COUNTDOWN

10! Such brave men!
Like Astronaut Glenn
9! Your tin foil suits shine
While rocket engines whine
8! Soon you will accelerate
Ignorant of your fate
7! Onward, upward to heaven
Just like Apollo 11
6! Your seatbelt neatly clicks
While the clock steadily ticks
5! Nerves electric and alive
No one's certain you'll survive
4! Into the empty space you'll soar
Heroic men of the Air Corps
3! Only He can foresee
What will become of thee
2! Up, up into the blue
Farewell! Adieu!
1! Your long trek has begun
It cannot be undone
0! All systems go!
To explore the long ago

—RAYMOND RORKE.

SENATE—*Thursday, November 29, 1973*

The Senate met at 10:30 a.m. and was called to order by the President pro tempore (Mr. EASTLAND).

PRAYER

The Reverend Dr. Seth R. Brooks, pastor, Universalist National Memorial Church, Washington, D.C., offered the following prayer:

Our Father, who through Thy wisdom didst permit men and women to bring forth our Nation, we offer our thanksgiving. We remember famous men and women and the unknown and unsung for the deeds and accomplishments they wrought in our Nation. We are aware of all those who would be men of present valor and would keep pure the springs of national purpose. We pray that in coming generations there may be gratitude for a goodly heritage.

We ask Thy blessing upon this body and upon the transaction of its business. We pray that each Member may be given health, strength, and courage. May the minds of those who carry grave responsibilities be held upon lofty things. May those who labor and toil find refreshment of spirit with the realization that eternal verities abide and that the arc of the universe is long and bends toward justice. Amen.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, November 28, 1973, be dispensed with.

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

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (H.R. 7446) to establish the American Revolution Bicentennial Administration, and for other purposes.

The bill was subsequently signed by the President pro tempore.

ORDER OF BUSINESS

The PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I do not desire recognition at this point.

The PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. HUGH SCOTT. Mr. President, I have elected not to disturb the peace of this body.

The PRESIDENT pro tempore. Under the previous order, the Senator from Montana (Mr. MANSFIELD) is to be recognized for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may have control of the time allotted to the distinguished majority leader.

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

RULES AND PRECEDENTS

Mr. ROBERT C. BYRD. Mr. President, I wish to raise a question that deals with the rules and precedents of the Senate, and I wish to do so merely for the benefit of future guidance of the Senate.

I suppose I have two or three questions that I would like to have resolved, if it can be done.

The first question would be this: A motion to table having been made, and the Chair having duly recognized the Senator who made that motion, can a point of order be entered at that point, thus displacing the motion to table?

The PRESIDENT pro tempore. The Chair is advised that after considerable research there appears to be no decision of the Chair exactly on point; however, in 1964 there was a ruling by the Chair that is very closely related. In that instance a resolution was being considered under a unanimous-consent agreement when the Chair stated that a Senator who had the floor could not be interrupted against his consent and that he was not required to yield for a question of personal privilege or a parliamentary inquiry.

In that instance the Senator who had the floor was subsequently called to order under rule XIX for the use of alleged objectionable language. The Presiding Officer, however, ruled that in his opinion the speaking Senator had not violated the rule. The Chair then having held that an appeal from the ruling was in order and subject to debate under the rule, an appeal was taken. The time for debate of the resolution having expired, a motion to table the resolution was made and carried. Subsequently, in reply to parliamentary inquiries, the Chair informed the Senate that the motion to table which was not debatable having been made was in order, and having been agreed to, the previous appeal from the ruling of the Chair was carried with it.

It would appear to the Chair that an appeal from the decision of the Chair and a point of order have comparable standing.

The procedure for the case in point, based on the above precedent, reasonably would have been as follows: A point of order against any procedure is in order at any time until that matter has been disposed of, but that does not mean that it has a higher privilege over all other motions. In this case the pending question had moved from the amendment per se to the motion to table and a point of order could be made against that motion to table as being in order or not being in order at that point, but the Senate had then moved one step from the amendment per se to a privileged motion—a motion to table had been made, which was not debatable. If the motion to table had carried, there would be no need for a point of order. If the motion to table failed, a point of order against the amendment as not being germane would still be in order.

Mr. ROBERT C. BYRD. So, Mr. President, if I can provide my own interpretation of that precedent as I understand it this is the only precedent that the Parliamentarian has been able to find that would be anywhere near the point that I raise. It would be my own interpretation that, as the Chair has stated, a point of order has equal standing with an appeal from a ruling by the Chair.

The PRESIDENT pro tempore. In respect to this situation it would appear so.

Mr. ROBERT C. BYRD. And a motion to table having been made had precedence in that instance over an appeal from a ruling by the Chair. Am I correct?

The PRESIDENT pro tempore. It becomes a question of interpretation, because we have no exact ruling on that point.

Mr. ROBERT C. BYRD. But in that instance, the effect was to give precedence to the motion to table over the appeal. Am I correct?

The PRESIDENT pro tempore. The previous ruling had that effect.

Mr. ROBERT C. BYRD. And that is the only similar ruling that can be found?

The PRESIDENT pro tempore. Except that there have been numerous rulings on points of order which hold that they may be raised until the said question is disposed of.

Mr. ROBERT C. BYRD. I understand that. I say most respectfully to the Chair that as I heard the Chair read the precedents, the motion to table in that instance took precedence over an appeal from the ruling of the Chair. Am I correct?

The PRESIDENT pro tempore. It would appear so.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Mr. ROBERT C. BYRD. Mr. President, that being the case, then a motion to table having been made, it would have precedence over a point of order coming in thereafter, if the point of order is equivalent to an appeal from the ruling of the Chair in the same circumstances.

Mr. HUGH SCOTT. Mr. President, would the distinguished Senator from West Virginia yield before the ruling?

Mr. ROBERT C. BYRD. Yes.

Mr. HUGH SCOTT. Mr. President, I want to raise a question of the importance of this colloquy, because I would think that we need to be very cautious not to bind the Senate in all future proceedings. This is a colloquy for information only. And I would hope that it is not intended as binding precedent unless it happens in an actual case. I take it that we are proceeding on a theoretical basis.

Mr. ROBERT C. BYRD. We are; we are exactly. And I certainly want to substantiate what the distinguished Republican leader has said. However, I think this is important.

The PRESIDENT pro tempore. These responses to parliamentary inquiries are not binding on the Senate because an appeal from these statements cannot be taken.

Mr. ROBERT C. BYRD. Exactly; however, I think it is important, may I say to my distinguished friend, the Republican leader, that we have some clarification of this situation, because on yesterday I made a motion to table. And I do not want any misunderstanding as to my purpose today in raising the question. I am not a sore head about the point of order having been upheld yesterday by the Chair, not at all. I certainly did not offer the amendment with any intention or hope that it would be upheld by the Senate. My thought and my hope was that the amendment would be tabled. So my question is not intended because of any feeling of ill will resulting from the holding of the Chair on the point of order per se yesterday.

At that time it was my feeling that, a motion to table having been made and the Chair having recognized me and having proceeded to state that the question was on my motion, and then having let a point of order come in and displace my motion, I did not think that was proper on the part of the Chair.

I said—

Did not the Senator from Hawaii have the floor in his own right?

The Chair answered that he did.

Then, I said—

Thereafter, when the Senator from Hawaii yielded back his time, I was recognized and made my motion to table.

The Chair said:

That is correct.

Then I said in effect—

Then am I to understand that a point of order can come in after the motion to table has been made?

The RECORD today does not show the response of the Chair. But the Chair did respond. The Chair responded to the effect that a point of order could come in after the motion to table had been made.

When the Chair responded in that fashion, I did not press the point. I thought I could be wrong. We were limited in time, and we had a vote at 2:30. I did not want to go through the process of appealing the ruling of the Chair because it might require two or three votes. I thought I could be wrong. However, I would stress that the Chair answered the inquiry. But the RECORD does not show the Chair's answer.

I know the Chair's answer because I saw it in the RECORD copy last evening, and it had been penciled through. The answer was, in effect, that a point of order could come in after a ruling had been made.

The fact that the Chair's response, as recorded in the reporter's transcript, was marked through with a pencil, and does not appear in the CONGRESSIONAL RECORD, indicates to me—and I am not talking about the particular Senator who was in the chair—that there was uncertainty on the part of the Parliamentarian's office.

The fact that it was marked out indicates to me that my question was not properly answered on the floor yesterday during the debate.

So, what I want is some understanding of where we now stand, because this question will come up again someday. It is my belief that a motion to table having been made, as it was on yesterday by me, a point of order should not have been allowed to come in. And I say that because a motion to table, if it carries, accomplishes the purpose of the Senator who wants to raise the point of order. If it fails, the person raising the point of order has lost no right. He can still raise his point of order.

Mr. HUGH SCOTT. Mr. President, there is a very considerable risk in revising the rules of the Senate through a colloquy. And the Chair has already answered that by saying that the responses of the Chair on points of order are not binding on the Senate.

There is an advantage, I say to my distinguished friend, the Senator from West Virginia, of a certain ambivalence under some situations in the Senate, because we cannot anticipate them.

I have in mind a point of personal privilege. Suppose that the speaker who was about to move to table an amendment had said something which involved another Senator on a point of personal privilege. It might be—and I am not exactly certain how the ruling would go—that the Chair would rule that the point of personal privilege had to be disposed of prior to the motion to table because it had occurred earlier. Stating a hypothetical case, there might be points of order of such substantial nature and of such importance to the Senate and perhaps to the bill that the Chair might rule under those circumstances that the point of order takes precedence.

