U.S. growth rate was only 4.1 percent.

Mr. President, I ask unanimous consent to have printed in the RECORD a table illustrating these very disturbing figures:

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

Comparison of economic growth rates
[In percent]

Country	Rate of economic growth 1960-73	Rate of growth prior to 1960
United States.....	4.1	3.6
Canada	5.1	5.2
France	5.9	4.9
West Germany.....	5.4	8.2
Italy	4.8	6.0
Japan	10.9	8.1
Netherlands	5.6	5.0
United Kingdom.....	3.8	3.3

¹ 1947 to 1960.
² 1950 to 1960.
³ 1952 to 1960.
⁴ 1951 to 1960.
⁵ 1955 to 1960.

Source: Laurits Christensen, Dianne Cummings and Dale Jorgenson, "Economic

Growth, 1947 to 1973: An International Comparison," Harvard Institute of Economic Research, discussion paper No. 521 (processed).

Mr. BENTSEN. Mr. President, one of the reasons for this poor rate of growth in the United States is the low level of investment. The growth rate of capital input in these eight industrialized nations has been lowest in the United States—4.0 percent and highest in Japan—11.0 percent.

Mr. President, I ask unanimous consent to have printed in the RECORD a table on these rates of investment.

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

Role of capital accumulation in economic growth, 1960-73
[In percent]

Country	Growth rate of capital input	Contribution of capital accumulation to economic growth
United States.....	4.0	1.6
Canada	4.9	2.2
France	6.3	2.6
West Germany.....	7.0	3.6
Italy	5.4	2.3
Japan	11.5	5.0
Netherlands	6.6	3.4
United Kingdom.....	4.6	2.2

Source: See preceding table.

Mr. DANFORTH. Mr. President, will the Senator yield for a question?

Mr. BENTSEN. I am happy to yield to the distinguished Senator.

Mr. DANFORTH. If we were to strike the investment tax credit and the employment tax credit from the bill, what would be left in the bill with respect to tax incentives for the private sector or private business?

Mr. BENTSEN. I think that all we would have left would be the extension of the increased surtax exemption which we now have.

Mr. DANFORTH. We would be exactly on the same plane we are on now, would we not?

Mr. BENTSEN. That is correct—for business.

Mr. DANFORTH. And it would be just a question of drifting along with exactly the same provisions in the Internal Revenue Code for business that we have right now, when we have what I think everybody would concede to be an unacceptably high rate of unemployment. Is that correct?

Mr. BENTSEN. That is correct.

Mr. DANFORTH. I think the Senator from Texas was present when Charles Schultz testified before the Committee on Finance. Does he recollect that testimony?

Mr. BENTSEN. I recall being there when he testified. I am not sure I recollect his testimony.

Mr. DANFORTH. He was testifying, of course, about the investment tax credit, not about the jobs credit. But he did point out that it was very important for

the private sector to know that there was at least something in the stimulus package for business and for private investment.

Mr. BENTSEN. That is correct. I remember that very well.

Mr. DANFORTH. And without these two provisions, if we just were to strike them, there would be absolutely nothing; is that not correct?

Mr. BENTSEN. That is correct.

Mr. DANFORTH. About 85 percent of the employment in this country right now is private sector employment, not public employment?

Mr. BENTSEN. That is right.

Mr. DANFORTH. My objection to the bill, as a matter of fact, is that it does not go far enough, that it does not have enough in it for the private sector. You and I could perhaps debate that with each other, but if we were to strike this it would be absolutely nothing. We would say that for the 85 percent of the jobs that are provided by the private sector absolutely nothing would be helped by Government.

Mr. BENTSEN. In fiscal 1978 you are talking about \$14 billion in tax cuts for individuals; you are talking about \$2.4 billion in tax cuts for business.

Mr. DANFORTH. A very, very modest provision as it is.

Mr. BENTSEN. I certainly agree with that.

Mr. DANFORTH. Does the Senator understand any of the arguments in favor of striking these two provisions?

Mr. BENTSEN. I think the logic is overwhelming for keeping the provisions in.

The PRESIDING OFFICER (Mr. METZENBAUM). The Senator from Hawaii.

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

Mr. BENTSEN. I am delighted to yield to the distinguished Senator from Hawaii.

Mr. MATSUNAGA. Mr. President, the question has been raised here by the movers of the motion to recommit the bill to the committee with instructions to strike out the investment tax credit and the employment tax credit as to what benefits the poor will get out of the bill as it now stands.

This was the very intent of the bill, to care for the poorest of the poor, the unemployed, the 7 million-plus men and women who have been unemployed, some of them for over 2 years now. To them the \$50 rebate would have meant nothing at all for the reason that they have no tax rebate in the first place. They have been so long unemployed that they have not even been paying taxes.

The employment tax credit will, according to the experts who testified before the committee, create as many as 750,000 to 1.5 million jobs.

According to the administration's report it is encouraging that the economy has been improving to a point where the unemployment rate is now down to 7.3 percent and will be down to 7 percent by the end of the year. But certainly this is not an acceptable unemployment rate. We condemned the previous administration for accepting 7 percent as a tolerable unemployment rate, and here again we

are drifting into an attitude of accepting a 7-percent unemployment rate as being tolerable—tolerable to 7 million-plus men and women who are out of work not knowing where their meal is coming from. Is that tolerable? Mr. President, this body certainly ought to be able to do better than that.

The 2-percent additional investment tax credit, they say, will benefit only the big concerns.

As was so ably pointed out by my colleague from Texas (Mr. BENTSEN) we are trailing so badly in our productive capacity the other developed nations of the world, and we are trailing so badly because we have not replaced our archaic equipment, machinery, with modern machinery. The investment tax credit will give this incentive.

Now, we heard complaints here on the floor earlier, questions being thrown at the managers of the bill, as to what good is this bill going to do "in my State where foreign-made shoes are closing down shoe factories in my State."

It is because of the decrease in the productivity due to archaic equipment and machinery that we have not been able to produce as cheaply as our foreign competitors.

The investment tax credit will permit our shoe factories to replace their old equipment with new so that we can produce at much cheaper cost than our competitors, and once again our factories will begin to hum, we will begin to reemploy those who have been unemployed.

Mr. BENTSEN. Mr. President, I yielded the floor to the distinguished Senator from Hawaii.

The PRESIDING OFFICER (Mr. BUMPERS). Does the Senator from Hawaii wish to retain the floor?

Mr. MATSUNAGA. Yes, I wish to retain the floor. I am just taking over from the Senator from Texas.

The PRESIDING OFFICER. Does the Senator from Hawaii yield to the Senator from Ohio?

Mr. MATSUNAGA. I apologize, Mr. President, for the shift here, but the Senator from Texas had to leave the floor temporarily, and he asked me to speak from here.

The PRESIDING OFFICER. The Senator may proceed.

Mr. MATSUNAGA. I thank the Chair.

Mr. President, in my State of Hawaii the unemployment rate far exceeds that of the national average. It is as high as 8 percent. Most of those who are now unemployed were last employed in the retail, the service, trades or in the construction industry.

(At this point Mr. DeCONCINI assumed the chair.)

Mr. MATSUNAGA. The bill as it now stands would provide incentives to small business, particularly the service and, yes, even the construction industry, to employ those who are most in need of work.

I have received many telegrams and letters from my constituent small businessmen in Hawaii, as did the chairman of the Committee on Finance, the Senator from Louisiana, and we have received assurances on the part of small businessmen that if the proposal to give a tax

credit for employment goes through they will hire two or three and even more employees in addition to what they now have.

So that to say that this bill does nothing to help the poor and will help only the rich is not in consonance with the facts and with the representations made by those who are awaiting action by Congress on this bill.

Mr. President, I urge that our colleagues not forget the original intent of the bill, that is, to help to stimulate the economy and to create jobs, jobs for the millions of unemployed who have too long been unemployed and who are searching for the opportunity to work again, make a living, get off the unemployment roll, get off the welfare roll, and once again live in dignity.

Mr. President, I yield the floor.
Mr. METZENBAUM and Mr. SCHMITT addressed the Chair.

Mr. MATSUNAGA. Mr. President, the Senator from New Mexico (Mr. SCHMITT) has been asking for some time to be recognized, if the Senator from Ohio will yield.

Mr. METZENBAUM. Mr. President, I may say to the Senator from Hawaii that I took the Chair in order to accommodate the Senator from Hawaii and did come to the floor so that I might speak. I would appreciate being accorded the opportunity to be heard at this time.

Mr. SCHMITT. I am happy to await my turn and let the Senator from Ohio proceed.

The PRESIDING OFFICER. The Senator from Ohio has the floor.

Mr. METZENBAUM. I am very grateful to the Senator from New Mexico as well as the Senator from Hawaii.

Mr. President, yesterday and today many distinguished Senators, including the distinguished Senator from Hawaii, the distinguished Senator from Texas, and others, spoke eloquently on the merits of the employment tax credit. I do not rise to address myself to the job credit proposal. As a matter of fact, I could support that part of the bill. My concern is not with that part of the tax measure but with another aspect that of increasing the investment tax credit by 2 percentage points—to 12 percent—until 1980. While the employment tax credit is designed to encourage added hiring in labor-intensive businesses, the second option—that of increasing the investment tax credit to 12 percent—is simply not needed.

For much of my life I have been active in the business community. The company I headed was listed on the New York Stock Exchange, employed over 4,000 people, and was a profitmaking entity in the American business community. In my years of business experience, I can recall no occasion in which our company or any other business corporation expanded its business as a result of an investment tax credit.

Mr. President, Treasury Secretary W. Michael Blumenthal has clearly indicated that the administration no longer believes the business tax reductions proposed in this bill are necessary. I shall quote from his letter to Senator BUMPERS:

... the administration concluded that ... the business tax reductions should not be enacted in view of the improvements in the current economic situation. It is our view that since the Senate has deleted the rebate you should also delete the business tax reductions in this bill. Neither is now needed in view of the improvements in the economy. In addition, we believe it is important that the business tax relief be removed in order to make it possible to develop a better balanced tax program this fall.

In explaining the administration's position on the tax stimulus measure, the Treasury Department cited the following figures:

First. Unemployment has dropped from 7.8 percent in December to 7.3 percent in March.

Second. Housing starts for March were up 49 percent over the same period last year.

Third. The gross national product for the first quarter showed a 5.2 percent real increase.

Fourth. The wholesale price index rose at a 10.2 percent annual rate for the first 3 months of 1977.

How can anyone realistically say that business needs tax relief when all of the indicators for our country show that business is doing particularly well at this moment?

Based upon these figures, the administration concluded that neither the rebate nor the investment tax credit should be enacted. I agree.

Further, this week's Business Week states that—

... the economic recovery is gaining new momentum that will carry it well into 1978. . . . Retail sales climbed 2.4 percent in March to \$59.6 billion, led by a 4-percent jump in durable goods and a 5-percent gain in auto sales . . . furniture and home furnishing stores scored a 3-percent increase.

There is, however, a more important reason why the business tax credit should not be included in the stimulus package, and that is the question of equity, the question of fairness. How can we on one hand take away \$50, and in some cases as much as \$200 per family, from the individual taxpayer and then turn around in the same week and grant business an investment tax credit that will benefit the business community by as much as \$1.4 billion a year?

In short, the investment tax credit is a misnomer. It is a giveaway. According to a 1976 Library of Congress study, the investment credit will only produce between 35 cents and 45 cents of new investment for every dollar lost to the Treasury.

With 20 percent of the Nation's productive capacity idle, and approximately 7 million persons out of work, more equipment is not the answer. As a matter of fact, if the investment tax credit actually does what its proponents suggest it will do—increase purchases of equipment—unemployment will not decrease but rather increase. Let us take the example of A.T. & T.

A.T. & T. has embarked on a multi-billion dollar effort to computerize its service equipment to reduce the need for individual operators and service personnel. That means less employment, not more. But for this, for this reduction in

the number of people that it is going to be able to employ, what did we do for A.T. & T.? We gave A.T. & T. an investment tax credit in 1975 amounting to almost three-quarters of a billion dollars.

This same problem is true in every industry where the installation of new machinery will result in a loss of manpower.

On the one hand, we have in this legislation a provision which ostensibly will help to create jobs; on the other hand, we have a tax giveaway which will actually result in putting in more technological improvements to cause a greater loss of jobs.

A well-run firm will not be induced by tax reductions to invest in additional equipment unless it will be profitable. There is not one businessman in the entire country who would state to the contrary. Where demand is great, market incentives—not Federal subsidies—will cause firms to invest. Businesses do not invest in new equipment when the economy is sluggish and when additional equipment is unnecessary. When they need the equipment, they buy it, because with the new equipment they can make more money.

Mr. President, only yesterday the distinguished chairman of the Finance Committee, Senator LONG, stated that the investment tax credit is that portion of the stimulus package that helps larger companies. I agree with him.

The investment tax credit is targeted to a narrow segment of the economy—capital intensive industry. It does not apply to investments in the housing sector, durable goods, plant or building expansions, real estate, intangible investments in research and development, or manpower training programs. Furthermore, the investment credit formula places many small businesses at a competitive disadvantage. Small businesses, or those operating at either no profit or a loss, must still compete with those competitors who are now able to buy their equipment cheaper.

The practical effect of this tax credit has been that it primarily benefits only the very largest capital intensive corporations. In 1975 more than 70 percent of the investment tax credit benefits went to corporations with assets of more than \$100 million. Four corporations—A.T. & T., Exxon, General Motors, and United States Steel—received almost 20 percent of the total investment tax benefits claimed.

In addition to its limited scope, the investment tax credit greatly contributes to the continuing erosion of the Federal tax base. In 1966 the corporate share of the Federal income tax burden was 35 percent. Today it is only 24 percent. The corporate share of the total Federal budget receipts fell from 23 percent to 14 percent in the same 10-year period. This means that increasingly the tax burden has shifted from corporations to the shoulders of the average American family.

The entire question of the investment tax credit serves to further highlight the need for Congress to carefully analyze the interrelationships between tax policy and Federal expenditures.

It is well-known that Congress annually authorizes expenditures of over \$400 billion for various Federal programs, but it is less apparent that Federal tax laws indirectly cost the Federal Government approximately \$100 billion per year in lost revenues. While much attention is given to balancing the budget by reducing Federal spending, all too little attention is given to the revenue losses caused by our tax policy. There is little difference between a dollar spent and a dollar of income lost.

If we are to achieve President Carter's goal of a balanced budget in 1981, a goal which I support, both Federal expenditures and Federal tax policy must be made to reflect our national priorities.

Mr. President, a careful look at the current economic situation clearly illustrates that increasing the investment tax credit is not in our best national interest. The major problems confronting our economy are unemployment, inflation, and a rising Federal deficit. Clearly, any Federal expenditures should be aimed toward solving these problems. By withdrawing the \$50 tax rebate for average American taxpayers, the President pointed to favorable economic indicators and cautioned against the inflationary aspects of the proposal. During my recent visits to Ohio, I found that despite their disappointment, most Ohioans accepted the President's reasoning and were willing to do their share to hold down inflation. If the American people are being deprived of a tax rebate because of economic factors, I believe it is only fair to require our largest corporations to do likewise.

The drain on the Federal Treasury caused by the 10 percent investment tax credit is estimated to be \$8.76 billion this year alone. The 2-percent increase will cost the Treasury an additional \$1.2 to \$1.4 billion. It would drain almost \$10 billion from the Treasury—or about one-sixth of the present Federal deficit. We talk about balancing the Federal budget—we talk about tax equity—we talk about tax loopholes. Now I think it is time that our talk be supported by our actions. I, therefore, strongly urge that we eliminate this unwarranted increase in the investment tax credit.

Mr. President, I yield the floor.

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

Mr. METZENBAUM. I yield to the Senator from Hawaii.

Mr. MATSUNAGA. As I understand the Senator's position, the Senator is opposed to the investment tax credit, but supports the employment tax credit. Do I understand the Senator's position correctly?

Mr. METZENBAUM. The Senator from Hawaii correctly states my position.

Mr. MATSUNAGA. Then may I suggest to the Senator from Ohio that he ought to oppose the pending motion to recommit, for the reason that the motion to recommit would strike out the employment tax credit as well, that portion which the Senator from Ohio supports?

I would strongly urge that the Senator join us in opposing the motion, and offer an amendment to strike out the additional 2 percent investment tax credit.

Mr. METZENBAUM. I advised the chairman of the Committee on Finance earlier today that I would have no difficulty in opposing the motion to recommit on the present basis, provided that the Finance Committee chairman could indicate his support for eliminating the investment tax credit. The chairman of the Committee on Finance did not indicate that he could give me that assurance in the event I made that kind of motion, and I am frank to admit to the Senator from Hawaii that absent that kind of support and assurance, I do not believe that kind of an amendment would be agreed to. It therefore is my view that in order to make my point that the investment tax credit should not be increased, the only possible procedure available to me is to support the motion of the Senator from Arkansas to recommit this measure to the committee.

Mr. BUMPERS. Mr. President, a parliamentary inquiry.

Mr. MATSUNAGA. Will the Senator yield further?

Mr. METZENBAUM. I certainly will.

Mr. MATSUNAGA. The Senator from Ohio is certainly concerned, as I am and as the Senator from Arkansas is, about the high unemployment rate today. The Senator spoke of this measure costing as much as \$1.4 billion for the investment tax credit and \$2.4 billion for the unemployment tax credit. The figures that the Senator cited may not be exact.

The Senator knows that the bill, as originally introduced and as reported by the Finance Committee, is intended to decrease unemployment by as much as 2 percent in the next 2 years. Assuming that we reduce the unemployment rate by 1 percent, the Senator knows that it will mean an additional \$16 billion to the Federal revenue. That means that we will be making a profit, Treasury-wise rather than losing.

In addition, we will be eliminating, for every 1 percent of decreased unemployment rate, about \$4 billion in welfare and unemployment payments which we now make. It would add up to a \$20 billion gain as opposed to about \$4.8 billion, or some say \$6 billion. The taxpayer, in effect, would be gaining by the passage of his measure.

Once again, I urge the Senator from Ohio to reconsider. Because of his long and wise support of the unemployment tax credit, I urge him to vote against the pending motion and offer an amendment to strike out just the investment tax portion.

Mr. METZENBAUM. Will the Senator from Hawaii yield for a question?

Mr. MATSUNAGA. I yield.

Mr. METZENBAUM. The Senator from Hawaii is a member of the Finance Committee. In the event the Senator from Ohio should decide to vote against recommitting, including the jobs provision and the tax credit, would the Senator from Hawaii be prepared to offer the motion to reduce the investment tax credit to 10 percent?

Mr. BUMPERS. Before that answer is given, will the Senator yield for a parliamentary inquiry?

Mr. METZENBAUM. I yield.

Mr. BUMPERS. Mr. President, I have a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BUMPERS. What will be the parliamentary situation as to the ability of any Senator to offer such an amendment in the event this motion is defeated? In other words, would the committee amendments have to be agreed to en bloc as a substitute before the amendatory process would be in order?

The PRESIDING OFFICER. The answer is no. If the Senate votes no on the motion, then the committee amendments would be taken up seriatim as they appear in the bill. Each committee amendment would be amendable when it is before the Senate.

Mr. BUMPERS. Would the amendment to strike the investment tax credit and jobs portion of this bill be in order prior to the agreement by the Senate for the consideration of all the committee amendments?

The PRESIDING OFFICER. No. If this motion failed, the committee amendments would be taken up one at a time as they appear unless there was a unanimous consent to vary that procedure.

Mr. BUMPERS. But an amendment, the substance of which is the same as this motion, would not be in order until all the committee amendments have been considered; is that not correct?

The PRESIDING OFFICER. Since it is a committee amendment that the Senator is trying to get at, an amendment to it would be in order when the committee amendment is pending.

Mr. BUMPERS. Such an amendment would then simply become an amendment in the second degree; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. BUMPERS. I thank the Chair.

The PRESIDING OFFICER. The original House language would remain in the bill unless it was knocked out.

Mr. METZENBAUM. As I understand, the increase from 10 to 12 percent is one of the seriatim committee amendments; is that correct?

The PRESIDING OFFICER. It is a Senate committee amendment that increases it from 10 to 12 percent. The question would come on the committee amendment.

Mr. METZENBAUM. And it is separate and apart from all other amendments?

Mr. BUMPERS. A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BUMPERS. Mr. President, what the Chair just announced seems inconsistent to me. Let me phrase the question this way: If the committee amendment is stricken, then does that not then leave the House language in the bill?

The PRESIDING OFFICER. That is correct.

Mr. BUMPERS. And the House language also contains the 12 percent investment tax credit?

The PRESIDING OFFICER. The Chair is advised that it does not.

Mr. BUMPERS. The House has the 4-percent credit on social security tax, is that correct?

Mr. MATSUNAGA. No.

Mr. METZENBAUM. One further parliamentary inquiry. It is not a fact that the committee amendment is a joint one including both the jobs credit and the increase in investment tax credit, all one and the same?

The PRESIDING OFFICER. That is correct. An amendment to strike part of that amendment would be in order while the amendment is pending.

Mr. METZENBAUM. Therefore, my inquiry to the Senator from Hawaii: Since the Senator from Hawaii is a member of the Finance Committee and knowing the usual procedures on the floor of the Senate, would the Senator from Hawaii, as a member of the Finance Committee, be prepared to offer an amendment to eliminate the increase in the investment tax credit from 10 to 12 percent, assuming that the Senator from Ohio was persuaded that the motion of the Senator from Arkansas to recommit should not prevail?

Mr. MATSUNAGA. In response to the Senator from Ohio, let me say this: I was initially opposed to the additional 2 percent investment tax credit. However, during the hearings, having had experts before the committee, I was convinced that the additional 2 percent was necessary in order to increase the investment in the capital intensive businesses to increase productivity, for one thing, and to increase employment. I was convinced that the additional 2 percent would be an incentive to create more jobs. Figures ran as high as 900,000 jobs. Well, they range anywhere from 500,000 to 800,000 jobs. The employment tax credit estimates ran from 750,000 to 1.5 million.

So I was convinced then that the investment tax credit would be a good thing.

Mr. METZENBAUM. Do I understand the Senator from Hawaii to say that somebody said that by increasing the investment tax credit from 10 to 12 percent it would add 700,000 to 900,000 jobs in this country?

Mr. MATSUNAGA. Yes. That was the testimony before the committee.

Mr. METZENBAUM. I am not certain as to whether the Senator from Hawaii was on the floor at the time I was speaking, and I could well understand his absence. But I pointed out at that time that A.T. & T. in 1975 received almost three-quarters of a billion dollars in investment tax credit, much of it by reason of the fact that they were installing automatic computerized switching equipment which would actually cause a reduction in the amount of employment rather than an increase. I point out to the Senator from Hawaii that much of the time, when business makes installations of new equipment in this day and age, it is a kind of equipment that is labor-saving, that eliminates jobs rather than producing jobs.

Mr. MATSUNAGA. But jobs are created, I remind the Senator from Ohio, in making the new equipment.

Mr. METZENBAUM. Let me point out that that is a one-time kind of job that may be created in making the equipment, but thereafter, hundreds of thousands of people lose their employment.

Let me further point out to the Sen-

ator from Hawaii a comment that I made at the inception of the speech I just concluded. That is that I have never met a businessman who told me that he bought a piece of equipment or invested in new capital equipment because he was going to get a tax reduction. As a businessman myself, I bought equipment when I could make a profit out of it. That, in my opinion, is the only basis on which businesses buy new equipment, regardless of the kind of business.

I believe that all this amounts to is a price to be paid in order to get through the jobs credit bill. I do not believe that we ought to take investment tax credit, that started off at 3 percent as a so-called incentive and stimulant to business in 1962, then was taken off for a few years, then came back at 7 percent, then came back again at 10 percent and now at 12 percent. All this amounts to is one more instance of a tax giveaway to the large corporations of America, not even to the small businessmen. What we are doing is saying to the people of this country, "We forgot about you. Forget about the \$50 tax rebate. That we took care of yesterday. Today, here is another handout for the large corporations, who certainly do not need it, because their businesses are doing particularly well and their profits are at an all-time high."

Mr. MATSUNAGA. The Senator from Ohio is very convincing and persuasive. I am inclined to believe that if the Senator votes against the motion to recommit and then offers the amendment to strike out the additional 2 percent investment tax credit, he may be able to convince a majority of the Members of the Senate and carry.

I am suggesting that, inasmuch as the Senator from Ohio has indicated his strong support for the employment tax credit, he would be defeating his own end if he were to support the pending motion to recommit.

The suggestion which I make, I think, is one which ought to be accepted by the Senator from Ohio.

Mr. METZENBAUM. If the distinguished Senator from Louisiana, the chairman of the committee, or the distinguished Senator from Hawaii would offer that amendment, then I could well understand and could very well consider not voting to recommit the bill. But absent that, I think my nose counting is good enough to tell me that the elimination of the investment tax credit alone does not have much of a chance. If the chairman of the committee were to indicate his support for it, or if the fight were led for it by a member of the Committee on Finance, then I think it might stand a chance of passage. But with the entire Committee on Finance now voting against cutting it back to the 10-percent figure, I do not believe that, realistically, it would have any chance at all. Therefore, the only way to make my point is to vote to recommit this bill in the hope that somewhere along the line, perhaps we can work out that kind of compromise to make it possible to eliminate the investment tax credit as a price for obtaining the jobs credit.

Mr. BUMPERS. Will the Senator yield for another parliamentary inquiry, if I

may, because there still seems to be a little confusion at this point?

Mr. METZENBAUM. I yield.

Mr. BUMPERS. I ask the Chair, first of all, if it is the intention of the author of this amendment to delete both the Senate provision, which raises the investment tax credit, and the jobs incentive provision and also, simultaneously, delete the House jobs incentive language?

The motion to recommit is designed to do both of those things. My question is, if this amendment is defeated, the only way to accomplish that same purpose, as I understand it—and I should like the Chair either to agree or disagree on that—is, No. 1, to defeat the committee amendment and then, No. 2, offer an amendment to strike the House language also?

The PRESIDING OFFICER. The Senator is correct.

Mr. BUMPERS. I thank the Chair.

Mr. LONG. Mr. President, will the Senator yield at that point?

Mr. MATSUNAGA. The Senator has the floor.

Mr. LONG. Mr. President, the motion that is being proposed is not, in my judgment—and I am confident I am right about this—the proper way to proceed to do what even the Senator from Ohio would like to do. All one would have to do is simply vote down the committee amendment which would provide the jobs credit and vote to strike that part of the House bill which would provide a jobs credit, and vote down the committee amendment that would provide the investment tax credit. That would be the orderly legislative procedure. It would not be necessary and should not be necessary to move to recommit and report back in a certain fashion.

The motion to recommit and report back should not be made if the objective can be achieved by a simple amendment. Oftentimes, in fact, usually, the motion to recommit and report back is made when no other option is available to achieve the same objective, such as the situation that occurs when a bill has been amended and is no longer subject to amendment. At that point, one has no choice but to move to recommit and report back in the fashion that he would like to have the bill reported back because he has, at that point, been prevented from putting the bill in the condition that he would like to have it by way of amendment.

What the Senator is seeking to do, is not orderly legislative procedure. I ask the Senator, does he have the bill drafted the way he would like to have it read now?

Mr. BUMPERS. Let me answer that question with a question: Would the Senator from Louisiana agree to a unanimous-consent request that, if this motion were withdrawn, he would agree to an amendment to take care of both the Senate provision and the House provision in one vote?

Mr. LONG. Mr. President, I do not feel like prejudicing my rights or the rights of any other Senator to insist on a division. I would not be surprised if we could ask for a division and motion—

let me ask the Parliamentarian. Is that motion that stands there now divisible?

The PRESIDING OFFICER. Since it is not an amendment, it is not divisible unless it is done by unanimous consent or unless there is an amendment to the instructions.

Mr. LONG. But it would be subject to amendment?

The PRESIDING OFFICER. The instructions are subject to amendment, not the motion itself.

Mr. METZENBAUM. A parliamentary inquiry, Mr. President.

Mr. LONG. Let me say this to the Senator. I think it would be highly improper to agree to a unanimous-consent request that a Senator could not ask for a division of an amendment when not many Senators are here on the floor, because any Senator, as the Senator from Arkansas so well knows, has the right to ask for a division of an amendment. It does not require a majority vote; any Senator can insist that an amendment that is subject to division be divided. The Senator knows that.

Mr. BUMPERS. Is a committee amendment divisible, to strike out an insert?

Mr. LONG. One can divide a committee amendment any way he wants to divide it. One can strike out a single word if he wants to.

Mr. BUMPERS. Let me first ask the Chair, is an amendment to strike out and insert divisible.

The PRESIDING OFFICER. Under rule XVIII, it is specifically nondivisible.

Mr. BUMPERS. All right. Now, my next question is: This procedure which I have chosen to use as mechanism to get at this I do not really understand the objection to. The Senator talks about going at it in an orderly way. We have debated the merits of the investment tax credit and the jobs incentive bill here. The debate would be precisely the same. This way, we reach both the Senate provision and the House provision in one vote. Everybody understands precisely what they are voting on, so I fail to understand what the objection to this procedure is.

Mr. MATSUNAGA. Will the Senator yield for a parliamentary inquiry?

Mr. LONG. The Senator could propose an amendment to strike and insert. As far as the Senator from Louisiana is concerned, I think that it would be orderly legislative procedure to do that.

Mr. BUMPERS. Before the Senator arrived, the Senator from Ohio and the Senator from Hawaii were engaged in debate about that very problem. That was dividing the issue between the investment tax credit and the jobs incentive. The Senator from Ohio has said he favors the jobs incentive provision but is opposed to increasing the investment tax credit.

Now, the motion to strike and insert would not be divisible along that line.

Mr. LONG. A Senator could very well just offer his amendment at that particular place in the bill, just where the investment tax credit appears, just move at that point to strike the investment tax credit and substitute the jobs credit.

Mr. METZENBAUM. Mr. President, a parliamentary inquiry, please.

The PRESIDING OFFICER (Mr. HATHAWAY). The Senator will state it.

Mr. METZENBAUM. I am not clear from the previous responses to the parliamentary inquiries from the Senator from Arkansas and the Senator from Louisiana. Would it be possible when the committee report is made, which has the combined jobs credit tax in it as well as the investment tax credit in it, upon the request of any single Senator, will those two portions be divisible?

I believe there are separate sections, as I understand it; is that correct?

Mr. MATSUNAGA. That is right.

Mr. METZENBAUM. May I have a response?

The PRESIDING OFFICER. Under rule XVIII, it is not divisible, because it is a strike and insert, by the committee.

Mr. MATSUNAGA. Mr. President, will the Senator yield for a parliamentary inquiry?

The PRESIDING OFFICER. The Senator will state it.

Mr. MATSUNAGA. Assuming that the motion to recommit is defeated, any Senator may offer an amendment to strike out the investment tax credit; is that not correct, without involving—

The PRESIDING OFFICER. While the committee amendment is pending, the Senator is correct.

Mr. MATSUNAGA. Right. So that there is no question of rule XVIII coming into play at that point.

The PRESIDING OFFICER. The Senator is correct.

Mr. METZENBAUM. That would require the affirmative offering of an amendment to strike.

The PRESIDING OFFICER. Right. So the Senator could, in effect, get division by motion to strike part of it if the committee amendment is susceptible of such a motion.

Mr. LONG. All one would have to do if he did not want the investment tax credit is just vote against it and defeat the committee amendment which proposes to add the investment tax credit. That is all one has to do.

That has not been agreed to. That is just a committee amendment to be voted on by the Senate and one that does not want the investment tax credit has only to vote against that part of it.

Let me say to the Senator that the investment tax credit is not going to become a part of this bill unless it be the view of the Senate that by a majority vote it should be a part of this bill.

I, for one, would like a direct vote on it when we get to it, may I say to the Senator, because I want to know what the view of the Senate is on the investment tax credit, as one who expects to be a member of the conference between the Senate and the House. I want to be able to report to the House of Representatives, if this provision is in the bill, whether this is a weakly held view or a strongly held view in the Senate of the United States, with regard to the investment tax credit.

I do not fully agree with what the Senator from Ohio said about the effectiveness of the investment tax credit. I had my severe doubts about it when it was first proposed. It was my amendment

that reduced the depreciation by the same number of points as the investment tax credit when it started out as a 7-percent investment tax credit. I believed that the basis for depreciation should be reduced by 7 percent on the theory that people should not be permitted to depreciate something they never paid for in the first instance.

That is how it stayed for the first couple of years it was in effect. Thereafter, on the urging of President Kennedy and President Johnson, who succeeded President Kennedy, I eventually relented and went along with the investment tax credit as it now stands, and, later on with the increase.

The reason I did was the experience with that proposal when it was being used to induce business to buy new equipment and stimulate the economy. It not only stimulated the economy, but it overheated the economy. It was absorbing so much of the funds available for investment that it seemed to this Senator that we did not have enough capital available for home building, and things of that sort.

But it really provided jobs and no one can contend that while we had that in effect we did not have reasonably full employment, because during that period we seemed to have more people working every month than we did the month before.

Strangely enough, instead of losing revenue, as some would have anticipated when we vote a tax cut, we gained revenue by about the same amount. We thought we would lose about \$5 billion. Instead, we gain \$5 billion in corporate tax collections alone.

Then later on under President Nixon, we repealed it. It was overheating the economy and we thought that we ought to repeal the investment tax credit, and we did.

Within a year, the economy was in a slump. The President asked us to reinstate it, and we did, and it played a major part in the recovery that then followed.

So the investment tax credit has been exceedingly effective in stimulating the economy. I do not think we can cite anything that has been done in the fiscal area to try to either stimulate the economy or slow it down that has had more effect than the enactment, the repeal, the reenactment, the rerepeal, the reenactment of the investment tax credit.

Mr. METZENBAUM. Will the Senator from Louisiana yield?

Mr. LONG. Surely.

Mr. METZENBAUM. Is it not a fact that every time the investment tax credit was put on or increased, first by the 3 percent, then 7 percent, then 10 percent, that the stimulus—

Mr. LONG. It has always been 7 percent.

Mr. METZENBAUM. Was it never 3 percent?

Mr. LONG. Seven, always at least seven.

Mr. METZENBAUM. I stand corrected.

Mr. LONG. When it first was enacted, it was a 7-percent investment tax credit. But it was my amendment that provided businesses could not depreciate the 7 percent that they had not paid

for. That is why the Senator may have the impression that it was 3 percent, because my amendment had the effect of reducing the tax advantage of that credit.

Mr. METZENBAUM. I appreciate the clarification. Is it not a fact that if there has been a reinstating of the investment tax credit, or the initial passage of the law, that there was a lag period of several years—I think about 2 or 3 years—before the economy started to move up, and that there truly is no cause-and-effect relationship that can be shown by any economist as pertains to this subject? I have done some research in this area and do not find any direct relationship.

It is true our economy has its up and downs. But it is also true, as I previously stated, that I never found an employer, never found a corporation, never found a businessman, who said he hired anybody or bought a piece of equipment because he was going to get an investment tax credit.

I believe it is a fact that, sure, we have had our ups and downs, but that does not mean it came about by reason of the passage of the investment tax credit.

In answering my question, I would be grateful to the distinguished Senator from Louisiana if he would clear up a question I have in mind in the event there is a direct up and down vote on the investment tax credit of reducing it through the 10 percent it presently is. I appreciate his thoughtfulness in suggesting he would like instructions. The Senator from Louisiana has great stature in this body, and the way the Senator from Louisiana indicates he feels often results in Members of the Senate following his leadership.