I appreciate what the distinguished assistant majority leader is trying to do. I do want to caution once more that we ought not to try to anticipate anything that can happen in this unpredictable body.

I was not present when the incident arose about which the Senator is talking. So, I have no opinion on that.

Mr. ROBERT C. BYRD. Mr. President, I appreciate what the Seantor says. Perhaps I ought to address myself to the matter of the point of order. I have no fault to find with the Senator in making the point of order. He was certainly within his rights. However, I strongly feel that the motion to table had precedence, it having been made. And as one Senator who has sat on this floor almost every day for 8 years, I am not an expert on the rules. I do not think that any Senator should be expected to know as much about the rules and precedents or to have anything near the expertise of the Parliamentarian. That is why we have a Parliamentarian.

However, I have been here long enough to have some meager understandings of some of the rules and precedents. And I have been on the floor long enough to know that we can have the same situation occur again. I feel that the question to be raised at this point to indicate that there is one Senator who would not agree that a point of order concerning germaneness should be allowed to enter after a motion to table has been made.

Fortunately, I had no strong feeling about the merits of the amendment; I did not expect the amendment to be adopted. I wanted the Senate to table it. As I say, I did not press the point. I raised it when the Chair indicated that such a point of order could come in after the motion had been made. I did not want to press the point, because I thought at the time that I could be wrong. I now think I was right.

Mr. HUGH SCOTT. Mr. President, will the Senator let me raise a different point very briefly that was raised yesterday in connection with another matter of procedure?

Mr. ROBERT C. BYRD. Yes.

Mr. HUGH SCOTT. We had some concern expressed on a time agreement that we shall vote, say, at 4 o'clock, and it is uncertain whether a quorum call is expected to take place or not at that time, that some Senator planning to leave immediately after the 4 o'clock vote may miss his plane because the quorum call delays the vote until 4:20, or the reverse happens; someone comes in at 4:20, there is no quorum call, and he misses a 4 o'clock vote.

I wonder if we could establish some kind of procedure for the information of Senators whereby, in time agreements, we agree that we shall vote at 4 o'clock, the vote to be preceded or not to be preceded by a quorum call, so Senators may be on some notice. Could we do that?

Mr. ROBERT C. BYRD. May I say in response to the inquiry of the distinguished Republican leader that I find no problem here. I do not know precisely what happened yesterday, because at the time all the confusion was going on, I was thinking about my motion to table.

Mr. HUGH SCOTT. I do not know precisely what happened either. That is why I am trying to find some way out of the confusion.

Mr. ROBERT C. BYRD. But let me say further to the distinguished Repub-

lican leader that any Member has a constitutional right to suggest the absence of a quorum immediately before a vote, even though the hour for voting has been agreed to by the Senate. There is no question of that.

Mr. HUGH SCOTT. That is right.

Mr. ROBERT C. BYRD. We have done that many times, and any Member has a constitutional right to raise the point of no quorum, because no business can be conducted under the Constitution unless a quorum is present. So any Member can call for a quorum just before a vote, even though a time has been set for a vote, and he will be upheld in his right.

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

Mr. HUGH SCOTT. Mr. President, I ask unanimous consent that the time I heretofore yielded back to be returned to me.

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

Mr. HUGH SCOTT. I now yield that time to the distinguished assistant majority leader.

Mr. ROBERT C. BYRD. I thank the able minority leader. I have answered that. I want the Chair to indicate whether or not I am right, but before he does so, I want to go on to the next question.

Mr. GRIFFIN. Could we have one question at a time?

The PRESIDENT pro tempore. Under the precedents, a quorum call is always in order just before a vote.

Mr. ROBERT C. BYRD. So that disposes of that.

Mr. HUGH SCOTT. Then I would suggest that perhaps we might accommodate Senators by providing that a quorum call shall occur at 10 minutes to 4 or a quarter to 4. We cannot thereby rule out a subsequent quorum call, I am aware of that, but we could at least put everyone on notice that if there is to be a quorum call it will occur at 3:45 or at 4, so that Senators, who very often are making speeches in the evenings in other places, other cities, will be able to arrange their schedules.

Mr. GRIFFIN. Mr. President, before we leave that point, if the Senator from West Virginia will allow me——

Mr. ROBERT C. BYRD. Yes.

Mr. GRIFFIN. I think it should be noted, without commenting on whether or not an error was made with respect to the point that he is primarily concerned about. I want to focus back on my effort yesterday, at the point where a vote was to be taken on the motion to table, when I suggested the absence of a quorum and I recall that the Chair at that point indicated that such a suggestion was not in order unless time were yielded to me.

Mr. ROBERT C. BYRD. That is a different question.

Mr. GRIFFIN. Oh.

Mr. ROBERT C. BYRD. Yes.

Mr. GRIFFIN. Then I think we should——

Mr. ROBERT C. BYRD. I am coming precisely to the point.

Mr. GRIFFIN. All right.

Mr. ROBERT C. BYRD. That is a different question. If a certain amount of time is allotted to an amendment, let us say 15 minutes to a side, no Senator can put in a quorum—I hope I am correct; the Chair will sustain me if I am—no Senator can put in a quorum until that 30 minutes has elapsed, or has been yielded back, or unless time is yielded by one side or the other, or both sides, for such quorum, or unless there is a unanimous-consent agreement to the effect that a quorum call may occur without the time being charged to either side. That is quite different.

But when the time has expired or been yielded back, then nothing can keep the Senator from Michigan from getting a quorum, because he is entitled to that quorum before the transaction of business occurs. He is entitled to a showing that there is a quorum present. But as long as all time has not expired or been yielded back, he is not entitled to get his quorum call except by unanimous consent or unless time is yielded by someone for the purpose.

Am I correct?

The PRESIDENT pro tempore. The statement of the Senator from West Virginia is correct as to a quorum call being in order.

Mr. GRIFFIN. I think we might put this factor into it, though: Suppose a motion to table were made, and those in control of the time did not yield for the purpose of a quorum call. Then a Senator does not have a right to have a quorum call before the transaction of business; would that be the case?

Mr. ROBERT C. BYRD. A vote could not occur on the pending matter, and a motion to table cannot be made until all time has been yielded back. At that point, the Senator can then suggest the absence of a quorum.

Mr. GRIFFIN. I see. All right.

Mr. ROBERT C. BYRD. I had only 1 minute, by unanimous consent, and I used my minute yesterday, and the Senator from Hawaii (Mr. FONG) had 15 minutes, and he was still in control of the time. Someone asked whether we could have a quorum call, and I said, "Not on my time," because I did not have any time remaining. Until he yielded back his time, or yielded time for the purpose, a quorum could not be called. I think that was what happened.

Mr. GRIFFIN. It was my understanding that a quorum call could not be had until all time had been yielded back. Is that correct?

Mr. ROBERT C. BYRD. Or unless time is yielded for the purpose, or unanimous consent is given for the quorum, the Senator is correct.

Mr. GRIFFIN. I thank the Senator. Now I know he wants to revert to his other point.

Mr. ROBERT C. BYRD. That is the point I wished to make.

Mr. President, I am sorry for taking the time of the Senate.

The PRESIDENT pro tempore. The additional time of the Senator has expired.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Now, Mr. President, I ask unanimous consent that the time which was allotted to the distinguished majority leader at the beginning of the session and which was not used, be given back to him.

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

Mr. ALLEN. Mr. President, I ask unanimous consent that I might be allotted 5 minutes, in order that I might discuss this parliamentary inquiry.

Mr. ROBERT C. BYRD. Mr. President, so that we will not have to break our rules that are not written down, I have just gotten the time back for the majority leader that he ordinarily gets at the beginning of every day under the standing order. I did not use any of that. I am sure the majority leader will use some of it, and be glad to yield some of it to the Senator from Alabama.

Mr. MANSFIELD. Mr. President, if the Senator does not desire to be heard now, I would be glad to yield some of my time to him. If he wants to be heard, I am delighted to yield to him.

Mr. ALLEN. No; I would be delighted to be heard later. I just thought now might be a logical time.

The PRESIDENT pro tempore. The Senator from West Virginia did not have reference to the 15 minutes allotted to the majority leader under the special order, but he asked that the 5 minutes at the beginning of the session be restored to the majority leader.

Mr. GRIFFIN. Mr. President, is there any time left on this side for the minority leader?

The PRESIDENT pro tempore. No, but there is time for routine morning business.

Mr. MANSFIELD. If the Senator from Alabama will allow me, I would like to proceed now, and ask that what I have to say be printed in the RECORD after the remarks of the distinguished Senator from Alabama, and that his remarks follow the remarks of the distinguished Senator from West Virginia.

Mr. ALLEN. That will be entirely satisfactory.

Mr. MANSFIELD. The reason I make the request is, I am chairman of the military construction conference.

Mr. ALLEN. That will be entirely satisfactory.

(The remarks of Senator MANSFIELD on the subject of gasoline rationing appear later in the RECORD, by unanimous consent.)

(The following colloquy, which occurred later, is printed at this point, to preserve continuity.)

Mr. ALLEN. Mr. President, I feel sure that I am one of the greatest admirers, in and out of the Senate, the distinguished Senator from West Virginia (Mr. ROBERT C. BYRD) has. Not only do I admire his great qualities as a Senator, as a statesman, and as a great American, but I certainly admire his great parliamentary skill, his great knowledge of the rules of the Senate, and his adherence to those rules, as well as his adherence to the rules and provisions of the Constitution of the United States, I might add.