Am I correct in assuming from the Senator's previous comments on the subject that he would be prepared to indicate to Members of the Senate that whatever way they vote is perfectly agreeable to him and that he is looking for instructions from the other Members of the body, or will he be indicating to them that he feels committed to increase the investment tax credit to 12 percent?

Mr. LONG. If it be the will of the Senate that the 2 percent investment tax credit should be stricken from the bill or that the committee amendment should not be agreed to, I will accept that verdict cheerfully. It is a matter for which I voted. It is a matter to which I became committed when President Carter recommended it. I believe that I had been advocating it even before President Carter recommended it.

For the Senator from Louisiana, at this late date, after having gone out and made speeches to people all over the country saying that this is a good idea and that I think it should be done, to reverse myself makes no sense. That is the kind of thing a politician should do only if it is absolutely necessary, and I do not think that is necessary. The Senate can inform me that it is a good idea or not, and it is a matter of no great moment to me whichever way the Senate votes on the investment tax credit. My view is that we should retain it, and that is the attitude I will take.

I would also like very much to try to

see what happens when you provide the kind of incentive that the House provided especially to small concerns, companies that are labor-intensive, to see if they can put people to work. I could cite a thousand examples of that, I believe. Let me indicate one or two that are obvious to me.

In my hometown, one of the main cafeterias is part of a chain across the country, a successful chain. There was a time that when you would get through the line, someone would take your tray, take it to the table, and unload the tray for you. That was a very nice service and a nice convenience. Usually, you would tip them something, but they would be paid in addition. That service has been discontinued.

Nowadays, if you are disabled or not able to handle the tray very well because you have small children with you, for example, they will ring a bell and some little lady who ordinarily would clean up the table after you have left will come and help you with the tray. But you have to ask for the service, to have someone help you with the tray, in the best cafeteria in my hometown, which is a town of about 300,000 people. They have a chain of places like that.

It would be nice if the service could be restored. I would not be at all surprised if this jobs credit might make it possible for a concern such as that to provide the service again, to have somebody help a lady or a gentleman with the tray, to unload the food on the tray after they go through the line.

There was a time when a lady would go shopping, and a young man would help put the groceries in the sack and carry the groceries out to the car. That service seems to be gone nowadays.

It is the same with curb service. That is a phrase that has disappeared from the American vocabulary. There was a time when you could drive up someplace and someone would provide service at your automobile. Perhaps some of those services could be restored if we had the tax incentive.

Here are 115 people from Louisiana who wrote in. They filled out a little card; 2,000 letters were sent out. They were invited to send the card back if they wished; 3 or 4 percent, perhaps 5 percent, said that they did not see any point in this jobs credit. But more than 95 percent said that they would hire more people—some 1 person, some as many as 10 or more; the average was better than 2—if they had the additional incentive that is provided in the House bill.

I find myself thinking more and more, in view of the fact that we have taken out the \$50 rebate, that perhaps we would be well advised to beef up this provision, to go as high as the House did. But we should be more careful in drawing it, because the House had a windfall advantage beyond anything we want to recommend. They would not have recommended it if they had given it as much thought as we have. That is, we had the opportunity to second-guess them. So we think we can improve on their handiwork. Under the circumstances, this is something that deserves to be

tried, and we do not think it should be stricken from the bill.

We also should have some experience with this jobs credit, because when we start looking at the welfare problem, we are going to be asking ourselves this question: If you pay about the same amount of money that that welfare check would cost the employer, to encourage him to hire somebody, one, would the employer hire the person and, two, would the person take the job?

We can have some valuable information if we just experiment with what the House is trying to do here. I point out that the House was not in any doubt about their position when they debated the matter and voted on it. Their position was taken on a 4-to-1 margin. This was offered as a substitute for two of the administration's favorite recommendations. This was offered in the House as a substitute for the investment tax credit and for the new proposal by the administration of a 4 percent credit against the payroll tax.

Even though the administration position as well represented by those who agreed with the administration, it was overwhelmingly defeated because people thought there should be an experiment with the jobs credit.

Looking at what was done in that respect, I would think that people would definitely want to see what we can do to make more jobs available and to make the jobs more attractive. How better could we do that than by giving the House effort a trial, to see to what extent these unemployed people could be put back to work?

Mr. President, as I indicated, this little effort that was made by the National Federation of Independent Business, in my judgment, convinces me beyond any reasonable doubt that if the jobs credit proposal is made sufficiently attractive, as the House attempted to do and as we should do in the Senate—the House bill may have resulted in as many as 200,000 to 400,000 jobs—that the estimate will prove to be conservative.

If Senators have any doubt about the matter, here are the names of people in Louisiana who got a letter—just a form letter that most people will not even answer.

Here are the individuals, here are places of business, their names, and just in case someone would like to check on it, here are their telephone numbers, including the long distance calls. Go call them. I have had my staff call them—and I have a memorandum here of what they said. Many of these people are very enthusiastic about their potential of hiring more people in the event this jobs credit goes into effect.

Here is just one response. Here is Mr. T. W. Anthony, president of the Schuyllkill Metals Corp., Baton Rouge, La., my hometown, telephone No. XXXXXXXXXXXX. Here is what he said, he will hire at least 10 new employees. He said:

Now I am either letting work go or working people overtime.

He continues by saying:

But if you put that credit into effect I will hire 10 more people.

Here are many others, more than 100 of them, who responded. That is a pretty good response to get from a form letter. We sent out 2,000 form letters. Five of them responded negatively—let us be fair—about five of them say they think it is a silly idea and they are not going to do anything about it. The other 110 say they will employ somewhere between 1 and 10 people. Now, it averages about better than two people per employer for these small businesses.

You can go call them yourself. Here are the telephone numbers, and they will tell you the same thing they are telling my staff when we called them, these people think they would be hiring more.

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

Mr. LONG. I yield.

Mr. CURTIS. If someone hires an individual and he receives this credit, considering that the credit does come out of the Treasury, how much does it cost the taxpayers to put that one person to work?

Mr. LONG. Well, if you should assume that that person is probably on the unemployment rolls now.

Mr. CURTIS. I am going to come to that. But how much in the credit alone?

Mr. LONG. Well, the House figure is the most you could expect would be \$1,680. Now, the Senate figure is \$1,050.

Mr. CURTIS. All right.

Suppose we took another route and provided public employment, public projects, whose objective is to provide employment. What would that cost?

Mr. LONG. \$8,500 or more.

Mr. CURTIS. Yes.

I want to ask something else: If the expenditure of this \$1,700 puts the individual to work will that individual be paying any tax?

Mr. LONG. Of course, he would pay tax on his wages.

Mr. CURTIS. If he has dependents and other deductions so that he is not in an income tax bracket, he would still pay social security taxes; would he not?

Mr. LONG. Of course.

Mr. CURTIS. Yes. So the saving over public employment is substantial, several times over.

Mr. LONG. Yes.

Mr. CURTIS. We can expect some tax return from every employee because there will at least be the social security tax, and some of them may get paid enough or their family situation is such that they will be paying some income tax.

Now, in addition to that, what are the chances, in the Senator's opinion, that these individuals who get a job because of this Government incentive may work into a permanent job?

Mr. LONG. Well, Senator, most of these people we are talking about here would very likely be permanent jobs. In other words, one of the responses we had was that of a man who said he had, let us say, two filling stations, and he said, "All right, if I could get this jobs credit I would like to open another filling station, but right now I just do not feel like taking the plunge, taking that risk. If you would do that, that would just be

the deciding factor, a little extra to make me do it."

Here is a man who says he has employees working overtime. At the moment he does not feel like taking the plunge to add more people, but if you would give him this little advantage he would hire more people.

Mr. CURTIS. However, the tax incentive does not go on forever, does it?

Mr. LONG. No.

Mr. CURTIS. How long does it go on?

Mr. LONG. Two years.

Mr. CURTIS. Not fully 2 years, this calendar year and the next one.

Mr. LONG. That is right. It is actually less than 2 years.

Mr. CURTIS. Yes.

Now, suppose this is enacted and no one hires a single person, what is it going to cost the Treasury?

Mr. LONG. Well, it would cost them something.

Mr. CURTIS. I mean under this program here. If no one goes to work it is not going to cost anything so far as the taxpayer is concerned.

Mr. LONG. We would have to assume there would be some situations where someone would hire a person anyway—you have to assume that.

Mr. CURTIS. Yes.

Mr. LONG. So there would be some situations where an employer would have hired someone anyway and where there would be some modest cost to the Government.

But, generally speaking, there will be very little cost, only a minimal cost, unless more people are put to work.

But, Senator, there is one more thing here that really has not been discussed, and that is this: How would you really know whether, by giving a tax advantage to an employer measured against the payroll, that man would put more people to work or not, how would you really know if you never tried?

Mr. CURTIS. That is right.

Mr. LONG. We need to know before we get into the welfare reform area, and the President is going to come down with a welfare proposal, and if he acts as ambitiously to help the poor as I know that man to believe, he is going to come down with a welfare proposal one of these days which will cost vastly more than what it costs with this jobs credit. We are going to be asking the question then, we are going to say, "Well, now, look, do you not think you might be able to help these people more if you would provide some kind of help, either a direct payment or a tax advantage?"

If you are a tax-writing committee, you are going to think first in terms of a tax advantage for an employer to hire somebody and to take these same people who otherwise might be on the welfare rolls and put these people to work, so they would have twice as much income, admittedly they would be working for it, but they would also have the benefit of their pride and the respect of their loved ones for the fine job they are doing in trying to improve their condition as well as the condition of society.

Now, we would like to know whether if you make it sufficiently attractive: First, these people could be persuaded to hire

those hardcore poverty cases or these people who never had a chance to work in a job at all; and second, whether if the job were offered the person could be persuaded to take it.

Now, if we go ahead with this we will have some experience to work from as to whether this type of approach might work. Maybe it will not work but, at least, we would know at some point.

Mr. CURTIS. Is it limited to the balance of this year and next year?

Mr. LONG. That is all.

At some point you would be willing to pay for knowledge, especially if it is the answer to the \$64 question, or the \$64 billion question really, if you are thinking in terms of the magnitude of the problem.

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

Mr. LONG. I yield.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that Joseph Merriman be permitted the privileges of the floor during the consideration and debate on this measure.

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

Mr. MOYNIHAN. Mr. President, I am one of those who, as a member of the Committee on Finance, supported the \$50 rebate which the President initially proposed to us, and I would like to say that, it seems to me, the poor and working people of this Nation needed that rebate then and, as far as I am concerned, they need it still, and I cannot see the reason for the argument presented to us in a letter which has been distributed from Secretary Blumenthal, who says that—

It is our view that since the Senate has deleted the rebate you should also delete the business tax reductions in this bill.

I think, in the first place, sir, it is technically the case that the Senate has deleted the rebate, but we did so at the behest of the Secretary of the Treasury.

Mr. LONG. Yes.

Mr. MOYNIHAN. Two points, Mr. President; first, this has been described as a business tax reduction. But is it not the case that no businessmen will get a penny of tax expenditure under this legislation until an American citizen has a job?

Mr. LONG. That is right.

Mr. MOYNIHAN. This is, this tax expenditure as we now technically call it, is directly dependent on putting people to work?

Mr. LONG. The Senator is correct.

Mr. MOYNIHAN. In additional new jobs?

Mr. LONG. That is correct.

Mr. MOYNIHAN. A second point: if I may ask the distinguished Senator from Louisiana, who has been for many years involved with questions of public welfare and efforts to create employment through job training and through macroeconomic stimulus and through subsidies of various kinds, is it not the case that this is the first time that Congress will have gone out to employers and given them a direct, precise, and concise incentive to add an employee; that this is the first time we have said to the employer, "If you do, if you add a new job,

you get a benefit from the Federal Government"?

Mr. LONG. The Senator is correct, and we have talked before in terms of saying, "We will give you a tax advantage if you will buy some more equipment or build a new plant." But we have not said to them before, "If you will put another man on the payroll, we will give you a tax advantage."

Mr. MOYNIHAN. This is after more than a decade. I began my career in Government in the Department of Labor under President Kennedy when we adopted the Manpower Development and Training Act of 1962 and began the manpower report to the President. We are now 15 years into those enterprises and, in the main, the level of what has been seen as normal levels of unemployment have gone up and up and up. Today we are facing an administration which in great good faith is hoping to bring the level of unemployment in this year down below 7 percent—that is what the Assistant Secretary of the Treasury said to us yesterday—below 7 percent as a goal. When I began in this enterprise 7 percent unemployment would have been considered a social disaster; it would have been reminiscent of the great depression. This is what we desire to attain. After 15 years of experimenting and billions of dollars of expenditure, is a 2-year experiment with a direct incentive for adding workers to payrolls not within the range of a reasonable measure of social experiment and position policy?

Mr. LONG. I could not agree more. I do not know about others, but when I see 7 percent of our people out of work that is a matter of deep concern to the Senator from Louisiana. Especially when I think of all these young people, who never had a chance in life and who still do not have a chance, especially the young blacks, but as to the young whites it is tragic enough even there, young people who were raised in poverty, whose families lived in ghettos, who did what they were told to do and tried to be good citizens and have been out for years trying to find a job and still cannot get the job. For Congress to take the attitude, "Now we have only 7 percent unemployed, enough has been done," what have we done? All we have done is just give the people some talk. Now we are going to propose to say enough has been done. Nothing more will be done. We will wait for a tax reform bill. And when are we going to vote on that? We will see the recommendations in October, after the committee gets through with it. That will be a real exercise. And we cannot pass something like that in less than 9 months. So we will get around to voting on that, let us say, come about the following October. So here we will be 2 years and we say, "Well, things look a little better. When we got in unemployment was 7.5. Now we got it down to 7.3. It looks like things are fine. Enough has been done. Meanwhile let us talk about energy."

So then if we had what we thought we were going to seek, not only has the \$50 rebate been dropped, and that was subject to a great deal of controversy, but we have been told that nothing is to be

done, just forget about it; just forget the whole thing.

I must say that is going from one extreme to the other. How about all these people out of work?

What is the percentage of young people unemployed?

Mr. HUMPHREY. Nineteen percent.

Mr. LONG. I must take issue with my dear friend from Minnesota who said there was 19 percent. What I have here might be a little out of date or a little more up to date, but the latest information I have is that the unemployment rate for teenagers has been running 18 percent.

Mr. HUMPHREY. About 18.8 percent.

Mr. LONG. We are just a percentage point apart. All right.

And the unemployment rate for blacks has been 12 to 13 percent.

Mr. MATSUNAGA. That is adults.

Mr. HUMPHREY. That is adults.

Mr. LONG. That is all blacks, I believe. But for young blacks it has been a lot worse than that.

Mr. HUMPHREY. Forty percent young people.

Mr. LONG. The Senator tells me it is 40 percent.

Here we had all this talk about what we are going to do for these young blacks. Forty percent. Those poor souls, raised in poverty, never knew what it was to have the best of anything, been out of jobs for years, never had a job at all, many of them are still looking. What are we told? It looks like the situation now has improved enough so we can say nothing more need be done.

Mr. HUMPHREY. Mr. President, will the Senator yield at this point?

Mr. KENNEDY. Will the Senator yield?

Mr. LONG. I yield to the Senator from Minnesota.

Mr. HUMPHREY. I love to hear the Senator from Louisiana. When he gets moved and tied into a subject, he is eloquent, brilliant, thoughtful, and compassionate. I mean that very sincerely.

Let me say I testified this morning before the Human Resources Committee on the youth employment bill. As we know, the Joint Economic Committee for the past 4 years has conducted intensive studies in youth manpower and the problems of it. We have really gone into it all around the country in field hearings as well as going to the top specialists to get a good picture of what has happened. Youth unemployment in this country is 50 percent of the total unemployed. Almost 50 percent of all unemployed people in the United States are between the ages of 16 and 24. There are young people today who have come into their twenties, who are now 22 or 23, who never had a job. They cannot get unemployment compensation because they never had a job. And they are either living off some form of welfare or ultimately driven to street crime.

We have records that show that the rate of youth unemployment and the rate of youth crime are parallel, just like that. They simply go up and down together. When we get youth unemployment down youth crime comes down.

When youth unemployment goes up, youth crime goes up and they live off the street in what we call the shadow economy.

The worse part of youth unemployment is in the 1980's and 1990's we will happen to have a large number of people who are then middle-aged who never had a chance to learn a work skill and never had a chance to become productive citizens. They get accustomed not to working.

We have ways and means through the economy, of jobs, tax reform, whatever it takes, to get these people to work, not only because we need their production, not only because it helps cut down on the social disturbances that come because of youth unemployment, but because, may I say, it gives them a chance to amount to something, with a sense of dignity, a sense of self-respect.

The Senator was at the meeting, I think, the other day with the President over at the Cabinet room in the White House, when we were talking about the costs and the budget. The biggest problem with the budget deficit is the unemployment in this country compounded by inflation. But as to unemployment, the Senator from Louisiana knows as well as I do that for every 1 percent of unemployment the Government loses about \$14 billion in income revenues. For every 1 percent of unemployment the costs to State, local, and Federal Governments added up are another \$5 billion in social costs. So for every 1 percent of unemployment it adds up to \$19 billion.

If we could reduce unemployment by 3 percent or 2.5 percent, 2.5 percent, we would cut that budget deficit almost down to where it was insignificant and most likely it would have resolved it because if we could put 3 million people back to work, adults and youth, 3 million and put them back to work where they were earning, let's say, even a minimum income of \$8,000 to \$10,000 a year, the tax revenues that would be generated plus the income that they would receive would do more to repair the budget and its deficit than anything we can do. And for us to go along and pretend everything is just jolly simply because the economic indicators indicate things are better is just to close our eyes to reality; it is just plain closing our eyes to reality. We are political ostriches with our head in the sand and our tail widely exposed. And someone ought to take sharp aim at it and maybe will.