In view of the fact that I will not be able to make all the points I should like to make in this connection on the matter

of the point of order that the colloquy has been on this morning, I ask unanimous consent that the colloquy appearing on pages 38348 and 38349 of the CONGRESSIONAL RECORD be printed at this point in the RECORD.

(Subsequently, by unanimous consent, page 38341 was also ordered to be printed at this point, to precede pages 38348 and 38349.)

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

The PRESIDING OFFICER. Has all time been yielded back?

Mr. ALLEN. All time has not been yielded back.

Mr. ROBERT C. BYRD. I yield back my time, Mr. President.

Mr. ALLEN. Mr. President——

Mr. FONG. Mr. President, I yield 2 minutes to the distinguished Senator from South Carolina (Mr. THURMOND).

The PRESIDING OFFICER. The Senator from South Carolina is recognized for 2 minutes.

Mr. THURMOND. Mr. President, article I, section 6, clause 2 of the Constitution states:

No Senator . . . shall, during the time for which he was elected, be appointed to any civil office . . . which shall have been created, or the emoluments whereof shall have been increased during such time.

This provision, if properly construed, simply means that if an office is created, or if the emoluments of an office are increased, while a person is a Member of Congress, then such person is not eligible for appointment to that office.

Why? To prevent personal aggrandizement or gain.

Had the Attorney General's salary not been increased while Senator Saxbe was a Member of the Senate, without any question, he would be eligible for that office. By lowering the salary, as this bill would do, we remove the barrier created by Congress in 1969 when it increased the salary. If Congress can create the barrier Congress can remove it.

Senator SAXBE is a man of character, courage, and capacity, and I predict he will make a great Attorney General.

Mr. President, on November 27, 1973, the Washington Star-News printed an editorial entitled "The Saxbe Nomination." I ask unanimous consent that this editorial be printed in the CONGRESSIONAL RECORD.

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

THE SAXBE NOMINATION

It is clear that the framers of the Constitution intended only to prevent members of Congress from deliberately cashing in on their votes when they put in a restriction against senators and representatives serving in any federal civil office after having voted to raise the salary for that office.

It would seem, therefore, that legislation rolling back the salary, for the office of attorney general would be sufficient to clear the way for confirmation of Senator Saxbe of Ohio to head the Department of Justice.

During the first year of Saxbe's Senate term, he voted in 1969 for legislation that raised the salary of cabinet officers from $35,000 to $60,000. According to those who question his nomination, that makes him ineligible to serve as attorney general because of a prohibition in Article 1, Section 6 of the Constitution, which says that no member of Congress shall be appointed to any civil office for which the "emolument . . . shall have been increased" during his term in the Congress.

The Nixon administration has proposed to clear the way for Saxbe's confirmation by cutting the attorney general's salary back to $35,000. But critics claim this is not enough to overcome the Constitutional barrier.

"There is a precedent for this, however. It was done in 1909 so that Senator Philander Chase Knox could be confirmed as Secretary of State. In 1876, the Senate confirmed Senator Lot M. Morill as Secretary of Treasury even though cabinet salaries were increased in 1873 while he was in the Senate. And Senator Hugo L. Black was named to the Supreme Court in 1937 although he had voted to increase the retirement benefits of Supreme Court justices, which certainly seems to fall into the "emolument" category.

"In the present Watergate atmosphere, it is not unusual that nitpickers have been going over the Saxbe nomination looking for flaws and threatening to challenge the nomination in the courts if he is confirmed. It has become the style these days to question every move and motive of the Nixon administration.

"It should be obvious to anyone that Saxbe did not vote for the pay increase for cabinet officers because he expected some day to become one. Given his strong criticism of several Nixon policies, it was a sure bet until Watergate came along that he would never be asked to serve in the cabinet. We believe that cutting the salary back to $35,000 while Saxbe serves as attorney general sufficiently cures whatever constitutional defect the nomination may have had.

Mr. FONG. Mr. President, in voting to table this amendment, I am voting on the ground that we have never had any hearings on this proposition and that I may want to vote for the amendment if we had hearings on it. But, not having had any, I am voting to table.

Mr. President, I yield back the remainder of my time.

Mr. ROBERT C. BYRD. Mr. President, I move to table the amendment.

The PRESIDING OFFICER. The question is on the motion to table the——

Mr. ALLEN. Mr. President, I was going to be recognized, I thought, for a point of order after the time had been yielded back.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, I raise a point of order that the amendment is not germane and, therefore, it cannot be considered.

Mr. ROBERT C. BYRD. Mr. President——

The PRESIDING OFFICER. The Chair would state that the point of order is well taken and that the amendment is not germane.

Mr. ROBERT C. BYRD. Mr. President, did not the Senator from Hawaii have the floor in his own right when he said that he yielded back his time?

Mr. ROBERT C. BYRD. I, at that time, got

The PRESIDING OFFICER. He did.

recognition and moved to table.

The PRESIDING OFFICER. That is correct.

Mr. ROBERT C. BYRD. So the point of order cannot be entered.

Mr. ALLEN. Mr. President, I called the attention of the Chair to the fact that I asked to be recognized when all time had been yielded back, and the Chair stated that he would recognize me then.

The PRESIDING OFFICER. The motion to lay on the table is not debatable. However, the Senator from Alabama was not recognized for the purpose of debate but rather as promised for the purpose of making a point of order.

The Chair sustains the point of order.

Mr. ROBERT C. BYRD. I thank the Chair.

Well, Mr. President, I will not appeal the ruling, but I think this indicates the confusion that we are all in here. The amendment was for the purpose of doing directly that which we say we cannot do directly but which we are attempting to do indirectly in the form of S. 2673.

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

The PRESIDING OFFICER (Mr. WILLIAM L. SCOTT). Fourteen minutes remain to the Senator from West Virginia.

Mr. ROBERT C. BYRD. I thank the Chair. Very well. Would the Chair secure order and preserve order during that 14 minutes?

The PRESIDING OFFICER. The Chair will attempt to do so.

Mr. ROBERT C. BYRD. Time is running on the Senator from West Virginia, I would state to the Chair. May we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Let me say to the Senator from West Virginia that I think the Senate is now in order. The Senator may proceed.

Mr. ROBERT C. BYRD. Mr. President, I would like to have a little better order if the Chair would get it for me.

The PRESIDING OFFICER (Mr. WILLIAM L. SCOTT). The Senator from West Virginia requests that the Senate be in order. The Chair asks that Senators take their seats and refrain from speaking with one another while they are in the Chamber. If Senators wish to speak, they should please retire to the cloakroom. The distinguished Senator from West Virginia is entitled to be heard by the Senate.

Mr. ROBERT C. BYRD. Mr. President, what are we attempting to do in enacting S. 2673? First, we are attempting to bend the Constitution by legislative enactment by temporarily reducing the salary of the Attorney General as an avenue of escape from the constitutional inhibition. This is not simply a matter of reducing the salary, and every Senator knows it.

We cannot shield ourselves by that proposition. The merits of the proposition incorporated in the bill have absolutely nothing to do with our real purpose in enacting the bill. The bill, if enacted, will be a violation of both the letter and the spirit of the Constitution.

When blacks come here for legislation, they are told that the Constitution is in their way.

When citizens come here to tell us they do not want to see their children bused to public schools for the simple purpose of bringing about an arbitrary racial balance in the schools, they are told that the Constitution is in their way.

When citizens come here to ask that prayer be restored to the public schools, they are told that the Constitution stands in their way.

When labor representatives come here, they are told that the Constitution is in their way.

When farmers come here, they are told that the Constitution is in their way.

When small businessmen come here, they are told that the Constitution stands in their way.

Mr. President, I think that all Senators are vitally interested in the rules and precedents of the Senate—and may I have the attention of the Chief Parliamentarian in what I am about to say. All Senators, I think, have a duty to uphold the precedents of the Senate. I have a duty to raise a question about an occurrence which developed today.

During the recent debate on S. 2673, the distinguished Senator from Hawaii (Mr. FONG) had acquired the floor in his own right. He made a statement and then he yielded back the remainder of his time, on my unprinted amendment which was then pending.

I secured the floor and I made a motion to table—I was recognized and made a motion to table. The Chair then allowed a point of order to be made by the very distinguished Senator from Alabama (Mr. ALLEN). I did not argue the matter then. I was not interested in appealing the ruling of the Chair because I think I had made my point with the offering of the amendment. So, I am

not quarreling with the distinguished Senator from Alabama at all—or with anyone else.

I am not satisfied, however, that a point of order can be made after a motion to table has been duly made by a Senator, because there can be no debate on a motion to table.

I would therefore urge the Parliamentarian to research this question. I am not setting myself up as a parliamentarian, but I think, if this is right, then we should know; and if this is wrong, then we should know so that the Senate will be properly guided in the future.

Thus, I would urge the Parliamentarian, with all due respect to the Parliamentarian, to research this question and be prepared at a later date to state precisely what that research shows.

Mr. ALLEN. Mr. President, will the distinguished assistant majority leader yield?

Mr. ROBERT C. BYRD. I am happy to yield to the Senator from Alabama.

Mr. ALLEN. I recognize the parliamentary skill of the distinguished assistant majority leader. Certainly it is unequaled in this body. I believe that his recital of the circumstances surrounding the recognition of the Senator from Alabama up to the making of the point of order left out, unknowingly of course, an added circumstance that, before the time was yielded back, the Senator from Alabama rose and addressed the Chair and was recognized by the Chair and then stated that he wished to raise the point of order. The distinguished occupant of the Chair at that time, the junior Senator from Louisiana (Mr. JOHNSTON), stated that the Senator from Alabama was out of order inasmuch as all time had not yet been yielded back. The Senator from Alabama at that time—and the official Record will disclose this, I am sure—asked the Chair, "Will the Chair then recognize the Senator from Alabama as soon as all time has been yielded back?"