I thank the Senator for his constant concern on this problem, and I mean that, Senator Long: You are one of the most compassionate Members of this body, and it is not only compassion that is involved here, it is equity and justice for everyone else. For the taxpayer today who is worried about the budget the best thing he can do is to find ways and means to put these young people to work. That will cut our budget. That will improve our revenues. That is the way to get business on Main Street. That will stop the mugging of the elderly and do more than all the cops we can put on the beat.

I remember I used this little example: In my little home town we had serious

problems with youth vandalism. A little country town: Crime is not all among the blacks in cities, you know. These were all nice whites, in a little rural village, with two nice big churches, a fine little community, but with a serious problem of vandalism.

Then we got some EDA funds, some community funds that were State funds, some private voluntary funds, and some summer youth program funds, and they put those kids to work developing a lake shore park, building a couple of tennis courts, building a place to park campers along the lake shore, and do you know what happened? Our youth crime problem disappeared. Where we used to run them up every week and put them in the county jail over at Buffalo, Minn., the sheriff said:

We do not have the problem anymore.

Why? Because they had work. I do not care whether they are black, white, thin, tall, purple, or short, if they stand around with nothing to do the chances are they will get in trouble. There used to be an old phrase—

Mr. LONG. "The idle mind is the devil's workshop."

Mr. HUMPHREY. The devil's workshop. And idle hands are even worse. I think whatever we can do to put people to work will be helpful. The public is tired of paying out money and getting nothing out of it. They want to see something that is constructive. They want to see something that is visible. And the individual who gets that check would like to have something he can point to, that "I worked on."

I was down here in Florida. It is an interesting thing to think about the intracoastal waterway, built by the WPA.

The WPA. You know, they did not have any big welfare program under Franklin Roosevelt. They had a work program. You got some commodities, a few potatoes, and so forth, but what little welfare program they had was from the county seat, a little county program. But they had a work program, and it put millions of people to work, and all over America courthouses, parks, water programs, roads, farm-to-market roads, trees were planted, the shelter belts, soil conservation projects—people went to work.

What has gotten into this country? Do you think we are going to repair this country by just printing checks, and saying to people the biggest work that they can do is going to the post office, or maybe just waiting for the postman, and complaining about the delivery?

That computer check system; they ought to have to write them out by hand. If everyone that puts out one of these Government checks had to write them out by hand, they would want to get something back. As far as I am concerned, I would be willing to pay a man \$100 or \$200 a week doing something, rather than \$75 a week sitting on his duff. I would be willing to go along with tax programs to provide incentives to get people jobs, because we will get far more revenue in that way than by their doing nothing.

When I came in, I heard the distinguished Senator from New York (Mr.

MOYNIHAN) discussing this matter, and I think it is time for us to bite the so-called bullet and fish or cut bait. Use whatever phrase you want; but we have to do something to put people in this country back to work.

I was not too much interested in that \$50 rebate; the Senator knows that. My interest in the rebate was party loyalty. At the time we were discussing the rebate, conditions were much more severe than they are now. At the time of the press conference, I made it clear that I was reluctantly supporting the rebate. When I got away from here, and had a chance to do a little thinking by myself, I called the President and told him I was not for the rebate.

But I am for work, and lots of it. And I will tell you something: This country is not going to go bankrupt fixing up roads, building up water and sewer systems, improving parks, improving campsites, planting trees, soil conservation, street repairs. The railroads of this country need repair. We have so many things to do that there is an unlimited list. I feel confident that if we have something to do with our money, let us pay people to do something that needs to be done, and have a tax program that gets our business going, modernizes it, makes it effective. That is the only way we are going to cut down on inflation. You cannot play games with it. Increased productivity cuts down inflation. You decrease unit costs when you increase productivity. When you have low productivity, you have high costs, inefficient production, and inflation.

I thank the Senator from Louisiana for his leadership in these matters.

Mr. LONG. Mr. President, it warms my heart—

[Applause from the galleries.]

Mr. HUMPHREY. Charlie Schultze must have heard me.

Mr. LONG. Mr. President, it warms my heart, and it seems like old times, to hear the Senator from Minnesota say what he just said a moment ago. I could not agree more.

As the Senator well knows, we are going to provide some jobs. We are going to provide some jobs, which might not be quite as efficient as a full-time, constructive job, but we hope to provide some jobs on a countercyclical basis in all these cities, in line with the traditions of Franklin D. Roosevelt, to get the people doing some things, building parks and roads and various and sundry things. Some of these will be marginal jobs, and some of the jobs we create here will be marginal jobs, too. If they do not give increased incentive, they are not going to be creative.

But people are not looking at alternatives. If we do not give these people a chance to work for a living, we are going to have to pay to keep them alive, anyway, to pay for their food, to pay for some kind of housing, meager though it may be. We are going to have to pay for hospital care of these people. We cannot allow them to starve; we have to accept at least that much social responsibility. So we will have to pay one way or the other—if not with employment then with welfare costs, and the Senator added a cost that is a hidden one, but

it is there and you cannot deny it, the cost of these people getting into trouble, getting into crime, getting their lives off on the wrong road, because this Government and this society failed to give them an opportunity to make use of their resources.

Mr. President, there is on every Senator's desk—

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

(Mr. STEVENSON assumed the Chair.)

Mr. LONG. I will yield in just one moment.

There is on Senators' desks a message from the Secretary of the Treasury addressed to Senator BUMPERS. It has Senator KENNEDY's name at the top; I guess it is distributed by Senator KENNEDY. The message is that Secretary Blumenthal does not think either the 2 percent investment tax credit—which he recommended—would do any good, nor the jobs credit the House voted him down on by a 4-to-1 margin.

Mr. Blumenthal told me in somewhat different words that he used here that he did not think there would be a single job added by these credits. I wish he would come and answer by telephone, the calls from people calling to say they would employ people. In response to a survey, they got a 5-percent response from Louisiana alone. That is a high return on a form letter. So we called them, and they said, yes, they would employ these people, and specified exactly how they would use them and exactly why they needed these people.

That is why I believe the estimate was conservative when they said this would result in as much as 200,000 to 400,000 jobs. I think it would result in more than that.

When a witness for the National Association of Independent Businesses appeared before the Finance Committee, I asked them if they would poll their members, by letter or however they wanted to do it, and see what responses they got from the people in States represented by members of the Finance Committee.

Here are the kinds of responses they got:

In the State of Colorado, 434 employers said they would employ 1,148 people.

In Alaska, 84 employers said they would employ 251. In Connecticut, 140 employers said they would employ 376. In Delaware, 28 employers said they would employ 94 people. So on down the line it goes. In Wisconsin, for example, 499 employers said they would employ 1,269 people.

Just with Finance Committee people, of the members who wrote in, the kind we have confirmed, they said without a doubt they would employ people.

There are 5,651 employers who said they would employ 15,219 people. Those are just the people who are members of this little association who responded to a form letter. Our tally is that they are ready to do it. The last 15,000 the Secretary of the Treasury can call himself. I will be glad to cooperate and get their telephone numbers if he does not want to bother locating them.

This is something which started out without an administration recommen-

dation. It had some bugs in it. There were some shortcomings in it. I know how people like to say, "Our idea is the best idea and your idea is wrong." The Treasury officials ridiculed first one little thing and then the other about the House measure. Those problems were easy enough to correct. As those matters were corrected, they still continued to pick it apart here and there. In due course, every criticism they could find has been corrected. We now have a provision which the Treasury people themselves would agree that, if we are going to have something of this sort, this is the most workable way to do it.

I yield to the Senator from Massachusetts.

Mr. KENNEDY. I thank the Senator. We covered some of this ground earlier today and also yesterday.

I must say there are few people who have given as much thought as the Senator from Minnesota to the whole question of the state of our economy. He is a member of the Joint Economic Committee. My respect for him and for his recommendations about how to get people off welfare rolls and onto job rolls is virtually unlimited.

The fact of the matter is what is being described as the result of the investment credit and job credit is not going to do the kind of thing that the Senator from Minnesota either believes it will do or that the Senator from Louisiana suggests his business friends feel it will do.

It just amazes me to keep hearing about those 115 businessmen in Louisiana who are going to go out and employ all these workers.

In effect, what the Senator is doing is asking the business people in Louisiana if they want a tax break. That is what they are being asked. I am surprised that only 5 percent said yes. I am very surprised that only 5 percent would say yes, that is what they want. And those 5 percent would be surprised to learn that what they are supporting now is a pale imitation of what they were asked in the survey. The Senate bill has drastically slashed the benefit of the credit compared to the House bill, but the responses were based on the House bill.

It is interesting to hear the Senator from Louisiana say that what we are talking about is putting people on the job rolls, getting them off the welfare rolls. Who are the principal spokesmen for the working people of this country? The AFL-CIO, the United Automobile Workers? Where do they stand? They oppose this.

It is interesting to note that the Senator from Louisiana says he is representing the interest of those who want to put more people on the work rolls, yet the principal spokesmen for working people feel that these incentives are worthless, a new tax bonanza for business with no effect on jobs.

Mr. LONG. Mr. President—

Mr. KENNEDY. I know the Senator has the floor, but I hope he will let me finish my comments on this point. I know he has the right to take the floor.

Mr. LONG. Could I respond to just one point the Senator made? He might want

to respond to that part of my statement as well.

Mr. KENNEDY. Very well.

Mr. LONG. What these people said was if there is a \$1,700 job credit, they would expect to hire more people. It is not the employer who gets the money; it is the employee who gets the benefit of it because he is the one who gets the job.

Mr. KENNEDY. I cannot understand why the Senator from Louisiana keeps talking about the people who favor the House provision, when actually we are talking about the Senate provision. There is a dramatic difference. There is three times as much benefit in credit in the House provision compared to the Senate provision. An employer gets a \$1,680 credit under the House bill, but only \$600 under the Senate bill. I suspect his 115 respondents in Louisiana might feel the rug has been pulled out from under them.

The Senator keeps talking about the replies he received. But when one asks, "Do you want a tax credit?" who will say they do not want one?

It is extraordinary to me that we delude ourselves into thinking that this is something helpful to the unemployed. The principal spokespersons for working people do not want. Quite frankly, they think it is a tax bonanza for business.

That happens to be what the principal spokespersons for the working people of this country have said.

One can say the AFL-CIO does not speak for the working people or the UAW does not speak for the auto workers, or various other organizations do not speak for working people. But the fact of the matter is, their position is clear from their correspondence. The spokesman for the AFL-CIO—and I will make it a part of the RECORD—said:

We feel there will be no added jobs stimulus from the business tax cut.

Mr. President, I ask unanimous consent that the letters we have received from the AFL-CIO, the UAW, and Public Citizen may be printed in the RECORD.

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

APRIL 20, 1977.

HON. EDWARD M. KENNEDY,
U.S. Senate, Russell Office Building,
Washington, D.C.

HON. DALE BUMPERS,
U.S. Senate, Dirksen Office Building,
Washington, D.C.

DEAR SENATORS KENNEDY AND BUMPERS: The AFL-CIO strongly supports your motion to strike the \$2.4 billion in new business tax breaks contained in H.R. 3477, now before the Senate.

From the standpoint of equity alone, it is scandalous that serious consideration is being given to initiating new "sweeteners" to businesses while taking away \$50 payments to the poor, the aged and the low and moderate income Americans. Certainly if there is no longer any claimed justification for the rebate, as President Carter says, there is also no justification for the additional business tax cuts.

The AFL-CIO opposed the rebate and the business tax sweeteners both in the House and the Senate because we felt the funds could be better spent in direct job-creating programs. We still feel that way because of persistently high unemployment.

We feel that there will be no added job stimulus from the business tax cuts. The 2

percent additional tax credit will provide few if any new additional jobs—just as there has been no clear proof that the present 10 percent investment tax credit created jobs. We also feel that the job tax credit will provide few, if any jobs as companies experiencing growth in the market place—such as General Motors—will receive the government subsidy, while companies in trouble—such as American Motors—will receive nothing.

A full examination of individual and corporate taxes is necessary, and will be undertaken later this year. That is the time for serious consideration of business taxes, individual taxes, and the entire internal revenue code.

We strongly support the Bumpers-Kennedy recommittal motion to set aside the \$2.4 billion in new business tax breaks.

Sincerely,

ANDREW J. BIEMILLER,
Director, Department of Legislation,
AFL-CIO

APRIL 20, 1977.

HON. DALE BUMPERS and HON. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATORS BUMPERS AND KENNEDY: The United Auto Workers supports strongly your amendment to delete the business tax reductions from the pending tax bill.

Even before the President's decision to request deletion of individual income tax rebates from the pending legislation, the UAW had expressed its opposition to tax relief for business. It was, and remains, our position that a tax savings based on a company's payroll would result in lost revenue far greater than any potential gain from such a measure. Also, the UAW has long had reservation about the effectiveness of the investment tax credit. The increase in the investment tax credit from seven to ten percent in 1975 cost the Treasury \$2.5 billion in fiscal 1976 without any discernible impact on investment.

While the UAW did oppose these business tax reductions as a matter of policy while the individual \$50 rebate was still under consideration, we believe the decision to abandon the rebate makes it all the more imperative to defeat the business tax savings.

The gross inequity of maintaining tax breaks for business while denying tax rebates to individuals, when they began as part of a single stimulus package, would heighten—with good reason—the high degree of public distrust of our tax system. You are both very sensitive to the cynical attitude with which the American people view the tax structure. Sadly, much of that cynicism is justified by the perpetuation of gross inequities in our tax system, despite constant lip service to the principle of tax reform. It would be ironic and tragic if, instead of moving toward tax reform, the Congress moved in precisely the opposite direction by approving business tax breaks of no value to the economy while agreeing with the President's decision to abandon the rebate. The UAW commends you for taking the initiative to strike the tax breaks for business from the pending tax bill and shall urge your colleagues to support you in this effort.

Sincerely,

HOWARD G. PASTER,
Legislative Director, UAW.

APRIL 20, 1977.

DEAR SENATOR: We urge you to support the motion by Senator Bumpers to recommit the Tax Stimulus bill with instructions to delete the temporary business tax cuts of Title III. Clearly fairness requires that elimination of the rebate for most Americans be coupled with elimination of the investment credit for corporations.

The business and financial community has waged an all-out publicity campaign to kill

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the rebate for the average person. Treasury officials testified before the Finance Committee that a principal reason for dropping the rebate was the fact that businessmen perceived that it would enlarge the deficit and thus aggravate inflation and push up interest rates, which expectations can become self-fulfilling. Any such concerns about the deficit apply equally to a package of business tax credits totalling \$2.4 billion per calendar year.

The other principal reason for the rebate's demise is, of course, that the renewed surge in the economy made it unnecessary. The same applies to the investment credit. Businessmen will increase their capital spending when warranted by consumer demand, low enough interest rates and the absence of excessive inflationary fears. If the recent boost in the investment credit from 7 percent to 10 percent hasn't been sufficient to spur investment another boost to 12 percent certainly won't help.

In the face of the worst unemployment crisis since the great depression the Congress has had to exercise considerable budgetary restraint in voting funds for badly needed direct job creation programs. Now it is about to deny a tax rebate which can amount to several hundred dollars for average families. Many have, in effect, already spent their rebate to pay increased fuel bills or to meet the ever increasing cost of living. Surely another boost in the investment credit, which even most businessmen have conceded will have little impact, should be of a lower national priority.

Indeed the investment credit was added to the stimulus package only as an afterthought. It was intended as a message of psychological reassurance that Washington would not approve substantial individual tax cuts without a sweetener for business. The irony of dropping the bulk of the individual tax cuts while retaining the "add-on" for large corporations will not be lost on the general public.

By the same token the Senate should resist the temptation to take advantage of the budgetary leeway for tax cuts by enacting other hastily considered or ill-advised measures which various Senators may propose. Various proposals to grant special rates of accelerated depreciation to some areas of the country provide especially costly examples of the kinds of unfair and ineffective measures which should be rejected.

Sincerely,

ROBERT M. BRANDON,
WILLIAM PIETZ,
Public Citizen.

Mr. KENNEDY, Mr. President, I do not deny there will be benefits to all those businessmen who will take the jobs credit. But, as I said, I cannot understand why there are so few. Who would ask a Louisiana businessman to look a gift horse in the mouth? Obviously, they will say they would like a tax break.

Mr. LONG, Let me be sure we understand what the Senator is trying to strike out of the bill. Could we understand that the provision he seeks to strike is that in order to get the benefit of this provision a man would have to hire not only more, but he would have to hire 103 percent of what he had in his 1976 base year, last year; that he has to hire 3 percent more than he had last year before he gets any benefit; that it is only then that he gets the benefit, and that benefit is limited to a fraction of what he is paying in wages? In any event, he would have to pay a lot more in wages than he is getting in tax advantage.

Does the Senator understand that is what he is trying to strike?

Mr. KENNEDY, That is exactly what I am saying. The tax break is a windfall. He will hire a new worker for good reasons, having nothing to do with the tax break. And then he will claim the credit as an afterthought. Does the chairman of the Finance Committee believe that any business person in this country are going to invest \$10,000 for the salary of a new worker, solely to get back \$600 under the jobs credit? That is what the Senator is trying to sell. That is saying it in a different way. The House provision would have offered a larger credit of \$1,680, but even that credit would not really affect a hiring decision.

Another potential loophole is that an employer could fire one full-time individual and hire two part-time workers, and be able to take greater advantage of the jobs credit, without increasing the total work roll. There are all kinds of different complexities and potential abuses in terms of that provision.

I think it is unrealistic to believe that industries are going to go out and say, "Because we could get \$600 back, we are going to invest \$10,000," in a new worker, unless, of course, they planned to do it in the first place. The fact of the matter is, they are going to need a good percentage of that \$600 to pay for the accountants and lawyers needed to decipher the complexity of this provision. The Senator from Louisiana knows that as well as I.

Mr. BENTSEN, Will the Senator from Louisiana yield on that point?

Mr. LONG, I yield.

Mr. BENTSEN, I would say to the Senator from Louisiana and the Senator from Massachusetts, that point was carefully considered in the Finance Committee. We paid a lot of attention to it. As the jobs tax credit is now formulated, the vast majority of small businesses will need practically no additional accounting work. They will be able to use figures from the Federal unemployment tax forms which they already submit to the Government. That is what they will be able to make their compilations from. It will be a very simple thing for most businessmen to accomplish.

In addition to that, I ask the Senator from Massachusetts, if the House position were accepted, if we had a larger incentive, would the Senator from Massachusetts accept it?

Mr. KENNEDY, I have indicated before the Committee on Finance that I could not, for the reasons that I outlined then. I do not think a tax credit is really meaningful in addressing the critical problem of unemployment. It is extremely complex, and not an effective job incentive. The House bill is bad enough, but the Senate bill is even worse, so far as a job incentive is concerned.

The 103-percent employment threshold is a special problem for New England. I see from the tables that average employment has increased in Texas by 4 percent. But Massachusetts fails to meet this threshold—our average growth is only 1.2 percent.

Mr. BENTSEN, I want to tell the Senator from Massachusetts that in all the service industries in Massachusetts, it

has increased by 3.3 percent. So in Massachusetts—

Mr. KENNEDY. In Massachusetts, the overall average total is 1.2 percent. In the State of Texas, it is 4 percent. That is a very clear signal. I understand why the Senator from Texas is so strong a supporter for that particular provision. But the fact of the matter is—I do not know what the unemployment rate is in the State of Texas at the present time. What is the level now?

Mr. BENTSEN. 5.7 percent.

Mr. KENNEDY. We would love to be that low in the State of Massachusetts. The areas which have the most persistent and consistent unemployment problem in this country are New England and the Middle Atlantic States and the Midwest. Yet they would be the areas least likely to take advantage of the jobs credit.

The fact of the matter is that, in New England, the average job growth is 1.5 percent. In the Middle Atlantic States—in New Jersey, New York, and Pennsylvania—it is 0.8 percent. We have devised a formula that is not going to be helpful in achieving even the limited goals that have been established. The Senator from Louisiana mentioned that the Senate Finance Committee had worked to get the bugs out of the House bill. But I think he has cut the heart out of the House bill, so far as a jobs incentive is concerned, because they have reduced its impact by two-thirds for firms that take advantage of it.

Mr. BENTSEN. Will the Senator yield for a comment?

Mr. LONG. I yield to the distinguished Senator.

Mr. BENTSEN. The most industrialized part of this Nation is New England. Some of the most outmoded manufacturing capacity is in New England. It does not do us any good just to wring our hands over these problems. We ought to be taking some affirmative action. We are talking about an increased investment tax credit that will encourage industry to modernize its manufacturing capacity to make it more competitive today. We are talking about trying to do something about unemployment by putting a carrot out there, an incentive for private enterprise to hire additional workers, something above what they would normally increase employment by. That is the purpose of the 103 percent base. That is the normal increase in the amount of employment. So there is a carrot out there.

I frankly think that is the better way to do it than the public service jobs. It is often a dead-end job, where there is no promotion, where there is no permanent employment. If we put them in the private enterprise system, we help them increase productivity, we help to lower costs. If we lower the cost of employment, that passes on to the consumer and what we are doing is fighting inflation and helping keep prices down.

Here is what we ought to be concerned in ourselves with, unemployment and inflation. Here is one of the rare times that we come up with something that works at both and is productive in attacking both problems, lowering costs and putting people back to work at the

same time, a lot cheaper than a public service job.

Public works jobs—I support those. But they are talking about public works jobs today that will cost \$30,000 per employee. There are some advantages to it. We have permanent investments to help the future of our country. I am going to continue to help support public works jobs. But here is the cheapest way I know to get people back to work, to try to increase productivity, to lower unemployment, to try to fight inflation. It is a unique solution. I think we ought to give it a fair change.

I know the Secretary of the Treasury came up and testified against it. I think he is a bright and a very able man, but I do not think that he has not talked to the many small businessmen that we have talked to who say, give us that incentive and we will add the extra worker or the extra two workers.

We have a lot of young people out of work in this country today. Here is one of the ways to help put them back to work. Look at the classified pages and see how many jobs are available. Lots of jobs. But what kind of jobs? Skilled jobs. High training is needed for those jobs.

The Secretary of the Treasury testified that the kind of people they are going to be hiring with this employment tax credit will be those with lower wages, lower income. What is wrong with that? Those are the people we are trying to get back to work and trying to get off the welfare rolls.

I think this is productive legislation to try to accomplish both objectives at the same time, fighting inflation and unemployment.

Mr. LONG. I thank the distinguished Senator.

Mr. President, the eloquence of our able friend from Massachusetts, if I might have the Senator's attention, has really convinced me of one thing: that this is not a big enough jobs credit. It ought to be a larger amount. I apologize for the fact that it is not more than that. The reason, from my point of view, that I voted to make it a low figure was that we are trying to stay within budgetary limitations.

But since the \$50 tax credit has been deleted, we have an \$11 billion savings and we have more slack in the budget. Therefore, I personally feel more inclined to support the kind of thing that our distinguished friend from Hawaii (Mr. MATSUNAGA) has been advocating. That is that we try to be as generous in the incentive that we provide to the employer who is hiring a new employee as the House of Representatives was in their proposal. Perhaps the Senator from Hawaii would like to describe how he would like to amend the proposal so that it could be even more attractive than what the committee recommended.

Mr. MATSUNAGA. If the Senator from Louisiana will yield, for the information of the Senator from Massachusetts, I do intend to offer an amendment which will raise from 25 percent to 50 percent the tax credit which will be allowed for each new employee employed. The chairman of the committee has agreed to it and so did the author of

the committee amendment which is now in the bill as reported by the committee, the Senator from Texas (Mr. BENTSEN). So the impact will be even greater than that which is provided in the House bill, which provides only for a 40-percent credit.

Mr. KENNEDY. May I ask the Senator how much that is going to cost?

Mr. MATSUNAGA. This will cost an additional \$1.1 billion added to the \$2.4 billion, which will bring it up to \$3.5 billion.

This is the thing I must emphasize, that for every 1 percent of unemployment we reduce, it will mean additional revenue of \$16 billion and also a saving of about \$4 billion annually in terms of welfare payments and unemployment compensation. So that will mean a total savings and earnings to the Federal Treasury of \$20 billion, as compared to an expenditure of \$3.5 billion.

So, in effect, this could be accomplished without any cost to the taxpayer.

The statement made earlier by the Senator from Massachusetts that we are giving a bonanza to the businessmen is not in fact true, for the reason that under the employment tax credit, the employer gets no tax credit until and unless he employs new employees, and take those unemployed off the unemployment roll.

This is the real essence of the unemployment tax credit. It is something which has not been tried in the United States. It is something which has been tried in Europe and which has worked. So that I think we ought to dare to try something new.

Mr. KENNEDY. It looks like even more of a business bonanza. The jobs credit in the committee bill cost \$1.2 billion a year. The Senator says that by doubling the credit, the revenue cost will be another \$1.1 billion, or double the current cost.

But how can that be? If the cost is only doubled, it means that no more new workers will be hired at 50 percent than would have been hired at 25 percent. The revenue loss from hiring workers with the 25-percent credit is simply doubled. Either the revenue estimate is mistaken, or the estimate is based on what I suspect, that the jobs credit is not a jobs incentive at all.

If I may ask a brief question, with the additional billion dollars, does not that violate the budget resolution?

Mr. MATSUNAGA. No, it does not, for the reason that we have, as the Senator knows, withdrawn the \$50 rebate which would have amounted to \$10 plus billion.

Furthermore, I say to the Senator from Massachusetts that we are not bound by any restrictions this time around, that we will be bound, of course, after the Budget Committee sets in the ceiling in May.

Mr. KENNEDY. I believe that since the \$50 rebate affects only the 1977 resolution, the withdrawal of the rebate gives no leeway for the Senator's proposal, which affects the 1978 resolution. That resolution is currently awaiting Senate action, after being reported by the Budget Committee. We are not bound yet, but the Budget Committee and the Finance Committee have cooperated in proposing limits for 1978, and I doubt that there is

room for such a large additional revenue loss.

Mr. McCLURE. Will the Senator yield on that question?

Mr. LONG. On the budget resolution, we would not be bound by the 1978 figure until it has been agreed to. It is my understanding that we are not bound even by the 1978 budget resolution until we have the second resolution.

Mr. KENNEDY. I understand it has been reported, it is on the calendar.

Mr. LONG. We cannot violate something that is not the law, the Senator knows that.

Mr. KENNEDY. Would the Senator agree it would violate the limit if the budget resolution is accepted?

Mr. LONG. I assume that if we pass this, we will amend the budget resolution—this is the same Senate.

Mr. McCLURE. If the Senator will yield on the question of the budget resolution, I think it should be said that if the action applies to 1977, it would come under the third concurrent resolution.

I think there is room under that with the subtraction of the rebate scheme, because there was about \$6-and-a-fraction billion on the revenue side and \$2-and-a-fraction billion on the outlay side contemplated in that \$50 rebate.

So there is some room to make some shifts in the Third Concurrent Resolution.

As far as the First Concurrent Resolution, the 1978, it has been voted out of the Senate Budget Committee, but not acted on by the Senate, certainly subject to whatever action the Senate might wish to take.

I do not think we ought to shy away from it on the basis of a budgetary limitation at this time. I do not think that is real.

Will the Senator yield briefly on a couple of other points?

Mr. LONG. Yes.

Mr. McCLURE. I want to comment about the Senator from Minnesota's concern about youth unemployment because a great many of us from liberal to conservative, Republican and Democrat alike, are focusing on that question. I have introduced legislation along the same lines that many others have dealing with that question.

If we look at the young people in our country today, the age group of 16 to 19 is only 10 percent of our labor force, but comprises 25 percent of the unemployment.

The age group expanded from 16 through 24 is only one-fourth of our labor force, but it is almost half of the unemployment of the United States.

I think we must deal with that question, and I hope we will. But when we look at the question of how we deal with gross statistics, not individual, or not individual groups within our society, how are we going to create the necessary jobs between now and 1980?

I think if we just look at the composition of the labor force, it is very obvious that between now and 1980 we must create at least 12 million new jobs. Where are they going to come from? Who is going to pay for them? Will they all be public employees? Will they all be public

service jobs? Or will there be a place for them in the arrangement that provides 8 out of 10 jobs now, and that is the private sector? And if they are to be in that, at what cost?

If we are to create 12 million jobs at the current rate of investment behind each job in the economy, it will take \$1.5 trillion of investment.

Certainly, our tax system ought to consider what it takes to trigger, or induce, or encourage, the investment of \$1.5 trillion to create those necessary jobs between now and 1980. If we do not do that, the unemployment rate we are all concerned about is going to go up, not down.

I commend the Senator from Louisiana for his leadership and understanding of this relationship in our economy. I wish others did, too.

I hear some comments made about the beneficiaries of an investment tax credit being a corporation. It seems to me that Sears, Roebuck is not just a name on a facade. It is a group of people that work. They are a group of people that work in that store, they are a group of people who work to supply the goods that move through it. I cannot understand the insensitivity of people who say we must not help Sears, Roebuck in spite of the fact that it is people that are helped.

I hold no stock in Sears, Roebuck, but there will be no jobs unless various business enterprises have the opportunity to invest and create the job opportunities for people. It is not just Sears, Roebuck or Montgomery Ward or Exxon or General Motors. It is the people that work for them, the people that work for their suppliers, the people that work in the steel mills, the people that work in the rubber companies. They are the ones who will be benefited if we create investment opportunities for the businesses of this country.

There is no alternative for it, if the business does not make those investments, except public service jobs or welfare. That is the choice we are confronting.

I agree with the Senator from Minnesota that I would rather put people to work than put them on public welfare. That is our choice.

I do not understand these people who fail to perceive, even though they may make loud speeches, that jobs are created only when somebody can invest.

Mr. LONG. Mr. President, I agree with the Senator.

Now, with reference to a letter we have here which the Senator from Massachusetts so generously distributed to us, this letter from these great labor organizations, I admire those people. They are very fine people. I admire them for who they are and what they do.

But let us understand, what is the program?

They did not want to put anybody to work by giving a businessman an incentive. When George Meany came before our committee a year or so ago, he said:

I want to make it clear that we favor the 12 percent investment tax credit.

George Meany told us that. I almost fell out of my chair. What was George Meany doing saying that?

I said:

Why would you favor this, haven't you always been against the investment tax credit for business?

He said:

Well, we made a deal, we agreed that if business would go along with us on something we wanted, and what we wanted is in the bill, we would ask you to vote for the 12 percent investment tax credit.

Frankly, if I do say it, that is the AFL's attitude toward putting somebody to work by way of a tax advantage. In other words, if they could make a deal with us so that they are going to get something they want, they will go along with it. But they feel something should be in it for them when we do that.

I think we are going to do right by those fellows. We are creating jobs, and some of them of a make-work nature, costing us more than \$8,000 a job to put their fellow to work.

We are not turning them down cold. We are buying a lot of their programs. But at the same time, we do not have enough money in this country to put all these people to work on make-work jobs at \$8,500 a job. That would truly bankrupt us and put us down at the bottom of the ocean.

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

Mr. LONG. I yield.

Mr. McCLURE. If we can indeed create productive enterprise, create these jobs so that they are producing more wealth for the country rather than the leaf-raking jobs which are the deadend public service jobs, then there is a greater opportunity to share in this wealth throughout the entire economy. All workers in this country will share if there is greater productivity. But if all you do is create public service jobs that do not create greater productivity, the only people who benefit from that are the ones who are actually holding jobs. The others have no chance to benefit from the increased economic activity.

Mr. LONG. That is correct.

Furthermore, the American Federation of Labor does not speak for the kind of people for whom we are trying to provide these jobs—not these little people who work in the mom and pop grocery stores and the little cafeterias and restaurants and television repair shops and filling stations, the various little service stores around this country, the little wholesale establishments.

I am talking about little Main Street, USA. I am not talking about big Main Street. I am talking about little Main Street, across the United States. Of course, there are a lot of jobs in the larger cities. They do not have these people. I wish they did, because that would be an indication that these people at least had one good job at one time in their lives when they could afford to pay union dues. I would like to see them join a union and have the kind of job the average member of organized labor has. Regretfully, organized labor is not in a position to speak for these people. They have sympathy for these people, ordinarily. Frankly, when we try to speak for these people, organized labor has its own ideas about this.

In the first place, they want the mini-

mum wage paid to everybody, then they have the prevailing wage, then they want them to join the union. That is all right so far as this Senator is concerned, but it is sometimes hard to comply with because sometimes an employer cannot afford to pay that much.

If the employer cannot afford to pay \$4,000 in a marginal job, maybe we can make it sufficiently attractive by a tax advantage so that his cost is covered against other taxes that he owes and, therefore, he would have the capability of employing that person. That is not the kind of thing organized labor ordinarily is interested in.

Mr. McCLURE. I understood the Senator to say a moment ago that there is a letter from the Secretary of the Treasury in which he indicates that the investment tax credit is not being effective in creating new jobs.

Mr. LONG. Yes, there is a letter from the Secretary of the Treasury. I assume that it has been placed in the RECORD. He says:

As you know, the Administration concluded that the \$50 rebate and the business tax reductions should not be enacted in view of the improvement in the current economic situation. It is our view that since the Senate has deleted the rebate you should also delete the business tax reductions in this bill. Neither is now needed in view of the improvements in the economy.

I wonder whether we are in that good shape. I thought things had turned a little for the better, but I did not know that the recession was all over. I thought the situation was still pretty grim.

Mr. McCLURE. I say to the Senator from Louisiana that the Secretary of the Treasury turned from an economic stimulator to an inflation fighter in 48 hours. He might similarly change his mind about this particular incentive as well.

Whether it is the investment tax credit or the wage credit provision, it seems to me that we still have a problem of high unemployment rates. We should be dealing with the question of high unemployment rates. Even if the economic situation is bettering, let us talk about the people who are involved in a 7.9-percent rate, and let us do something directly and immediately to solve that problem, or at least work on that problem in the short run, while the economy improves in the long run, to take care of the unemployment rates in 1978, 1979, and 1980.

Certainly, there is a short run problem as well, and it seems to me that the wage tax credit will work on the short run. That is all it is designed to be, as I understand it, under the House proposal. As the Finance Committee has suggested, it is an experimental program of short duration, to see how it will work.

If the economy is recovering, as many of us hope it is, and some indications are that it is, then this will phase out at exactly the time the economic recovery takes over and supplants the need.

Mr. LONG. I will read the last sentences of the Secretary's letter, because I find this amusing:

Neither is now needed in view of the improvements in the economy.

Does anyone think that the Secretary had in mind the 40 percent of young blacks who never had a job in their lives, or the old people, when he said that neither is needed?

I will read the remainder of it:

In addition, we believe it is important that the business tax relief be removed in order to make it possible to develop a better balanced tax program this fall.

If you remove it, what do you have? You have \$6 billion for people who do not itemize. So that is zero for the business community in the bill; zero to provide incentives to hire somebody. For all the poor souls who do not make enough money to pay any tax, including the 40 percent of young blacks, many of whom never had a job in their lifetime, it will be great news to them to know that this is a balanced bill. They do not have anything now, and they are not going to get anything, including a job, in the future.

For certain taxpayers, mainly middle-income people who have the good fortune to have a job, have fairly simple lives, so they can just take the standard deduction, have no particular business problems that cause them to have to itemize, the result is that they get a tax cut.

One might ask, for the good Lord's sake, why? Just for the purpose of simplification. If that is the case, why can we not postpone the whole fool thing and let it wait for the tax reform, for which recommendations are to come in October? Maybe they should save the whole thing and get a sweetener for the so-called tax reform bill.