The Chair stated that he would. So, in the first place, the Chair was merely carrying out his commitment made before the whole Senate during the proceedings of the Senate to the Senator from Alabama that he would recognize him for the purpose of raising that point of order as soon as all time had been yielded back.

Now that would certainly justify the Chair in recognizing the Senator from Alabama.

Now, on the other point, and I appreciate the Senator's asking that the Parliamentarian research this point, it would seem to the Senator from Alabama that if any amendment is improperly before the Senate, a motion to table that amendment does not put any element of germaneness into the amendment and make it properly before the Senate. So it would seem to me, even though a motion to table had been made, that it would be proper to raise the point of order that the amendment was not properly before the Senate; and that would not be a debate, it would be merely raising a parliamentary point.

So I do certainly join in the request of the distinguished assistant majority leader that the Parliamentarian research the point.

Mr. ROBERT C. BYRD. Mr. President, I am grateful for the comments that the distinguished Senator from Alabama (Mr. ALLEN) has made, because they round out the record.

I do not agree, however, that the Chair has any business committing itself to recognizing any Senator at a later point unless it is done by unanimous consent because, under the rules, as the Senator well knows, the Chair shall recognize the Senator who first seeks recognition. But the Chair, of course, has discretion. The Chair does not have to do that.

I do not think the fact that the Senator from Alabama asked that he be recognized at a later time to make his point of order carried with it any status. I suppose the Chair felt committed, but the Chair did not have to be committed. I got recognition after the Senator from Hawaii yielded the floor, and I made my tabling motion, which would have had the same practical effect, if it had carried, as taking down the amendment by a point of order.

Mr. ALLEN. With all due respect to the distinguished Senator from West Virginia, I wonder why he did not raise that point at the time, instead of waiting until this time.

Mr. ROBERT C. BYRD. What point?

Mr. ALLEN. The point that the Senator from Alabama should not have been recognized.

Mr. ROBERT C. BYRD. I will tell the Senator why I did not raise it at the time. Our time was short. I did not want to appeal the ruling.

Mr. ALLEN. I am not talking about the ruling.

Mr. ROBERT C. BYRD. I understand. I did raise the point, but I did not want the question the Chair further.

I am not concerned because the Senator's point of order was upheld. I wanted to see the amendment tabled.

What I am concerned about is this: I do not believe that previous precedents will uphold the Chair in what the Chair did. I may be wrong, but, if so, I ought to be shown. We ought to know what the precedents of the Senate are. If previous precedents show that my motion to table should have been voted on and that the point of order should not have come in, then that is what the precedent ought to be. If we are going to have a new precedent by which, after a motion to table has been made, a point of order can still come in, we ought to know about the precedent. I want to know what the precedents are, so that the Senate can be correctly guided in the future. That is all I am asking for.

Mr. ALLEN. The distinguished majority whip will recall that at one time, when the Senator from Alabama had a motion to table before the Senate on the postcard registration bill, the distinguished majority whip put in some six, seven, or eight quorum calls and motions to adjourn, in the face of a motion to table.

Mr. ROBERT C. BYRD. Yes. A Senator, under the Constitution, has a right to call for a quorum; and a Senator cannot be denied the constitutional right to call for a quorum before a vote.

Mr. ALLEN. I saw it happen here today, when we were not allowed to have a quorum call unless there was time.

Mr. ROBERT C. BYRD. The Senator raises a good question. The Senator was denied his constitutional right for a quorum call.

Mr. ALLEN. One more response to the Senator from West Virginia: I doubt that we are going to find a precedent in which a point of order was raised in the face of a motion to table, where the Presiding Officer had committed himself to recognize a Senator for making a point of order and did proceed to recognize him in compliance with his commitment. I doubt that we will find a precedent on all fours with that.

Mr. ROBERT C. BYRD. We may not, May I assure the Senator again that there is certainly no ill will on my part toward him for raising the point of order. That was his right. There is no ill will on my part toward the Parliamentarian. I want the precedents researched.

Mr. ALLEN. I am sure there is no feeling of that kind on the part of the distinguished Senator.

Mr. ALLEN. Mr. President, I care not how the Chair rules on this point. I agree with the distinguished Senator from West Virginia that the Senate ought to know what the construction by the Chair of that rule is, as to whether or not a point of order can be raised after a motion to table has been made on an amendment or a measure before the Senate. I believe it was restricted in this case to the germaneness of an amendment.

First, I will say that to rule that a point of order cannot be made under such circumstances does violence to logic; because under the time limitation agreement and a germaneness rule, it would be possible for any Senator, under such circumstances, to offer an entirely extraneous amendment and have it before the Senate; then make his motion to table, and then force a vote by the Senate on an entirely extraneous matter that should not be before the Senate. So the part of logic would be to allow the point of order to be made that the amendment is not properly before the Senate. That would be the logical procedure, and not to require a vote on an extraneous amendment.

Be that as it may, the facts presented yesterday when the point of order was made are not quite as simple as the parliamentary inquiry that the distinguished Senator from West Virginia made as to whether a point of order can be raised after a tabling motion has been made. Yesterday, before the time was yielded back on the amendment, the Senator from Alabama tried to get recognition in order to raise a point of order; and the Chair stated that he could not be recognized until all time had been yielded back. Then, before all time was yielded back, the distinguished Senator from West Virginia turned to the Senator from Alabama and said, "Do you want to make your point of order at this time?" So it was well understood that the Senator from Alabama wanted to raise the point of order at the conclusion of the time.

Then, when the motion to table was made, the Senator from Alabama insisted on his right to raise the point of order. Apparently, the Chair backed up and allowed him to make the point of order, ruling at the same time, as the Senator from West Virginia pointed out, that the point of order was in order—seemingly ruling at that point in lieu of or in addition to the fact that the Senator from Alabama had been seeking to raise that point of order before the time was yielded back.

So it is not exactly as simple as the parliamentary inquiry that had been made. Whatever the ruling is, of course, the Senate will abide by it. But I do point out that to rule that a Senator cannot make a point of order under controlled time, where germaneness is involved, could require the Senate to vote on extraneous matters not properly before the Senate. That is what happened on yesterday, and that is the logic of the position of the Senator from Alabama on the point of order.

Mr. ROBERT C. BYRD. Mr. President, I do not want to belabor this point, except for the purpose of having the RECORD also show the counter argument. I realize that this will not settle the matter, but I think the RECORD should also

show the other argument, which I wish to make.

First of all, I did turn to the able Senator at some point and say, "Now is the Senator ready to make his point of order?" There is no question about that. But time passed. I decided in the meantime to press my motion to table. Every Senator has a right to change his mind.

So, having earlier put the Senate on notice that it was my intention to make a motion to table, having made the motion to table, having withdrawn it, I decided I would pursue that course. That was why, even though I had turned to the able Senator and said, "Is the Senator ready to make his point of order?" and he could not make it at that point, I later felt that I was perfectly within my right to pursue the course I had earlier outlined and move to table.

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

Mr. ROBERT C. BYRD. I yield.

Mr. ALLEN. I think that in order to come under the precedent that has been cited by the Chair—that is, where the point of order was raised against an amendment and then a subsequent motion to table being made and carrying, and carrying with it the point of order—it would have been necessary for the Senator from West Virginia to renew his motion to table after the point of order had been raised by the Senator from Alabama. If the Senator from West Virginia had done that, he would have come squarely under the precedent; but not having done that, I do not believe the precedent covers the exact situation that transpired on yesterday.

Mr. ROBERT C. BYRD. Mr. President, if the Senator had made his point of order, I think it would have been perfectly proper for the Chair to rule on his point of order. But the exact situation was that I had already made a motion to table. The Chair said, "The question is on the." He was going through the ritual of saying, "The question is on the motion to table."

I had been recognized, and the motion to table was before the Senate. A motion to table cannot be debated. I did not feel that at that point a point of order was in order with respect to germaneness.

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

Mr. ROBERT C. BYRD. I yield.

Mr. ALLEN. If the Senator then had renewed his motion to table, he would have come squarely under the precedent; but not having done so, he did not do it.

Mr. ROBERT C. BYRD. I did not need to renew it because it was before the Senate. The Chair arbitrarily took it away from me. That is the thing I am concerned about—not so much because of yesterday, but it might happen again, and it might happen the next time to the distinguished Senator from Alabama.

As to the logic, Mr. President, I greatly respect the Senator from Alabama. He is a great American, a great Senator, and a Christian gentleman. I think he is the best parliamentarian now serving as a Member of the Senate. He has had very valuable experience formerly as the Lieutenant Governor of Alabama, in presiding over the Senate of Alabama. He has had a long and distinguished service before coming to the U.S. Senate. So far as I am concerned, I bow to him. But I cannot agree that the logic of this matter is as he has stated.

First of all, it seems to me that a motion to table, not being debatable, can settle a matter more quickly. If we go the route of the point of order, then there is the matter of appealing the ruling of the Chair, that can arise, which will require a vote, and it can be debated. There is the matter of tabling the appeal of the ruling of the Chair, which is in order. That could require a vote. Moreover, I do not like to see the Chair wrongly overruled. When the Senate goes that route, it opens up the possibility that the Chair will make a ruling that is the right ruling and which will be wrongly overruled by the Senate, because Senators who come in the door are often guided by the emotion or merit involved in the particular amendment or motion, or whatever is at stake, and they do not really understand perhaps that they may be overruling the Chair and breaking a vital and longstanding precedent.

So I think that anything that will best avoid that possible danger, plus the cost of additional time involved in that route, is the way the Senate ought to go; and the motion to table disposes of the matter with promptitude, without debate, and without the danger of having the Chair overruled in error. If it fails, the Senator who wants to make the point of order can still make his point of order, and he has lost no right of his.

Mr. President, I close with this comment.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. ALLEN. Mr. President, I ask recognition in the morning hour and I yield my time to the Senator from West Virginia.

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

Mr. ROBERT C. BYRD. The distinguished Senator from Alabama has asked that certain pages of the RECORD be printed.

Mr. ALLEN. Yes. Page 38348, and 38349.

Mr. ROBERT C. BYRD. Yes. On page 38348 I responded to the distinguished Senator from Alabama by saying:

> I did understand. I did raise the point, but I did not want to question the Chair further.

In order that that may be clear as to the fact that I did raise the point, I ask unanimous consent that page 38341 also be printed in the RECORD, and I think it should appear, if the Senator has no objection, just prior to the pages which he has requested be printed because that page appears prior thereto in the RECORD.

Mr. ALLEN. Yes.

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

(See prior point in RECORD where pages 38341, 38348 and 38349 appear.)

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the limitation on statements during the period for transaction of routine morning business today be limited to 5 minutes rather than to 3 minutes.

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

GAS RATIONING WILL BE NECESSARY

Mr. MANSFIELD. Mr. President, the latest figures on unemployment are at 4.5 percent which I think is the lowest in 3 years. These figures go back a month, I believe. Since that time, there have been statements made that unemployment, in view of the energy crisis, will possibly reach 8 percent.

I note that the administration, in the person of the Chairman of the Council of Economic Advisers, Mr. Stein, said he saw no basis for projections of a possible 8 percent unemployment rate in the next year if the Arab oil embargo is not lifted. That statement is taken from the Oil Daily under date of Thursday, November 8, 1973.

However, I note that United Airlines, American Airlines, and Frontier Airlines are either laying off pilots, stewardesses and stewards, and some ground crews, or will be in the process of doing so shortly.

I note also that a private plane concern, the Cessna Manufacturing Co., I believe located in Kansas, at the present time has indicated it will be forced to lay off 25 percent of its personnel and perhaps more in the months ahead because of the prohibitions on fuel laid down so far as general aviation is concerned.

I note also that on yesterday it was announced the armed services are shipping to Vietnam and Cambodia 22,000 barrels of aviation gasoline every day.

It is known, of course, that because of the drawdown in Mideast oil, something on the order of 600,000 barrels a day, I believe, have been diverted from domestic use for the use of our armed services. That is understandable. I do not know whether they need that much, but certainly the armed services should have a priority. But I cannot understand 22,000 barrels of oil a day going to Cambodia and South Vietnam at this time; because I want to say to my associates in this Chamber that we are facing a crisis which I do not think we even yet realize is as serious as it is going to be.

Mr. President, the resumption of oil shipments from the Mideast would make no difference in the immediate future—and, I would say, up to 2 years—in the difficulties which confront this Nation in an energy sense today.

We have been profligate with our resources. We have been wasteful with our energy uses. We have, I understand, over the past several years, wasted between 40 percent to 50 percent of the energy we consume.

We are not going to be able to overcome that deficiency through lowering

thermometers in our homes or offices to 68 degrees. We are not going to be able to overcome that deficiency by establishing a rate of 50 miles an hour for automobiles, a rate, incidentally, which I note in the last day or so has been raised to 55 miles an hour for trucks.

Chilly homes and reduced speeds on our highways will be among the least serious of the difficulties which confront us at the present time.

What I am worried about is not the minor sacrifices, but what the economic effects of the shutdown on imports on the one hand and the wastage on the other by this country will cause, because what we will have will be an increase in fuel prices—whether we like it or not; what we will have will be increased unemployment, and the signs are there already—whether we like it or not; and what we will have will be increased inflation, now running about 8 percent a year—whether we like it or not.

If we are not careful and do not face up to this problem as we should, I think that the danger of a recession next year is not only apparent, but very likely real.

I would point out further, Mr. President, that the petrochemical industry will be hard hit, as well as the plastics industry, the synthetic rubber industry, and the fertilizer industry. At the present time, General Motors, I think, is shutting down 16 of its plants a week or so before Christmas. Whether they will reopen after the first of the year is undetermined at this time, but that means that thousands of men will be out of work, and consumer goods and food will be affected, because, after all, if we are going to produce the surpluses we need in order to feed ourselves and hungry countries throughout the world, we are going to see that the farmers get enough gasoline.

Thus, Mr. President, with all these factors to consider; namely, unemployment, shortages, increase in prices, I would hope that the administration would give the most serious consideration not to an increase from the present 4-cent national Federal sales tax on gasoline to something on the order of 30 or 40 cents, as has been mentioned, but to rationing. That is not popular, but at least it is equitable. The poor and the middle-income groups will be treated on that basis just as fairly as the rich who can afford increased prices and who would be able to afford increased taxes.

All I want to do is to raise, once again, warning flags as to what confronts this Nation at the present time, and to point out that so far as importation of fuel from the Middle East is concerned, it will not make a bit of difference so far as the crisis which confronts us at this present time is concerned, even if it is resumed.

So it is time to face up to the facts and to do what can be done, and also to recognize that there is such a thing as equality insofar as the distribution of fuel oil supplies is concerned. That would be far better than any kind of inequitable system which seeks to raise more revenue through increased taxes on gasoline.

Mr. President, if that is ever done—and I shall oppose it all the way through—it will mean that the poor and the middle-income groups, who now bear the greatest share of the burden of taxation in this country—and they have no tax loopholes—will be the ones who will have to carry the added burdens.

Accordingly, Mr. President, I would hope that while the administration, the President, and his counselors are meeting, they will be able to come up with solutions which will allow us to confront this problem on an equitable basis.

I want to assure the President that if he does, the Senate will be prepared to support him because we, too, are aware of the emergency which exists in this country today and we are well aware of what this crisis—this potential crisis—can do to us in the years ahead.

EXTENSION OF PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the period for the transaction of routine morning business be extended an additional 30 minutes, with statements limited therein to 5 minutes.

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

The Senator from Oklahoma is recognized.

Mr. BARTLETT. I thank the distinguished Senator from West Virginia.

STEEL AND ENERGY: MUTUAL DEPENDENTS

Mr. BARTLETT. Mr. President, the people of the United States are facing a severe energy crisis. By the end of this winter, and surely by the end of next summer, there will be few if any "nonbelievers" in the existence of an honest to goodness energy crisis of huge proportions.

It is hard to believe, but almost nothing is being done to improve our energy situation; and on the contrary, much is being done to exacerbate it. Constructive legislation is being sidetracked by previous political commitments and lack of understanding of the petroleum industry. Instead Congress seems to be satisfied with merely spreading out the shortages rather than doing something to relieve them—guaranteeing rationing and sacrifice including loss of jobs and simultaneously guaranteeing no solution to the real problem of insufficient supplies of energy.

Ironically, the dependence of the energy industry upon available steel and the corresponding dependence of the steel industry upon available energy represent probably the most important relationship within the U.S. economy. If either of these vital industries suffers, the other suffers, and then the entire economy breaks down.

Ostensibly, the answer to our Nation's energy crisis is very simple—we need to increase domestic energy supplies. In the short term we must depend upon those sources of energy that we know best—the ones that have supplied our needs for many years now. Last year petroleum and natural gas supplied 78 percent of our entire domestic energy consumption.

Petroleum exploration and development expenditures within the United States have decreased from approximately $7.3 billion in 1956 to $3.9 billion in 1971; wildcat drilling is down from 16,207 wells in 1956 to only 7,539 in 1972; and new reserve additions of oil and gas are down from 3.78 billion barrels and 24.8 trillion cubic feet respectively in 1956 to 1.8 billion barrels and 9.8 trillion cubic feet respectively in 1972.

To emulate the drilling to demand ratio of 1956 would require almost four times the current drilling rate and would require an estimated $15.2 billion in exploration and development outlays. In 1971 only $3.9 billion was invested in exploration and development.

The petroleum industry is trying to respond to recent price increases for oil and gas. But because of lack of available steel and other necessities, drilling activity is up only 13 to 14 percent over last year.

We must have an overall energy program. That program must coordinate all of those industries which must function in a flatout effort to cope with our rapidly increasing energy problems. The first goal of any energy program should be to at least double the current drilling rate.

The current drilling rate cannot be doubled unless the steel industry also gears up to supply the needed steel.

In a very short time, oil well casing, tubing, drill pipe, drill collars, valves at the wellhead, blowout preventers for drilling safety, and forgings for many other types of steel equipment necessary to operate in the oilfield are now in short supply. Drill pipe in some areas has as much as an 18-month delivery schedule—they cannot get new drill pipe delivered until 1975.

Several factors have caused this shortage of oilfield steel goods to occur in a very short period of time.

First of all, there is a worldwide shortage of steel—competition within the world market is fierce. Domestic steel prices are controlled at a low level compared to the world market by the Cost of Living Council. These low prices are counterproductive in several ways.