If you want to create a job, why not provide some tax incentive or tax reward for someone who puts people to work? That is what those of us on the committee are contending in saying that we would like to reward a fellow who actually employs somebody.

Mr. McCLURE. The tax credit might provide additional jobs, as the wage tax credit might. Certainly, the increase in the standard deduction is of no benefit to the person who is unemployed. He has no income against which it can be taken, so there is no benefit to that person.

I hope we can move in this direction. I am not wedded to the precise language in this bill or this particular provision. Perhaps somebody has a better idea. I know that the Senator from Kansas (Mr. Dole) had a wage subsidy proposal which has been endorsed by several of us who support that. I think this wage tax incentive is largely in the same direction as the one the Senator from Kansas had in mind. But it is important that we move to work on the margins of employment now, to get a job for some people who otherwise will remain unemployed or will remain on the welfare rolls, while various people study alternatives.

There is about an \$18 billion swing for every 1 percent change in the unemployment rate. That \$18 billion in our budget could be put to far better use than simply paying welfare and having reduced income to the Federal Treasury. Again I commend the Senator from

Louisiana and the Finance Committee for at least working on this matter, instead of trying to ignore it and assuming that it either does not exist or that it will go away.

It was suggested by the Senator from Minnesota that we should not have our heads in the sand because that exposes a certain part of our anatomy that makes a great target for somebody who might shoot at us.

It was also suggested by someone that we had to rise to the occasion and we ought not to have our feet set in concrete.

Well, I would say that if you have your feet set in concrete and your head in the sand, it is awfully hard to rise to the occasion. [Laughter.]

Mr. LONG. I thank the distinguished Senator.

I believe we have covered this subject fairly well today. But let me just summarize this one point. This little poll to which I made reference, taken by the National Federation of Independent Businesses, was mailed out to approximately 70,000 employers. That was just a sample because we, on the Committee on Finance, said we would like to know how many of their members would write in and actually make a commitment to hire somebody if they would write them.

All right. So of those 70,000 polled, 5,651 employers said yes, they would expect to hire somebody and, to be specific, they would expect to hire 15,219 employees.

But that takes into account all of these many businesses who are not going to bother to fill out a card and send it in to some little association, but who, if the opportunity were provided and the incentive were provided, when they make their plans and look at that situation, would decide they would by all means take advantage of this, particularly when they see their neighbor, in competition, providing additional service to the customers of that business.

So that there is great potential in using the tax system to reduce the cost of hiring an additional employee and to put more people to work.

I do think, Mr. President, that if we are going to reduce taxes by \$6 billion in ways that tend to simplify the law, but have no assurance that it will do anything of a substantial nature in putting people to work, then we ought to have passage of this provision in the bill that would definitely add additional employees to the rolls.

I think, Mr. President, we will probably want to vote on this matter sometime tomorrow, and I have discussed this with Senators, and I think that sometime early tomorrow afternoon would be a good time to vote and, perhaps, at that time we might reach an agreement.

Mr. BUMPERS. Let me say to the distinguished Senator from Louisiana I talked to the majority leader earlier and suggested that we vote at a time certain tomorrow. We will come in at 12:30 tomorrow, and morning business should be over by 1. I am agreeable to voting, say, at 2 o'clock tomorrow afternoon.

Mr. LONG. That would be all right with the Senator from Louisiana.

I would like, if there be no objection, to propose a unanimous-consent agreement to that effect. I would like to ask the acting Republican leader what he thinks about that matter.

Mr. CURTIS. I would not want to do that without conferring with the leadership here. My guess is we can vote sometime tomorrow, but to fix it right now I cannot do that. It was my understanding that we were not coming in until 2 o'clock. We will be in session very late tonight.

Mr. LONG. Well then, I would suggest that we more or less agree, without a unanimous-consent agreement, to have a tentative agreement that we will try to vote in the early part of tomorrow afternoon, around 2 o'clock.

The motion is subject to a motion to table, but I think the Senator would prefer to have a straight vote on his motion, and we can vote on it, and I think sometime about 2 o'clock will be fine.

Mr. BUMPERS. If it is agreeable with the Senator, unless there is some objection to a unanimous-consent request, let us leave it to the majority leader, with the understanding that we will vote at 2 o'clock tomorrow afternoon. In his unanimous-consent request last night he carried the orders over to tomorrow, as I recall, and he said he would come in at 12:30 tomorrow. That is already in the RECORD. That would give us another hour to talk about it.

Mr. CURTIS. I would rather not have an order entered this evening.

Mr. LONG. I am informed there would be objections to entering a unanimous-consent agreement at this time, but I would suggest that Senators make their plans to vote early tomorrow afternoon on this matter.

INCREASING THE INVESTMENT TAX CREDIT: AN IDEA THAT HAS COME, AND GONE

Mr. HUMPHREY. Mr. President, I have always viewed our Federal tax system as a fragile beast of burden. If we abuse it, or make it unfair, the people will react in kind by withdrawing their faith and their participation. If we nurture it, it shall serve us well.

That is why we in Congress must respond with sobriety and full awareness of what is at stake as we consider whether or not to enact an increase from 10 to 12 percent in the investment tax after having eliminated the \$50 per person tax rebate.

In my mind, and in that of most Americans, there is no doubt that the rebate and the investment tax credit increase were two sides of the same coin—a coin designed to stimulate the economy out of a sluggish recovery.

When President Carter first proposed a special temporary stimulus component for consumers and industry to the tax bill, there was widespread agreement as to need. In the subsequent quarter, however, the recovery has perked up significantly; we are all familiar with the statistics on industrial production, personal income, capital investment, and housing starts, to name a few examples. Some of us are still unsatisfied with the rate of progress, particularly with regard to unemployment, but there is a general consensus that our economic recovery has perked up. In the interest of

balance, President Carter wisely recognized that a tax cut designed to increase consumer spending should be complemented by a modest increase in the tax incentive to stimulate investment. But, now that the changes in the pace of economic recovery have convinced the President and Congress to eliminate the tax rebate, I believe that we should follow through completely and eliminate the proposed increase in the investment tax credit.

While the equity and balance arguments are convincing to me in and of themselves, I believe that a strong case for its elimination can be made on purely economic grounds. The investment tax credit is one of the largest tax expenditures currently included in our tax laws. It amounts to about \$10.5 billion in this fiscal year alone.

Mr. President, I have supported and continue to support the investment tax credit. I believe it is especially useful as a countercyclical measure during times of deep recession when capital spending decisions are being deferred. However, the whole rationale for abandoning the rebate was that our economy is bouncing back. If this is true for the rebate it is also true for the proposed increase in the investment tax credit. With so many indicators pointing upward, I believe that investments will be made without providing any additional tax incentive. The 2-percent increment to the investment tax credit we are considering will, in my opinion, be a windfall to business, taking roughly \$2.4 billion from the pockets of our taxpayers and producing virtually nothing in terms of investment that would not have occurred otherwise.

I believe we should also be aware of the potential impact of the increased investment tax credit on employment if it does in fact, increase investment. This is particularly crucial in view of the fact that the production recovery that is underway is by no means an employment recovery. Our unemployment rate today is virtually the same as it was a year ago. A recent study by Dr. Robert Caen, a University of Chicago economist, reported last year in the Wall Street Journal, found that an investment tax credit "hikes unemployment marginally for at least 3 years after it is instituted, because it lets companies substitute more automated equipment for workers." Certainly this analysis should encourage us to take a very skeptical view toward increasing the investment tax credit in our high unemployment economy.

Furthermore, even under the most optimistic assumption, \$2.4 billion in tax stimulus to business is not going to have much impact once it has trickled down through our \$1.5 trillion economy. This is particularly true when there is not even a pretense that this tax reduction will be targeted at additional capital that would not be invested without this economic sweetener.

Recent economic developments have also convinced me that we do not need to add to the \$10.5 billion we will spend for the investment tax credit this year. Business investment plans are up markedly since early winter when the President framed his original proposal.

Private surveys show a remarkable increase in planned capital expenditures. Typical is the survey conducted by Rinfret Associates, Inc., which reported last fall that real capital expenditures would rise in 1977 by 2 percent in real terms, according to the respondents to our survey. This rise in capital expenditures in 1977—is enough to assure continued economic expansion but not enough to assure a robust or vigorous economic expansion. But RAT's latest survey released March 19 concluded that—

In real terms (nominal adjusted for inflation) private capital expenditures are slated to increase eight percent in 1977. Capital expenditures were a laggard in the economic recovery. They are no longer.

The most recent Commerce Department estimates confirm this dramatic shift in investment plans. It now projects a 7-percent increase in real plant and equipment spending in 1977 over 1976.

Finally, let me point out that the majority of American business people feel the change in the investment tax credit will not be important in their investment decisions. According to the latest "Outlook Survey" of the Nation's Business magazine, 57 percent of the business executives interviewed said the investment tax credit under consideration would not be important to their investment decisions and 22 percent said it would be of little importance. In fact, 93 percent of the executives interviewed did not feel it would have a very significant bearing on their investment decisions.

Mr. President, if the economy does not need it, if it has the potential of reducing employment, if it raises basic questions of equity among consumers, if the administration feels it is unnecessary, and if 80 percent of our business executives say it will have little or no impact on their investment decisions, why in the world are we even debating the proposal?

Mr. President, I have looked long and hard at the Finance Committee's desire to keep the business portion of the tax cut in the revised bill. But from no perspective that I can find is such a course justified.

PERMANENT TAX CUTS NEEDED

Mr. ROTH. Mr. President, I applaud the President's decision to withdraw his \$50 tax rebate proposal. I think it is extremely refreshing to have a President who is flexible and candid enough with the American people not to try to push a \$10 billion mistake through the Senate.

However, I strongly disagree with the President that no further action is needed. While we have recovered from the depths of the 1975 recession, our economic growth is still sluggish and unemployment is at intolerable levels. We must take action now to stimulate the economy and reduce our high levels of unemployment.

The best way to stimulate long-term economic growth and create permanent new jobs is through a permanent tax rate reduction. The administration says that we should wait until October or January of next year to consider permanent tax cuts. But I believe that we cannot afford to wait until next year to put America back to work again.

According to the Congressional Budget

Office, the permanent tax cut that I am proposing would increase GNP by \$43 billion and create 920,000 taxpaying jobs by the end of next year—if we act now. This permanent tax cut approach will provide the economic growth needed to create real jobs in the private economy, not temporary, make-work public service jobs.

I believe the President is making a serious mistake by opposing these efforts to create almost 1 million jobs in the private economy, and I urge him to reconsider his position on permanent tax cuts for the American people.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). Without objection, it is so ordered.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated.

By Mr. JACKSON:

S. 1326. A bill to designate the Thaddeus Kosciuszko Historic Route, and for other purposes; to the Committee on Environment and Public Works.

By Mr. JACKSON (by request):

S. 1327. A bill to amend section 2 of the act of June 30, 1954, as amended, providing for the continuance of civil government for the Trust Territory of the Pacific Islands, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HATHAWAY:

S. 1328. A bill entitled "The Career Education Implementation Incentive Act of 1977"; to the Committee on Human Resources.

By Mr. LEAHY:

S. 1329. A bill to amend the provisions of the Federal Advisory Committee Act; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JACKSON:

S. 1326. A bill to designate the Thaddeus Kosciuszko Historic Route, and for other purposes; to the Committee on Environment and Public Works.

THE THADDEUS KOSCIUSZKO HISTORIC ROUTE

Mr. JACKSON. Mr. President, I am introducing for appropriate reference a bill to designate the Thaddeus Kosciuszko Historic Route.

The Thaddeus Kosciuszko National Memorial, located at 301 Pine Street, Philadelphia, Pa., was established in 1972 by Public Law 92-524. This memorial recognizes the great Polish patriot and soldier whose genius as a military engineer contributed materially to the collapse of British strategy and the success of the American Revolution.

Mr. President, the purpose of the measure I am introducing today is to recognize further the accomplishments of General Kosciuszko by designating the Kosciuszko Historic Route.

The route would extend from upper New York State, including Fort Ticonderoga, Saratoga, and West Point and through Philadelphia to Ninety-Six and Savannah, Ga. The route would be identified by markers or other appropriate means and would recognize those sites where military victories and accomplishments are credited to the military genius of Gen. Thaddeus Kosciuszko of Poland. Establishment of the historic route is both a proper and logical means of honoring a man whose talents helped the cause of American freedom and independence.

By Mr. HATHAWAY:

S. 1328. A bill entitled "The Career Education Implementation Incentive Act of 1977"; to the Committee on Human Resources.

THE CAREER EDUCATION IMPLEMENTATION ACT OF 1977

Mr. HATHAWAY. Mr. President, I am introducing a bill today to provide Federal incentives to States, and to local educational agencies and other public and private nonprofit educational institutions, to develop and implement comprehensive career education programs and activities.

This bill, which is called the Career Education Implementation Incentive Act, allocates money to States for the purpose of encouraging the implementation of career education programs and activities in elementary and secondary schools, and in institutions of postsecondary education. The bill authorizes \$25 million for the fiscal year 1979, the first year in which it takes effect, and \$50 million in the fiscal year 1980, \$100 million in fiscal 1981, \$50 million in fiscal 1982, and \$25 million in fiscal 1983. Since the purpose of the program is to provide seed money as an incentive to State and local agencies and institutions, it is clearly intended that the categorical grants authorized in this bill will not be extended beyond the end of fiscal 1983. This is in keeping with my feeling that too many categorical incentive programs—including some which were clearly beneficial when first enacted—are permitted to live on long after their usefulness has ended. If career education has been incorporated into State and local educational goals and programs by the time this program terminates, it will have done its job, and further seed money will no longer be necessary. If it has not, then it will be time to reevaluate the utility of this approach.

The Federal/State matching requirement is also drawn with that goal firmly in mind. For the first year of its existence the program will pay up to 100 percent of the cost of planning and implementing the provisions of the bill. In subsequent years the State matching requirement will gradually increase until, in the final year of the authorization, the Federal Government will have become the junior partner in the arrangement, paying no more than 25 percent of the cost of the program.

In order to insure that various types of educational institutions are able to share equitably in these career education incentives, States will be required to pass

through at least 60 percent of their allocations the first year, and at least 70 percent in subsequent years, to local educational agencies, and at least 15 percent in each year to public and private nonprofit institutions of postsecondary education.

In addition to the State grant program, this bill will set aside money for model and demonstration grants, and for evaluation and training programs, administered at the Federal level by the Office of Career Education. The bill also authorizes a set-aside for career education information gathering, storage and dissemination functions identical to those authorized for fiscal 1978 in the Education Amendments of 1976 (P.L. 94-482).

A more complete section-by-section analysis of this bill will be included at the end of my remarks.

Mr. President, this bill has its origins in a measure which I sponsored in the Senate last year as a separate title of S. 2657, the Education Amendments of 1976. At the suggestion of Chairman CARL PERKINS of the House Education and Labor Committee, however, the Senate title was reduced by the Conference Committee to a single-year authorization of \$10 million, for the fiscal year 1978, for State career education planning and Federal information gathering purposes. Chairman PERKINS and his House colleagues made that request because the House did not have a career education bill of their own in conference, and they wanted the opportunity to work on such a measure themselves in the Education and Labor Committee. They have now done so in exemplary fashion, as is demonstrated by the fact that their resulting legislation, H.R. 7, passed the House by the overwhelming vote of 398 to 14 just before the Easter recess.

Because of the strong House support for H.R. 7, I have waited until their action was final to introduce a companion measure in the Senate, in order to be able to incorporate certain of its elements into this bill.

I did so because it was clear to me last year that the career education goals of Congressman PERKINS are substantially the same as my own, and thus it seemed advisable to avoid unnecessary duplication of effort wherever possible.

Still, there are several key differences between my bill and H.R. 7, and it would be useful to point them out at this time.

Perhaps the most significant difference between my bill and H.R. 7 involves the extension of career education incentive programs to institutions of postsecondary education. Under H.R. 7, federally supported career education is to be limited to elementary and secondary schools. However, I believe that such a limitation ignores one of the central problems career education is seeking to solve: that too many graduates or leavers of our entire educational system, up to and including postsecondary, are quite simply ill prepared to enter the world of work. And while applying career education to postsecondary settings can admittedly be more difficult to accomplish than at the elementary or secondary level, some of our best and most com-

prehensive experimental career education programs to date have been developed in postsecondary settings.

In addition, the effective years and authorization levels in this bill are somewhat different from those of H.R. 7. For example, H.R. 7 does not apply to specifically designated fiscal years, but rather to a floating 5-year period which begins in the first year in which funds are appropriated. My bill refers specifically to the fiscal years 1979 through 1983, since current Office of Education planning authorizations for Career Education will run out at the end of fiscal 1978. Also, while I agree with the House approach of reaching a high authorization level relatively quickly, then phasing out the Federal commitment to this incentive program, the highest level is reached more gradually in this bill than in H.R. 7, since as a practical matter, budget and appropriations planners in the administration and in Congress are likely to be reluctant to provide large sums of money at as early a stage as is contemplated in H.R. 7.

The bill I am introducing today also includes additional authority for the Commissioner to make model and demonstration grants, conduct evaluation studies, and perform information gathering and dissemination functions, which authority is not specifically contained in H.R. 7.

HISTORY OF CAREER EDUCATION

"Career education" in the form we know it today had its inception as a formal educational program in the late 1960's. At the beginning of this decade, it was given a high priority among federally funded educational research programs by Commissioner of Education Sidney P. Marland.

In enacting the Vocational Education Amendments of 1968 (20 U.S.C. 1241 et seq.) Congress first emphasized the need to bridge a gap that was felt to exist between education and work. Early in 1971, Commissioner Marland coined the term "career education" and elevated it to the status of major educational reform.

The Education Amendments of 1972 established the National Institute of Education—NIE—as separate from the Office of Education—OE—and both departments adopted career education as a priority item. In the case of NIE, career education research was written into its enabling legislation. In OE, the first career education research and development programs were funded under Parts C and D of the Vocational Education Act, and new statutory authority was created by the Special Projects Act as part of the Education Amendments of 1974 (20 U.S.C. 1865), which authorized additional demonstration programs and created within OE an Office of Career Education.