It is not attractive to foreign steel makers to export steel into the United States any longer when they can receive a higher price elsewhere. Historically, imported tubular steel has cost about $25 to $30 per ton less than domestic steel. Now, if you can find anyone who will import tubular steel, it costs $25 per ton more than domestic steel. The recent devaluations of the dollar and prices on domestically produced steel products and tubular goods controlled at a level significantly less than corresponding foreign prices have encouraged the exportation of American steel products. Exported steel can be delivered to other countries cheaper than foreign-made steel, so the demand from the outside is rising. Domestic mills can get 25 to 35 percent more for steel that they export. It seems reasonable to assume that with such an economic incentive export commitments will increase.

The price controls on steel have been a disincentive to U.S. steelmakers to invest in both new steel and rolling mill capacity. The return on the investment at current prices is not enough economic incentive to justify the investment.

Even after the decision is made to add new capacity, it will take from 2 to 3 years to complete significant capacity.

A second major reason that steel tubular goods are in short supply is that drilling activity is up in response to recent price increases for oil and natural gas. Some drilling prospects that would have been abandoned at lower prices, because of the unfavorable economics, are now more attractive at the higher prices.

In anticipation of expanded drilling programs many larger operators have been stocking up with pipe sufficient to meet their needs for several months.

Unfortunately, the small independent operator, who drills most of the wells in the United States—approximately 75 percent—in general, cannot afford to buy great quantities of pipe. Now he cannot spot-buy tubular goods to fill his needs. Plans to drill wells have been delayed or abandoned for lack of drilling pipe or casing.

Under the recent inequitable two-tier pricing system for crude oil, adopted by the Cost of Living Council, there was some incentive in light of the casing shortage to abandon marginal, low volume producing wells with "old" oil being sold at lower prices than "new" oil would bring. In some instances the casing was pulled from producing oil wells and used in newly drilled wells—which could receive a free market price for their oil under the Cost of Living Council's guidelines.

It makes no sense to shut in "old" production because casing is not available for "new" wells, but the steel shortage and the Cost of Living Council's regulations encouraged producers to do this.

Used casing prices have gone up 75 percent in the last 6 months because of the shortage of new steel. Now, generally, used casing is selling at nearly the same prices as new casing and in some cases exceeds the price for new casing.

The "stripper well amendment" which I proposed to the Alaskan pipeline bill has become law. Exempting these marginal wells from price controls will help to discourage these producing wells from being plugged and abandoned.

The petroleum industry is trying to respond to recent price increases for crude oil and natural gas but their effort is being hampered by lack of steel. At the same time, the steel industry is dependent upon adequate supplies of oil and gas in the manufacture of steel.

The steel industry uses approximately 300 trillion Btu's of energy annually. Although much of this energy is derived from coal, the 18 percent supplied by natural gas and the 9 percent supplied by fuel oil are critical to the reheating, annealing, heat treating, and similar specialized uses where the technology has not been developed to permit coal to be used. Now that our energy situation has degenerated to a condition requiring allocations of fuel, the steel industry faces allotments of critical fuel on the basis of previous levels of operations which are far short of the current demand.

Thus, because of the fuel shortage, the steel industry is facing restrictions on fuel usage at a time when increased steel production is a must if additional supplies of fuel are to be generated.

Truly steel and energy have a mutual dependence.

On November 1, I sent a telegram to President Nixon calling upon him to encourage the removal of price controls on steel and steel products which are associated with the exploration, development, and production of energy. This is a necessity if exports of steel are to be discouraged, and imports of foreign steel are to be made attractive and if investments are to be made by the steel companies to increase capacity. Fourteen of my colleagues signed this telegram with me.

On November 19, 1973, I wrote a letter to Secretary of the Treasury, George Shultz, again calling attention to the untenable steel situation. I will meet with Secretary Shultz, Dr. Dunlop of the Cost of Living Council, and others including several distinguished Senators, early next week on this important matter.

This Nation has used our plentiful energy supply to greatly expand our productivity—our productivity in turn has brought high employment, high standard of living, good health care, an improved environment, expensive and numerous social programs—a record not matched by any nation.

Our shortage of energy means a reduction in productivity—a reduction in jobs, standard of living, health care, environmental progress, and social reforms.

We cannot increase productivity at prices that produce shortages of oil and gas and steel.

The oil, gas, and steel industries are like grocery stores which have been selling items off the shelf at less than replacement prices.

It is about time all the necessary building blocks are put into place to help increase supplies of energy. Unfortunately, up to now we as a nation have been very shortsighted. Congress has had little insight toward proposing viable solutions to our energy problems. Instead Congress seems content to spread out shortages rather than eliminate them. Let us unite together to be positive as well as negative. This country was not built by accenting the negative. Rather it was built by vigorous courageous positive action. Let us unite to increase supplies of energy.

To increase supplies of oil, gas, and steel while reducing demand and putting each fuel to its best use, we must raise prices—the fairest way is to remove controls and to establish a free market.

BUDGET REFORM LEGISLATION

Mr. PERCY. Mr. President, I am most appreciative that the acting majority leader and the distinguished chairman of the Committee on Government Operations are in the Chamber. I wish to address my comments to the majority side because they hold the leadership in the matter of budget reform legislation.

First, I refer to Resolution No. 6 of the Democratic Caucus printed in the RECORD of February 5, 1973, in which it is stated that, "Whereas Congress must recapture its rightful constitutional place in the fiscal field," it resolves that the members of the Joint Committee on Budget Control expedite its studies for the purpose of recommending to Congress, by February 15, 1973, a comprehensive reform of the congressional budget process.

The Committee on Government Operations went to work after studying the results of the 32-member, bipartisan joint committee on budget control, which made its report in April.

In the first 6 months of 1973, Members of Congress introduced more than 250 bills and resolutions dealing with reform of the congressional budget process.

The leadership received a letter on congressional concern signed by the 13 freshman Senators. The letter stated that—

> The most crucial question facing the body today is this: what do we intend to do about the Federal budget and our constitutional responsibility over it?

The Committee on Government Operations began its work on budget reform in March. The distinguished Senator from North Carolina (Mr. ERVIN), the distinguished Senator from Montana (Mr. METCALF), and I introduced a comprehensive bill, S. 1541, on April 8. More than 30 witnesses testified during 8 days of hearings, including a wide range of budget experts. Agreement on the need for reform was unanimous.

The Budgeting Subcommittee began its markup session on S. 1541 in June and reported the bill on July 25. The full Government Operations Committee began its markups in September and ordered the bill reported on November 8.

Mr. President, I ask unanimous consent to have printed in the RECORD at the close of my comments two articles published in the Washington Post on October 7 and October 10, written by David Broder.

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

(See exhibit 1.)

Mr. PERCY. Mr. President, the conclusion of the October 7 article is that—

> Now, as the session draws to a close, it is a fair test for the Democratic leadership—of Speaker Carl Albert and Sen. Mike Mansfield—to see to it that the opportunity for this essential reform is not lost.

There is another article, dated October 10, in which this distinguished columnist, once again said it is time for the Senate to put its own house in order and give high priority to budget reform.

This bill has been reported out in the House and the House has scheduled action for December 3 and 4. The House recognizes that if we let this legislation slip into next year, we will lose a whole year's work because among other things, it calls for a change in the fiscal year to October 1, and it is necessary to get that change underway.

I, therefore, feel it is crucial to bring this legislation to the floor and vote on it this year, before we go home for Christmas.

I think, as the distinguished chairman of the Committee on Government Operations (Mr. ERVIN) has said, it is the

most important legislation facing the Congress. It is certainly the most important legislation I have worked on in 7 years in the Senate.

As James J. Kilpatrick said in his article in last night's Washington Star-News—which I ask unanimous consent to have incorporated in the RECORD at the conclusion of my remarks—if reform is enacted—

A new sense of order will be imposed on the present chaos of Federal spending.

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

(See exhibit 2.)

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. PERCY. Is there any Senator available who could give me 2 minutes?

Mr. HARRY F. BYRD, JR. Mr. President, I yield 2 minutes to the Senator from Illinois.

Mr. PERCY. I thank the distinguished Senator from Virginia, whose distinguished father had many times commented on this subject. When that distinguished Senator left the Senate, he left that firm resolve to be kept by his distinguished son, and I know we will be working side by side on this problem.

We have one problem which remains, I am referring to whether this legislation should be referred to the Committee on Rules and Administration. The entire Government Operations Committee has written the joint leadership asking for fast action on the budget bill.

The Rules Committee does have jurisdiction over "matters relating to parliamentary rules." The budget bill makes changes in the parliamentary rules of the Senate. These changes have been extremely carefully considered by the Budgeting Subcommittee and the full Government Operations Committee, with full advice from Senate legislative counsel.

If there is a need for refinement or technical corrections of the bill's changes in the rules, these can always be made after the bill is enacted.

The Senate minority leader and the ranking Republican on the Rules Committee, Senator COOK, agree that the Senate should act on the bill before Christmas. They have waived further consideration by the Rules Committee.

I, therefore, turn with a sense of urgency to the majority leadership now and ask the question: What can be done to put this legislation on the floor of the Senate so that we can act on it this year and get this vital work underway? There must be a way we can move, in accordance with established parliamentary procedure, and still take into account the urgency of this matter.

I simply turn to the leadership and ask respectfully for a response, because this is an issue I am not, as one Senator, going to give up on. I do not think it is necessary to pass it off until next year.

The above-mentioned articles follow:

EXHIBIT 1

[From the Washington Post, Oct. 7, 1973]

BUDGET BATTLE, REVISITED

(By David S. Broder)

On both sides of Capitol Hill last week, men were struggling with a problem as important in its consequences as any the Congress will face this year. It is the problem of equipping the Congress with a mechanism for handling the federal budget.