FUNDING HISTORY OF CAREER EDUCATION

Federal funds allocated for research and demonstration under the various statutory authorities are as follows:

THE VOCATIONAL EDUCATION ACT

Prior to its recent amendment in Public Law 94-482, part C of this act authorized projects for research and training, and part D authorized model programs

and projects. Under these authorities, over 100 research and model career education projects have been established at local education agencies—LEA's—in the 50 States. A recent GAO study could find no apparent distinctions between projects funded under part C and those using part D dollars.

During fiscal years 1972-75, OE obligated approximately \$36 million to the States under part C and about \$38.5 million under part D for career education programs. In fiscal year 1976 these programs were cut back considerably, with no funds spent under part C and only \$8 million under part D for career education.

NIE EXPENDITURES

Beginning in mid-1971, OE initiated four multiyear career education projects under the authority of the Cooperative Research Act. In August 1972, these were transferred to NIE. Through fiscal year 1975, NIE estimates that approximately \$42 million of its appropriations were allocated to the four projects.

In addition, NIE has taken on several projects initially started up by OE under its educational laboratory and research and development center programs, spending \$7.6 million through fiscal year 1975. Finally, NIE had originated 85 new career education projects of its own through the end of fiscal year 1975, spending another \$7.6 million. Approximately \$14 million was spent on all NIE career education projects in fiscal year 1976, and an equal amount is estimated for fiscal year 1977.

OFFICE OF CAREER EDUCATION

The third major source of Federal career education funding has been the Special Projects Act, enacted in the Education Amendments of 1974. Those amendments authorized \$15 million each year for career education, of which approximately \$10 million has been spent in each fiscal year since the enactment of those amendments.

NON-FEDERAL SPENDING

Projects and programs funded under each of these authorities have varied widely, and few generalizations can be made about successes or failures from the Federal perspective. However, it is important to note that State and local governments have contributed considerable resources of their own in this area. Part C and D funds referred to above have been matched on a dollar-for-dollar basis. And many States and LEA's have enacted legislation and/or initiated additional career education programs of their own.

As of the end of fiscal year 1975, for example, OE had cited nine States as having made significant progress in career education. Even a State as small as Arizona had set aside over \$22 million of its own education funds for this purpose.

NEW AUTHORIZATIONS

Finally, the Education Amendments of 1976 (P.L. 94-482) contains a new authorization, for fiscal year 1978 only, of \$10 million to be used for comprehensive State planning for career education, and for Federal information gathering, storage, and dispensing. Up to \$2 million may be set aside for this

latter purpose. The balance is to be distributed to the States, with at least \$100,000 going to each State and the remainder distributed on the basis of population.

NATIONAL SUPPORT FOR CAREER EDUCATION

Career education has managed to create for itself a broad base of support across the educational and ideological spectrum. Strong support was communicated to the Carter transition team from the National Conference of State Legislators, the American Personnel and Guidance Association, the U.S. Chamber of Commerce, the National PTA, the Southern Superintendents for Educational Progress, the National Association of Elementary School Principals, the American Society for Training and Development, the Council of Chief State School Officers, and educational representatives of the cities of Baltimore, Dallas, New Orleans, and the State of Illinois.

In other forums, career education has received strong support from the National Education Association, the American Vocational Association, the NAACP, the American Association of Secondary School Principals, the American Association of Junior Colleges, and numerous other institutional and individual educators and associations. A recent Commissioners Conference on Career Education held in Houston, Tex., drew an astonishing 8,500 participants.

CAREER EDUCATION ISSUES AND PRIORITIES

Issues and priorities considered important by groups and interests which support career education include the following:

First. Career education is necessary because many individuals leave the educational system today without the basic academic, occupational, and decision-making skills, as well as the work attitudes, necessary to adapt to the changing economic and social world outside that system. A figure commonly used is "2-3 million leavers per year at all levels" who lack such skills. Also cited by many is a recent HEW-commissioned survey indicating that perhaps as many as one in five adults today are functionally "illiterate" in basic coping skills necessary to perform simple daily tasks.

Second. Even within the schools, many students fail to see meaningful relationships between what they learn and what they will need to do when they leave. American Personnel and Guidance Association cites poll data indicating that 78 percent of 11th grade students claim to need more career guidance than they currently receive.

Third. These serious deficiencies can only be remedied by a virtual revamping of our educational system to give more emphasis to career awareness, exploration, and preparation skills, from the elementary level through college, and by changing much of our basic educational curriculum so that even basic skills—the "three R's"—are taught where possible through references to real-world experiences.

Fourth. In too many educational settings, an unhealthy dichotomy has grown up between academic skills and manual skills, with primacy given to the former

and the latter relegated to second-class status. As a result, many students pursue education for skills for which no job opportunities exist, invest too many public and private resources in their education, and become overqualified for the majority of available jobs.

Fifth. Education has become too isolated from the community where its "product" will have to work and live—and members of that community must therefore be brought into the educational system—and conversely, students brought into the community—through comprehensive programs of career education.

Sixth. The growing need for and presence of women in the work force has outdistanced our educational responsiveness to the needs of that group, including the need to avoid sex stereotypes. Career education has the potential as a new approach to overall work and life preparedness, to overcome such stereotypes.

Seventh. Nor does education respond to the needs of the poor or the minority students, giving precedence instead—and lavishing far more attention on—the middle class, more generally college-bound student. Career education is needed for all students to break down the barriers that separate our system into multiple tracks, relegating the preponderance of individuals in certain social and economic classes to an inferior status, and too often insulating those in the "academic" track from the experience they will need when they leave school and enter the real world.

NEED FOR THIS BILL

Current levels of funding support are significant, but diverse. Adding the section 406 money to the NIE resources and the vestigial vocational education funding, a total of over \$30 million in Federal funds are being spent on career education in the current fiscal year, with prospects of up to \$10 million more under the new fiscal year 1978 planning authority.

But while there is a relatively large aggregate amount spent by various branches of HEW each year on career education, very little of that is actually within the control of State and local governments, thereby frustrating the efforts of many to initiate or replicate career education projects on their own. While the seed money previously available under part C and D of the Vocational Education Act was relatively unstructured in this regard, that money is rapidly drying up and will soon be unavailable, if current trends continue, leaving all major creative efforts in the hands of Federal administrators, researchers and other employees. If we expect States effectively to implement career education programs and activities they have developed to date under model and demonstration grant authorities, there must be some additional incentives available.

In addition, the GAO, the American Institutes for Research, and other program analysts have delineated several areas of immediate concern which are not being adequately addressed in most

current career education projects, and which will also require the availability of new resources.

Included in this list are better evaluation techniques; better training of teachers, counselors, and other education personnel to take advantage of, and develop, career education resources—particularly in secondary and postsecondary institutions, where researchers have found greater resistance to career education than in elementary schools; additional development of career education curriculum in college-level teacher training programs; need for better information and materials gathering, storage, and dispersal techniques at the Federal, regional, and local levels, including information about the techniques of career education, as well as about trends and developments in the labor marketplace. In that regard, while some individuals and organizations have complained of inadequate materials, indications are that an abundance of information and materials is available or is being constantly developed for most aspects of career education. The problem seems more to be one of effective access to such information than any lack thereof.

Finally, to the extent current Federal research and development, including WIE research, is to lead to on-line implementation of techniques and materials found to be effective, additional resources will have to be made available to familiarize States and local education agencies and schools with results of such research, and to provide the incentive for such implementation. We should include here the reality of fiscal problems faced in school financing in most jurisdictions, which rarely leave room in the State or local budget for new projects funded entirely out of State or local resources. If the results of major NIE research efforts in such areas as school-based or experience-based career education prove to be worthy of implementation, Federal authorizations should be available to provide the incentive to do so.

Mr. President, I ask unanimous consent that the text and section-by-section analysis of my bill be printed in the RECORD immediately following my remarks.

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

S. 1328

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 "Career Education Implementation Incentive Act of 1977".

STATEMENT OF CONGRESSIONAL FINDINGS

SEC. 2. The Congress hereby finds and declares that—

(1) a major purpose of education should be to prepare every person to pursue a career suitable to that person's maximum potential ability;

(2) it is the obligation of all educational agencies and institutions, including but not limited to agencies and institutions of elementary and secondary education, higher education, adult education, employment training and retraining, and vocational education, to make available such preparation to all persons;

(3) each State or local agency or institution of education should therefore be encouraged to expose every person to the widest variety of career options through programs of career education.

PURPOSE

SEC. 3. It is the purpose of this Act to provide federal incentives to States, for five years, to enable state and local education agencies and institutions to develop and implement career education programs and activities for individuals of all ages, and to improve and expand existing programs and activities, in order to improve the awareness, exploration, planning and decisionmaking skills of such individuals with regard to career opportunities and career development throughout the lifetimes of such individuals.

AUTHORIZATION OF APPROPRIATIONS

SEC. 4. (a) There are authorized to be appropriated for the purpose of this Act \$25,000,000 for fiscal year 1979, \$50,000,000 for fiscal year 1980, \$100,000,000 for fiscal year 1981, \$50,000,000 for fiscal year 1982, and \$25,000,000 for fiscal year 1983.

(b) (1) From the sums appropriated pursuant to this Act, the Commissioner shall reserve—

(A) an amount not to exceed 1 per centum thereof for the administration of this Act, for making model program grants pursuant to section 8 and for the support of such other special or demonstration projects as he deems necessary to carry out the purposes of this title, and

(B) an amount not to exceed \$2 million per annum for the purpose of carrying out section 9 of this Act.

(2) From the remainder of the sums appropriated under this Act, the Commissioner shall reserve such amount, not to exceed 1 per centum thereof, as he may determine necessary and shall allot such amount among the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands, according to their relative need for assistance under this title.

(3) From the remainder of the sums appropriated, the Commissioner shall allot to each State an amount which bears the same ratio to such sums for such year as such State's population, aged twenty-one or younger, of all the States, except that no State shall be allotted from such sums less than \$100,000.

(C) (1) Any funds allotted to a State under subsection (b) (3) for which a State has not applied or for which a State application has not been approved shall be reallocated by ratably increasing the allocations of each of the States which have approved applications.

(2) If the sums appropriated for any fiscal year are not sufficient to make the allotments of the minimum amounts specified in subsection (b) (3), such minimum amount shall be ratably reduced. If additional sums became available during a fiscal year for which such allotments were reduced, such allotments shall be increased on the same basis as they were reduced.

STATE APPLICATIONS

SEC. 5. Any State desiring to receive the amount for which it is eligible for each fiscal year under this Act shall submit to the Commissioner an annual application for such funds, which shall include assurances that—

(1) the State will designate a State officer or agency for the purpose of administering funds expended pursuant to the provisions of this Act;

(2) without in any way interfering with the curriculum decision-making authority of local educational agencies or public or private non-profit institutions of postsecondary education in the State, the State will encourage all such agencies and institutions

to develop or expand career education programs and activities, in order to integrate career education into the regular education programs of such agencies and institutions;

(3) from among the agencies and institutions so encouraged, the State will identify all such agencies and institutions which desire to develop or expand their career education programs and activities, and the State will develop a plan to allocate funds and provide necessary technical assistance to such agencies and institutions for that purpose;

(4) of the amount received pursuant to this Act for the fiscal year 1979, the State will pass through no less than 60 percent to local educational agencies and no less than 15 percent to public and private institutions of postsecondary education for carrying out the purposes of this Act, and of the amounts received pursuant to this Act for the fiscal year 1980 and for each subsequent fiscal year, the State will pass through no less than 70 percent to local educational agencies and no less than 20 percent to public and private institutions of postsecondary education for carrying out the purposes of this Act;

(5) the State will expend, from its own sources, for any fiscal year for which funds are received under this Act, an amount equal to or exceeding the amount which such State expended for career education during the preceding fiscal year;

(6) the State officer or agency designated to administer this program will employ such staff as are necessary to provide for the administration of this Act and programs of career education funded under this Act including a person or persons experienced with respect to problems of discrimination in the labor market and stereotyping effecting career education (including bias and stereotyping on account of race, sex, or handicap), and including at least one professional trained in guidance and counseling who shall work jointly in the office of the principal staff person responsible for such administration and coordination and in the office of the State educational agency responsible for guidance and counseling, if any such office exists;

(7) such agency will continuously review the plan submitted under section 6 and will submit such amendments thereto as may be deemed appropriate in response to such agency's experience with the program;

(8) not less than 15 percentum of that portion of a State's grant for any fiscal year which is not reserved pursuant to section 8(b) (1) will be used for programs described in section 7(a) (3) (B); and

(9) the funds received under this Act will be used in accordance with the provisions of section 7.

STATE PLAN

SEC. 6. Each State desiring to receive funds appropriated pursuant to this Act for the Fiscal Year 1980 and subsequent fiscal years, shall, at the time of submission of its annual application for the fiscal year 1980, submit to the Commissioner, a State plan which shall—

(1) set out explicitly the objectives the State will seek to achieve by the end of each fiscal year up to and including the fiscal year 1983 in implementing the purposes of this Act;

(2) set out the methods by which the State will seek each year to achieve these objectives with all resources available, and describe the methods by which the funds received under this Act will be used, in accordance with section 7, to implement the overall objectives of this Act; and

(3) set forth policies and procedures which the State will follow the assure equal access of all students (including the handicapped and members of both sexes) to career education programs carried out under the State plan; and

(4) provide proposed criteria to the Commissioner for evaluation of the extent to which the State will achieve the objectives set out in the State plan.

USE OF FUNDS

SEC. 7. (a) Subject to the provisions of section 8, funds received under this Act may be used by a State only for the following activities:

(1) employing such additional State educational agency personnel as may be required for the administration and coordination of programs assisted under this Act;

(2) providing State leadership for career education, either directly or through arrangements with private and public agencies and organizations (including institutions of higher education), in—

(A) conducting inservice institutes for education personnel;

(B) training local career education coordinators;

(C) collecting, evaluating, and disseminating career education materials on an intrastate and interstate basis;

(D) conducting statewide needs assessment and evaluation studies;

(E) conducting statewide leadership conferences;

(F) engaging in collaborative relationships with other agencies of State government and with public and private organizations representing the business-labor-industry-professional community and organizations representing the handicapped, minority groups, and women; and

(G) promoting the adaptation of teacher-training curricula to the concept of career education by institutions of higher education located in the State;

(3) making grants to local educational agencies and to public and private nonprofit institutions of postsecondary education for the purpose of—

(A) Improving the career awareness, exploration, planning, and decision-making skills of individuals through the adaptation of career-oriented concepts to curriculum design and classroom techniques;

(B) developing and implementing comprehensive career guidance, counseling, placement, and followup services utilizing counselors, teachers, parents, and community resource personnel;

(C) developing and implementing collaborative relationships with organizations representing the handicapped, minority groups, and women and with the business-labor-industry-professional-government community, including the use of personnel from such organizations and that community as resource persons in schools and for student field trips into that community;

(D) developing and implementing work experiences for students whose primary purpose is career exploration, provided that such work experiences are related to existing or potential career opportunities and do not displace other workers who perform such work;

(E) employing coordinators of career education in local educational agencies or in combinations of such agencies;

(F) training of local career education coordinators;

(G) inservice education of teachers, counselors, school administrators, and other education personnel aimed at helping them to understand career education, and to acquire competencies essential for carrying out their roles;

(H) conducting institutes to acquaint school board members, community leaders, and parents with the nature and goals of career education;

(I) purchasing instructional materials and supplies for career education activities;

(J) establishing and operating community career education councils;

(K) establishing and operating career education resource centers serving both students and the general public;

(L) adopting, reviewing and revising local plans for coordinating the implementation of the comprehensive program; and;

(M) conducting needs assessments and evaluations; and

(4) reviewing and revising the State plan

(b) Grants to local educational agencies and public and private nonprofit institutions of postsecondary education pursuant to subsection (a) (3) from funds received under this Act shall be made on the basis of applications approved by the State educational agency, and shall, to the extent practicable, be made in accordance with equitable distribution criteria established by the State educational agency, having due regard for the special needs of agencies and institutions serving large numbers of disadvantaged students, and of agencies and institutions serving sparsely populated areas or serving relatively few students.

(c) To the extent consistent with the number of children enrolled in private nonprofit elementary and secondary schools within the State, as regards services provided under paragraph (2) of subsection (a), and within the school district, as regards a grant made to a local educational agency under paragraph (3) of such subsection, after consultation with appropriate private school officials, provision shall be made for the effective participation on an equitable basis of such children and the teachers of such children in these services and in the programs funded with these grants.

MODEL PROGRAMS

SEC. 8. From funds reserved under section (4) (b) (1) (A) of this Act, the Commissioner is authorized to make grants directly to State and local educational agencies, institutions of postsecondary education, and other nonprofit agencies and organizations to support projects to demonstrate the most effective methods and techniques in career education and to develop exemplary career education models.

SEC. 9. (a) The Commissioner shall provide, either directly or by grant or contract, for—

(1) the gathering, cataloging, storing, analyzing, and disseminating of information related to the availability of, and preparation for, careers in the United States, including information concerning current career options, future career trends, and career education;

(2) the ongoing analysis of career trends and options in the United States, using information from both the public and private sectors, including such sources as the Bureau of Labor Statistics, the Department of Commerce, the Tariff Commission, economic analysts, labor unions, and private industry;

(3) the publication of periodic reports and reference works using analysis prepared pursuant to this section and containing exemplary materials from the career education field, including research findings, results and techniques from successful projects and programs, and highlights of ongoing analyses of career trends in the United States; and

(4) the conduct of seminars, workshops, and career information sessions for the purpose of disseminating to teachers, guidance counselors, other career educators, administrators, other education personnel, and the general public information compiled and analyzed under this section.

(b) In carrying out the provisions of this section, and to the extent practicable, the Commissioner shall (1) make use of existing offices, centers, clearinghouses, and research capabilities, (2) coordinate among the offices, centers, clearinghouses and research capabilities in carrying out his career information responsibilities, and (3) use the

career information capabilities of the Education Division.

PAYMENTS

SEC. 10. (a) The Commissioner, upon receipt of an application for the fiscal year 1979 and each subsequent fiscal year which the Commissioner finds to be in compliance with section 5, and upon finding the State to be in compliance with sections 6 and 7 for the fiscal year 1980 and each subsequent fiscal year, shall pay to the State the amount which it is entitled to receive for each such year under this Act.

(b) (1) Any State receiving funds for the fiscal year 1979 under this Act may reserve not more than 20 percent of such funds for services performed pursuant to section 7(a)(2) and not more than 5 percent for the purposes of paragraphs (1) and (4) of section 7(a). Not less than 60 percent of such funds shall be distributed to local educational agencies and not less than 15 percent of such funds shall be distributed to public and private institutions of postsecondary education for carrying out the purposes of this Act.

(2) Any State receiving funds for the fiscal year 1980 and for subsequent fiscal years may reserve not more than 10 percent of such funds for services performed pursuant to section 7(a)(2) and not more than 5 percent for the purposes of paragraphs (1) and (4) of section 7(a). Not less than 70 percent of such funds shall be distributed to local educational agencies and not less than 15 percent of such funds shall be distributed to public and private institutions of postsecondary education for carrying out the purposes of this Act.

(3) In the fiscal year 1979, funds available under this Act to a State may be used, subject to the provisions of paragraph (1), to pay the entire cost of carrying out programs under this Act. In subsequent fiscal years, subject to the provisions of paragraph (2), funds available under this Act may be used to pay (A) not more than 75 percent of such costs in the fiscal years 1980 and 1981, (B) not more than 50 percent of such costs in the fiscal year 1982, and (C) not more than 25 percent of such costs in the fiscal year 1983.

FEDERAL ADMINISTRATION

SEC. 11. (a) (1) The Office of Career Education created pursuant to section 406 of the Education Amendments of 1974 shall be the administering agency within the Office of Education for the review of the State plans, applications, and reports submitted pursuant to this Act. In addition, the Office of Career Education shall perform a national leadership role in furthering the purposes of this Act.

(2) In reviewing the plans, applications, and reports submitted pursuant to this Act, the Office of Career Education shall provide technical assistance to those States having plans, applications, and reports needing improvement. The Office shall also provide technical assistance, as requested by the States, to all participating States, Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(b) The National Advisory Council on Career Education created pursuant to section 406 of the Education Amendments of 1974 shall perform the same functions with respect to the programs authorized under this Act as it is authorized to perform with respect to the programs authorized under that section.

(c) The National Institute of Education shall continue its complementary efforts in career education, including product and program development, evaluation, and research. The Office of Education shall cooperate with the Institute in identifying research and development priorities and, either directly or through arrangements with private and pub-

lic agencies and organizations (including institutions of higher education), in disseminating the products and findings of research and development undertaken by the Institute.

(d) Section 406(g)(1) of the Education Amendments of 1974 is amended by striking out subparagraph (B) and inserting in lieu thereof the following:

"(B) not less than twelve public members broadly representative of the fields of education, the arts, the humanities, the sciences, community services, business and industry, and the general public, including (1) members of organizations of handicapped persons, minority groups knowledgeable with respect to discrimination in employment and stereotyping affecting career choices, and women who are knowledgeable with respect to sex discrimination and stereotyping, and (ii) not less than two members who shall be representative of labor and of business, respectively. A majority of the members selected pursuant to subparagraph (B) shall be engaged in education or education-related professions."

DEFINITIONS

SEC. 12. For purposes of this Act the term—

(1) "career education" means educational programs and activities through which educational agencies and institutions, and individual educators, counselors, and other individuals, seek to improve the awareness of students of all ages of career opportunities which are, or may in the future become, available to them, and to improve the ability of such students to take advantage of such career opportunities. "Career education" includes, but is not necessarily limited to, activities which involve career awareness, exploration, planning, and decision-making, which activities are free of or are designed to eliminate bias and stereotyping (including bias or stereotyping on account of race, sex or handicap).

(2) "handicap" or "handicapped" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired persons, or persons with specific learning disabilities, who by reason thereof require special education and related services;

(3) "State" shall mean the States, the District of Columbia, and the Commonwealth of Puerto Rico;

(4) "State board of education" shall mean the governing board or boards designated pursuant to State law for the administration, or for the supervision of administration, of elementary and secondary education in local educational agencies and other agencies in each State; and

(5) "local educational agency" has the meaning given it by section 403(6)(B) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 244(6)(B)).

SECTION-BY-SECTION ANALYSIS

Section 1. This section provides that the short title of the bill will be the "Career Education Implementation Incentive Act of 1977".

Section 2. This section sets out a statement of Congressional findings regarding the need for career education.

Section 3. This section provides that the purpose of his act is to provide Federal incentives to States for five years to enable State and local education agencies and institutions to develop and implement career education programs and activities for individuals of all ages, and to fulfill a number of other needs having to do with career education.

Section 4. This section authorizes appropriations for this Act, according to the following schedule: \$25,000,000 for the fiscal year 1979, \$50,000,000 for the fiscal year 1980, \$100,000,000 for the fiscal year 1981, \$50,-

000,000 for the fiscal year 1982, and \$25,000,000 for the fiscal year 1983. This section also authorizes the Commissioner to reserve up to 1 percent of the appropriation in any fiscal year for making model and demonstration program grants, and up to \$2 million in each fiscal year for the purpose of gathering, storing and disseminating information about career education and careers. This section also sets out a formula for the allocation of State grants based upon the population of each State aged 21 and younger, provides for a minimum grant of \$100,000 to each State, and provides for a ratable reduction of such grants in any year in which the appropriation does not permit such minimum grants.

Section 5. This section requires States desiring to receive funds under this Act to file annual applications for such funds, including assurances that the State will designate an appropriate administrative entity, will encourage all local education agencies and other appropriate agencies and institutions to participate, without interfering in the curriculum decision-making authority; will pass through certain minimum percentages of the funds received to such agencies and institutions, pursuant to the requirements of section 10; will ensure that at least 15% of the grant will be devoted to career planning and guidance functions; and other assurances.

Section 6. This section sets out the requirements for State plans for career education, which are required to be submitted with the annual application for each year commencing with the fiscal year 1980. The plan must set out the objectives the State hopes to attain, and the methods to be used to attain those objectives; set forth policies for assuring equal access for all students to career education programs; and provide proposed criteria for the evaluation of the State's own effort.

Section 7. This section sets out a comprehensive list of the uses to which States may put funds received under this Act. This section also requires due regard to the special needs of agencies and institutions serving disadvantaged students, and of agencies and institutions serving sparsely populated areas. This section also sets out criteria for meeting the career education needs of children enrolled in private elementary and secondary schools.

Section 8. This section authorizes the Commissioner to make direct grants to State and local educational agencies and institutions to develop model and demonstration career education projects.

Section 9. This section authorizes the Commissioner to provide career education information services, identical to the services already authorized to be performed in the fiscal year 1978 by the career education provisions of the Education Amendments of 1976 (Public Law 94-482).

Section 10. This section authorizes payments to States under the provisions of this Act, and requires States to pass through at least 60 percent of those funds the first year, and 70% in subsequent years, to local educational agencies, and requires that at least 15% in each year be passed through to public and private institutions of postsecondary education.

Section 11. This section authorizes the administration of this program by the Office of Career Education, authorizes that Office to provide technical assistance to the States, and authorizes the National Advisory Council on Career Education to give advice regarding the implementation of this Act. This section also authorizes the National Institute of Education to continue to play its complimentary role in career education.

Section 12. This section defines several terms used in the Act, including the term career education.

AMENDMENTS SUBMITTED FOR
PRINTINGTAX SIMPLIFICATION ACT OF 1977—
H.R. 3477

AMENDMENT NO. 199

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

Mr. LEAHY submitted an amendment intended to be proposed to the bill (H.R. 3477) to provide for a refund of 1976 individual income taxes and other payments, to reduce individual and business income taxes, and to provide tax simplification and reform.

NOTICE OF HEARINGS

THE CIVIL RIGHTS COMMISSION AUTHORIZATION
FOR FISCAL YEAR 1978

Mr. BAYH. Mr. President, on behalf of Senator EASTLAND, I wish to announce that the Committee on the Judiciary will hold a hearing on S. 1231, to raise the limitation on appropriations for the U.S. Commission on Civil Rights, in room 2228 Dirksen, the Judiciary Committee hearing room, at 2 p.m. on April 27, 1977. All persons desiring to submit statements should contact Nels Ackerson or Ben Dixon of the staff of the Subcommittee on the Constitution, 102B Russell Building, 202/224-8191.

Mr. ROBERT C. BYRD. 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. 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.

CONCLUSION OF MORNING
BUSINESS

Mr. ROBERT C. BYRD. I ask that morning business be closed.

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

TAX REDUCTION AND SIMPLIFICATION
ACT OF 1977

Mr. ROBERT C. BYRD. Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The clerk will state the pending business.

The assistant legislative clerk read as follows:

A bill (H.R. 3477) to provide for a refund of 1976 individual income taxes, and other payments, to reduce individual and business income taxes, and to provide tax simplification and reform.

The PRESIDING OFFICER. The clerk will state the pending motion.

The assistant legislative clerk read as follows:

A motion by Mr. BUMPERS, for himself and Mr. KENNEDY, that H.R. 3477 be recommitted to the Committee on Finance with instructions to report it forthwith with the House-proposed section 302 and the Senate-proposed substitute for the House proposed section 302 stricken.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow at the hour of 1 p.m. the Senate resume consideration of the pending motion by Mr. BUMPERS and Mr. KENNEDY to recommit with certain instructions and that the committee report back forthwith, that there be 1 hour of debate on that motion tomorrow beginning at 1 p.m., with the time equally divided between and controlled by Mr. LONG and Mr. BUMPERS; and that at the close of the hour a vote occur on the motion up or down, with a motion to lay on the table at that time to be in order.

Mr. BAKER. Mr. President, reserving the right to object, the majority leader has previously announced, and I only wish to reiterate, that the request as stated has been cleared with the distinguished senior Senator from Nebraska, the ranking Republican member of the Finance Committee, and there is no objection on our side.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia. The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. This would mean, then, Mr. President, that at the hour of 2 o'clock p.m. tomorrow, a vote would occur on the motion to recommit. It would be an up-or-down vote unless a Senator moves to table, in which event such tabling motion would occur at that time, at 2 o'clock p.m.; am I correct?

The PRESIDING OFFICER. The Senator from West Virginia is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, there are various matters here that have been cleared on both sides of the aisle. I ask unanimous consent that the Senate go into executive session to consider three nominations which were reported from committees earlier today.

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

Mr. ROBERT C. BYRD. The Committee on Energy and Natural Resources reported two nominations, which I understand have been cleared on both sides.

Mr. HANSEN. Mr. President, if the distinguished majority leader would yield, let me observe that I was at the committee meeting this morning to which the distinguished majority leader has referred, and those nominations were both reported out unanimously.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Wyoming.

The PRESIDING OFFICER. The clerk will state the first nomination.

FEDERAL ENERGY
ADMINISTRATION

The assistant legislative clerk read the nomination of David J. Bardin, of New Jersey, to be a Deputy Administrator.

Mr. BAKER. Mr. President, reserving the right to object, there is no objection on this side to this nomination or the next succeeding nomination.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

DEPARTMENT OF THE INTERIOR

The assistant legislative clerk read the nomination of Joan Mariarenee Davenport, of New Jersey, to be an Assistant Secretary of the Interior.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

Mr. ROBERT C. BYRD. Mr. President, the third nomination has been reported by the Committee on Banking, Housing, and Urban Affairs. I understand it is cleared on both sides of the aisle.

Mr. BAKER. Mr. President, there is no objection to the confirmation of this nomination.

The PRESIDING OFFICER. The clerk will state the nomination.

The assistant legislative clerk read the nomination of Chester Crawford McGuire, Jr., of California, to be an Assistant Secretary of Housing and Urban Development.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominations.

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

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. I ask unanimous consent that the Senate resume the consideration of legislative business.

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

COMMITTEE MEETINGS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all committees be authorized to meet during the session of the Senate tomorrow.

Mr. HANSEN. Mr. President, may I observe that the Committee on Energy and Natural Resources, I think, proposes not to reconvene until next Tuesday. If there were any change in plans, I would have to respectfully object that that unanimous-consent proposal exclude the Committee on Energy and Natural Resources, because I would like to be present on the floor.

Mr. ROBERT C. BYRD. Very well. Mr. President, I change my request to authorize that all committees of the Senate with the exception of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate tomorrow.

Mr. HANSEN. I do not think there will be any meeting.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? Without objection, it is so ordered.

ADDITIONAL FUNDS FOR HOUSING ASSISTANCE

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Wisconsin (Mr. PROXMIRE) I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 3843.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H.R. 3843) to authorize additional funds for housing assistance for lower income Americans in fiscal year 1977, to extend the Federal riot reinsurance and crime insurance programs, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Senator PROXMIRE, I move that the Senate insist upon its amendment and agree to the request of the House for a conference, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. PROXMIRE, Mr. SPARKMAN, Mr. WILLIAMS, Mr. BROOKE, and Mr. GARN conferees on the part of the Senate.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene this evening at 8:30, at which time there will be a quorum call. At the hour of 8:42 p.m., the Members of the Senate will proceed in a body to the Hall of the House of Representatives to hear an address by the President of the United States before a joint session of the House of Representatives and the Senate.

Following that address, the Senate, under the order previously entered, will automatically stand in recess until the hour of 12:30 p.m. tomorrow.

After the two leaders have been recognized under the standing order on tomorrow, there will be a period for the transaction of routine morning business not to extend beyond the hour of 1 o'clock p.m., with statements therein limited to 5 minutes each.

At the hour of 1 o'clock p.m., the Senate will resume consideration of the Bumpers-Kennedy motion to recommit with instructions to the committee the tax bill, and there will be 1 hour of de-

bate. At the close of the 1 hour, at 2 o'clock p.m., the vote will occur either on a motion to table the motion to recommit, or up or down on the motion to recommit. That will be a rollcall vote. Other votes will occur during the afternoon tomorrow on amendments to the bill if it is not to be recommitted, or if it is recommitted and reported. Votes will also occur on motions with relation to the measure. It is possible that the Senate will stay in until a reasonably late hour tomorrow, and also on Friday there will be rollcall votes on the same measure.

RECESS UNTIL 8:30 P.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business at this time before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 8:30 p.m. today.

The motion was agreed to; and at 5:49 p.m., the Senate took a recess until 8:30 p.m., whereupon the Senate reassembled when called to order by the Presiding Officer (Mr. STONE).

Mr. ROBERT C. BYRD. 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. 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.

Mr. ROBERT C. BYRD. Mr. President, for the information of Senators, following the address of the President the Senate will automatically stand in recess until the hour of 12:30 tomorrow afternoon. However, the doors of the Chamber will remain open in the event any Senators wish to return to the Chamber for coats or hats, and so forth.

JOINT SESSION OF THE TWO HOUSES—MESSAGE OF THE PRESIDENT OF THE UNITED STATES

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate now proceed to the Hall of the House of Representatives to hear the President's address.

The motion was agreed to, and, at 8:42 p.m., the Senate, preceded by the Sergeant-at-Arms, Frank N. Hoffmann, the Secretary of the Senate, J. Stanley

Kimmitt, and the Vice President, proceeded to the Hall of the House of Representatives to hear the address by the President of the United States.

(The address by the President of the United States, this day delivered by him to the joint session of the two Houses of the Congress, appears in the proceedings of the House of Representatives in today's RECORD.)

RECESS UNTIL 12:30 P.M. TOMORROW

At the conclusion of the joint session of the two houses, and in accordance with the order previously entered, at 9:41 p.m. the Senate recessed until tomorrow, April 21, 1977, at 12:30 p.m.

NOMINATIONS

Executive nominations received by the Senate April 20, 1977:

IN THE ARMY

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. John Quint Henion XXXX
U.S. Army.

IN THE NAVY

Vice Adm. Robert E. Adamson, Jr., U.S. Navy, for appointment to the grade of vice admiral on the retired list pursuant to the provisions of title 10, United States Code, section 5233.

CONFIRMATIONS

Executive nominations confirmed by the Senate April 20, 1977:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Chester Crawford McGuire, Jr., of California, to be an Assistant Secretary of Housing and Urban Development.

DEPARTMENT OF THE INTERIOR

Joan Mariarenee Davenport, of New Jersey, to be an Assistant Secretary of the Interior.

FEDERAL ENERGY ADMINISTRATION

David J. Bardin, of New Jersey, to be a Deputy Administrator of the Federal Energy Administration.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

HOUSE OF REPRESENTATIVES—Wednesday, April 20, 1977

The House met at 3 o'clock p.m.

The Chaplain, the Reverend Edward G. Latch, D.D., offered the following prayer:

The Lord is my Shepherd.—Psalms 23: 1.

O Thou singing Shepherd of our seeking souls, who hast promised to lead us in the paths of righteousness for Thy name's sake, lead us this day in Thy wholesome ways that we may guide our Nation along the roads of peace, justice, and good will.

Grant strength and wisdom to our

President and his Cabinet, to our Speaker and the Members of Congress, to our Chief Justice and members of the Supreme Court. Bless the moral and military leaders of our country and may those who are the directors of business and labor learn to get along together walking in the ways of righteousness and working for the highest good of our beloved land.

Grant us the courage to develop a sound energy program for the good of all and may our people respond with willing hearts to make the program work.

Hear Thou our prayer, O Lord, and grant us strength and wisdom as we work this day. 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.