Let it be said, at the outset, that it is a terribly difficult task. There is no quick, easy answer to the question of how Congress can evaluate and balance the claims of thousands of ongoing agencies and programs against the needs of the country and the requirements of sound economic policy, in a fashion that protects the rights of 535 indiviual representatives and senators, and yet permits them to make an intelligent collective judgment.

Nor is this simply a challenging intellectual problem. It is, at heart, a question of power—the power of the purse. The process of negotiating the sharing of that power by those who now enjoy disproportionate influence over money matters in Congress involves exquisitely intricate politics.

But solving the problem is important to the national interest. At present, members of Congress deal piecemeal with the appropriations bills (which control a declining fraction of federal spending) and never have an opportunity to assess the overall impact of their fiscal decisions. The result has been a history of deficits, a habit of delayed decisions which cause administrative chaos, and, of course, a transfer of real budgetary decision-making power from Congress to an already powerful President.

It was the dramatic evidence of that shift of power, symbolized by Mr. Nixon's bold use of impoundments to halt congressionally-mandated programs, that last winter spurred Congress' sudden interest in reform of the budgetary process. Since then, some 40 to 50 of the ablest members of the House and Senate in both parties have been struggling with the problem. They have not yet resolved their own differences on substantive procedural issues, but they have managed to bring the problem close to the point of decision. The House Rules Committee and the Senate Government Operations Committee are actively trying to draft legislation for floor consideration.

Yet, the leaders of the budget-reform battle talk with varying degrees of discouragement about the prospects for action this year. Estimates of its chances range from 50-50 downward.

Interestingly, many of the legislators say their cause has been damaged by Watergate. Public attention has been diverted from the Battle of the Budget, which was Topic A in Washington for the first three months of the year, to the more compelling dramas of Nixon, Agnew, Haldeman, Ehrlichman and Mitchell.

At the same time, the weakening of the President's position since March has reduced the pressure on Congress to put its own fiscal house in order. Whatever the constitutionality of those impoundments of last winter, they provided a powerful catalyst for congressional budgetary reform. Now, with many members thinking Mr. Nixon has been cut down to size, there's a natural tendency for Congress to revert to the status quo, which allows members to wangle what they want for their own districts without having to take rseponsibility for adding up the cost to the country.

Finally, Watergate has interfered with reform of the budget process by diverting the time and energy of certain key members of Congress. For example the Government Operations Committee can meet on the bill only on Mondays and Fridays this month, because it's chairman, Sen. Sam Ervin (D-N.C.), must preside at the Watergate hearings Tuesday through Thursday. Keeping enough senators on the premises to make a committee quorum on Monday and Friday is very tough.

In a real sense, then, the budget reform bills may provide the best test of the President's contention that Watergate has diverted Congress from "the people's business." As a generalization, that argument is suspect. But budget reform is an important item of the people's business, and it remains to be seen whether Congress will act on it this year.

The senators and representatives who have been grappling with the problem have given the effort their dead level best. There has been ample time for consideration of the merits and demerits of various solutions. Now, as the session draws to a close, it is a fair test of the democratic leadership—of Speaker Carl Albert and Sen. Mike Mansfield—to see to it that the opportunity for this essential reform is not lost.

EXCERPT

(NOTE.—The excerpt is from an article entitled "Senate Fleeing Political Virus," by David S. Broder, appearing in the Washington Post of October 10, 1973.)

The official explanation is that the Senate has cleared its agenda and is waiting for the House to send it more bills. That's mostly malarkey. If the senators were eager for work, they could perfectly well spend those two weeks completing committee consideration and floor action on the bills to reform the budget-making process and campaigns—to mention only two of many items that would help them put their own house in order.

EXHIBIT 2

[From the Washington Star-News, Nov. 28, 1973]

BUDGET REFORM MAY BE EMERGING

(By James J. Kilpatrick)

More than 50 years have passed since Congress adopted the Budget and Accounting Act of 1921. Since then, so far as congressional control of the purse is concerned, it has been downhill all the way. Now the real and hopeful possibility is emerging that the trend may be reversed. If the two chambers can agree on a major pending bill, Congress may be back in the saddle again.

The matter is of towering importance to the American people, but the issue lacks political pizazz. Not many observers are much interested in the companion House and Senate bills that are scheduled for consideration in December. Yet if a workable bill can be passed, and if the two chambers thereafter abide by the spirit and the letter of this reform proposal, a new sense of order will be imposed on the present chaos of federal spending.

The chaos is of fairly recent origin. For the first hundred years of this Republic's history, federal spending was relatively modest. In 70 of those 100 years, the budget showed a surplus. By 1900 the national debt amounted to only one billion dollars. By World War II, however, spending had begun to soar, and executive agencies of the government had learned how to razzle-dazzle the Congress with end runs around the appropriations committees.

The 1921 act helped for a time, but with the Depression of the 1930s new theories of federal spending gained control. World War II made bad matters worse. For the past quarter century, the Congress has tagged along behind successive presidents, unable to gain a sense of direction.

The late Harry Byrd used to talk about it all the time. The great Virginian, for many years chairman of the Senate Finance Committee, labored unceasingly to achieve unified control of the budget. He got nowhere. In Byrd's view, it was lunacy for Congress to operate under a system by which a dozen appropriations bills—plus a raft of supplementals and deficiencies—were considered in isolation, as if no outlay were related to any other outlay or to federal revenues as a whole.

Byrd died too soon. After two years of hard labor and delicate compromise, the House and Senate now appear ready to consider a completely new system of fiscal control.

Details remain to be hammered out, but these are the main features: The President will continue to send up his budget in January, but it will cover a fiscal year beginning in October instead of in July. As soon as they are received, the White House figures will be examined by a new Congressional Office of the Budget and by newly created budget committees in each chamber.

The idea at this point is for Congress itself, by joint resolution, to agree upon a single comprehensive ceiling on total prospective spending. The two chambers would debate national priorities, and undertake to fix recommended goals within the ceiling for major areas of spending. Appropriations committees and subcommittees would then go to work, but no spending bill—and this is the key to the new structure—could become operative until all spending bills had been adjusted to a ceiling figure.

In its most desirable form, the new system would impose a deadline on wholly new authorizations for spending. The plan would provide a sensible periodic review of "permanent" authorizations. Sponsors want to put a lock on "back door" and "open-end" programs, which function like a dozen wild cards in a $300-million game of poker. Within a few years, if all goes well, Congress might regain the one constitutional power that stands above all others—the power of the purse.

It is an admirable goal, but seeing is believing. The proposed reforms demand that politicians turn into statesmen, and no alchemist yet has perfected that conversion. Even so, a new spirit seems to be working on Capitol Hill. These bills, after all, have now emerged from committee. The problem in coming weeks is to get them through the floor, and to write some sensible controls into law.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HARRY F. BYRD, JR. Mr. President, normally I should yield to the distinguished Senator from West Virginia, but first I want to say I, too, feel this is a very important measure, a measure that should be considered by the Senate at the earliest possible time. I think it is important that a ceiling be put on Government spending. I think it is important that Congress reform and revise its budgetary procedure. I think the procedures we have used are outmoded and outdated and that we should move into the 20th century with our procedures.

Mr. ROBERT C. BYRD and Mr. ERVIN addressed the Chair.

Mr. HARRY F. BYRD, JR. I yield to the Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I will attempt to respond, but before I do, perhaps the Senator from North Carolina ought to make a statement.

The PRESIDING OFFICER. The Senator from North Carolina was seeking the floor in his own right, on his time.

Mr. HARRY F. BYRD, JR. Mr. President, I yield.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. ERVIN. Mr. President, I want to echo what the distinguished Senator from Illinois and the distinguished Senator from Virginia have said. In my judgment, next to the energy crisis, the most important problem confronting this country is whether or not the Congress of the United States is going to have the hardihood and the courage to take effective steps to prevent an unbridled appropriation of money by the Congress.

The Committee on Government Operations has labored very hard to bring forth a bill which would establish an effective congressional budgetary system. This bill was reported to the Senate by a virtually unanimous vote of the committee on the 8th day of November, as I recall. It is an effective bill, and it is a bill which I think is stronger to accomplish this objective than the bill which the House committee has approved and which is awaiting action by the House.

I think that virtually every remaining legislative task, except those dealing solely with the energy crisis, is of subordinate importance to the passage of this bill by the Senate.

I would urge the leadership and I would urge the Rules Committee to take effective action to permit this bill to come before the Senate during the closing days of this session, because, as I say, outside of legislation relating to the energy crisis, there is no more important piece of legislation confronting the Congress.

We are never going to have a sound fiscal system in this country until Congress adopts a plan such as that set forth in this legislative proposal, whereby Congress will know, each time it undertakes to pass an appropriation bill and each time it undertakes to pass an authorization bill, just exactly what the impact of that authorization bill and that appropriation bill is going to have upon the financial resources of the Nation as a whole.

I just think that if it is necessary, we should sidetrack other pieces of legislation to do that and permit this bill to be acted on by the Senate before our adjournment. I do not know of a finer example of the legislative process at work than this bill. It was brought forth after complete hearings, after careful consideration by the subcommittee headed by the Senator from Montana (Mr. METCALF), and after consideration of the bill at great length by the full committee. Virtually every member of the committee, and particularly the Senator from Illinois, the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), and the present Presiding Officer, made great contributions to this bill. I sincerely hope that there will be some way the bill can be brought up and acted upon by the Senate.

Mr. PERCY. Mr. President, will the Senator yield for a question?

Mr. ERVIN. I yield.

Mr. PERCY. Would it be desirable to have the acting majority leader give us the benefit of his wisdom now as to where matters stand so we can look forward to action in this session?

Mr. ROBERT C. BYRD. Mr. President, to begin with, let me say I agree wholeheartedly with what the able Senator from Illinois and the able Senator from North Carolina have said about the necessity for this legislation and about the necessity for expediting the legislation. Having said that, however, I think I ought also to observe that we are in the last days of this session. We still have some appropriation bills. We will probably still have some problem with the extension of the debt limit. We will have the railroad legislation. We still have legislation dealing with the energy crisis.

I think personally it would be a mistake, to bring such a very important bill, to which the Senators have alluded, to the floor of the Senate at this stage of the session, because I think that we would legislate in haste and perhaps regret it later.

It seems to me that nothing is lost and perhaps something is gained, if the bill could still go to the Committee on Rules and Administration. It could these be taken up by the Senate very early next year.

It seems to me that would be the better part of wisdom. I cite the Legislative Reorganization Act, for which I think I voted, in 1970. That act did not go to the Committee on Rules and Administration. I did not ask that it go to the Committee on Rules and Administration. And I believe at that time that the late, highly respected, and highly revered Senator Richard Russell was so ill and that his failing health was such that he was not able to attend the sessions of the Senate as he formerly had attended them. He was the guardian of the Senate's rules, and was commonly acknowledged as such. I do not think that he was in a position or in any condition to give his full attention to as important a piece of legislation as the Legislative Reorganization Act.

So no effort was made to send that legislation to the Committee on Rules and Administration. I think it should have been. I think that the Committee on Rules and Administration should have given it consideration. And if additional consideration had been given at that point, we would not now look back at that action by the Senate with some misgivings.

I am not denigrating that act. A lot of excellent work went into it. However, I think that we have had cause to regret having passed that act without taking a little more time and a more careful look at it. I was at fault, as well, for not having raised the question at that time.

I need only cite one instance to back up my statement. And that is the matter with regard to germaneness in the House resulting, in part at least, from the Reorganization Act of 1970. This rule in the House not only irritates Senators but also, I think, denigrates the Senate by reason of the fact that if a Senate amendment is added to a House bill, the germaneness of that Senate amendment is interpreted by the House in accordance with the germaneness rule of the House.

The Legislative Reorganization Act of 1970 amended House Rules XX and XXVIII which placed the Senate at a disadvantage in sending bills to conference. The amendment to rule XX makes it abundantly clear that if the Senate adds nongermane amendments as defined by the House rules to a House bill, there can be no free conference between the managers on the part of the two Houses. One of the amendments included in that law provides that:

No amendment of the Senate which would be in violation of the provisions of clause 7 of Rule XVI, if such amendment had been offered in the House, shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall be first given by the House by a separate vote on every such amendment.

The Senate acquiesced in that provision of the House bill without giving it adequate consideration. And the Senate has paid a severe penalty for that oversight, as most Senators, I believe, will agree.

I think it is bad practice when a straitjacket is placed on the Senate as was done in that instance. I do not think that is good for the public. But I think we can blame ourselves for having slept on our rights. And this budget control measure, while it is vitally important, will probably have some impact on the rules of the Senate.

I think that all Senators will concede that the Rules Committee has some jurisdiction and that the Committee on Rules and Administration ought to have a chance to look at it.

I do not think that the committee should be forced to consider such an important bill, however, under the pressure of a few hours time. I think that the committee should have a reasonable amount of time to look at the bill.

I can assure the Senator that those of us on the Committee on Rules and Administration want, as much as anyone, to see a feasible, workable, effective budget control measure enacted in the Senate as soon as possible, but I do not think it should be rushed through the Senate in the closing hectic days of December.

Mr. PERCY. Mr. President, if the Senator will yield at that point, this was not a new item. Congress has worked on this for years.

Mr. ROBERT C. BYRD. The Senator is correct. However, it is new to the Committee on Rules and Administration.

Mr. PERCY. The Committee on Rules and Administration was certainly aware that it has been in the works.

I want to make it perfectly clear that a member of the Committee on Rules and Administration, the distinguished minority leader, the Senator from Pennsylvania (Mr. HUGH SCOTT), thinks that it is not necessary to send it to the Committee on Rules and Administration.

The ranking minority member of the Committee on Rules and Administration, the Senator from Kentucky (Mr. COOK), says that it is not necessary.

And certainly the Government Operations Committee feels that it is not necessary to send it to the Committee on Rules and Administration.

We were willing to report the bill on November 8 with a limited time period to look at it. However, they were bogged down at that time with the Vice Presidential situation. I would simply feel that this is a matter of such urgency, with the House being able to handle it and with the minority being able to look at it and work it out—and obviously if we find that there is an insurmountable situation involved, I would be the first to acknowledge it—that we do not want it done in haste. This is an act worked out with a great deal of give and take on both sides and with a unanimous report of the committee despite the many differences we have had.

It has gone through the whole process. I cannot, for the life of me, see why we cannot move expeditiously and put some time on it. I think the Committee on Rules ought to spend some time on it but get it back to the floor of the Senate promptly, so that we may see whether we can, at least, get a part of the work done at this session.

Mr. ROBERT C. BYRD. Mr. President, the Senate Rules Committee has not indicated that it would not accept some time limit. But I would be opposed to sending it to the Rules Committee with the idea that it would be reported back in 24 or 48 hours. I respect the views of the other members of the Rules Committee who feel that it would not need to go to that committee. I would say, however, with all due respect to the members of the Rules Committee, including those members of the committee who feel that the measure need not go to that committee, that I think we could possibly have cause to regret it if the bill were not sent to the Rules Committee, to let that committee examine and have a reasonable amount of time in which to report the bill back.

The matter is urgent, but I believe it is too late in the first session of the 93d Congress; however it could receive favorable early action in January or February next year, because this is a very important bill and should have priority status early in the second session. I would hope that we could arrive at some reasonable arrangement whereby the Rules Committee could take a look at the bill and then report it back. It may suggest no changes at all, or it may suggest some changes.

Mr. PERCY. Mr. President, it is a matter of regret to the Senator from Illinois that for 3 weeks nothing has been done. The bill has had high priority. We have "crashed" it through. We have held long sessions and have even held night sessions. We are ready to have it considered. Nothing has happened.

Mr. ROBERT C. BYRD. The bill only went on the calendar on November 20.

NEED FOR EARLY ACTION ON SPECIAL PROSECUTOR BILL

Mr. TAFT. Mr. President, I certainly share the views of the Senator from Illinois that since the budget control bill has been reported by the committee, early action should be taken.

Another remark I would like to make relates to the special prosecutor bill, which is expected to be reported by next Monday night.

In reporting the proposed special prosecutor legislation, I should like to invite attention to the fact that in the RECORD of November 28, pages 38303 through 38313, we have had printed a lengthy legal memorandum which was prepared by myself and my staff, with the assistance of other persons, on the whole subject of the special prosecutor, particularly the question of the power of removal.

I again point out to the Senate that we have given careful attention to the whole question of the power of removal. This issue arose in the Cox case. It is an issue that goes more to the question of the special prosecutor than to other factor we could consider in connection with that legislation. For that reason, we drew S. 2642, working closely with the Senator from Nebraska (Mr. HRUSKA), the ranking Republican member of the Committee on the Judiciary, in perfecting that bill in the form in which it is to be reported by the Judiciary Committee.

In connection with the report, I wish to correct any misimpression that Senators we could consider in connection with made by the distinguished junior Senator from Indiana (Mr. BAYH) on Tuesday, remarks which appear at page 38101 of the RECORD, in which the Senator from Indiana said that under the Hruska-Taft proposal the prosecutor could still be subject to removal by the President.

The Senator from Indiana is, I believe, in error in his statement to that effect. That is not my opinion and is not my interpretation of the proposed legislation known as the Hruska-Taft proposal. Rather, I would call attention to the portion of my remarks appearing on page S21255, with regard to S. 2462.

It states as follows:

S. 2642, which I introduced, provides for appointment of a Special Prosecutor by the Attorney General, with removal by the Attorney General only for neglect of duty, malfeasance in office, or a violation of the act by the Special Prosecutor. Before such removal could occur the Attorney General would have to notify both Houses of Congress 30 days in advance of such removal, stating the reasons for dismissal. The district courts would have original jurisdiction of any action brought by the Special Prosecutor with respect to removal or attempted removal and could issue an order blocking such removal, if appropriate.

Those are the terms of the removal power in that legislation, and I think it makes it perfectly clear that the only removal power relating to a special prosecutor under the cases as they presently stand on the books under the provisions of the Hruska-Taft proposal would be, in accordance with those provisions, giving Congress 30 days to act, and giving the court 30 days in which to issue an order, if the causes for removal were other than those set out in the act.

I yield back the remainder of my time.

The PRESIDING OFFICER. Is there further morning business?

Mr. MOSS and Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. MOSS. Mr. President, did the Senator from West Virginia wish me to yield to him?

Mr. ROBERT C. BYRD. No, Mr. President; I can take care of the calendar later.

AMERICAN INDUSTRY HAS BEEN WEARING BLINDERS

Mr. MOSS. Mr. President, a constituent last week sent me a particularly appropriate and thought-provoking

letter. Mr. Lawrence Sheppick of Salt Lake City asked why both the car manufacturers and Government seem to be ignoring available improvements to increase automobile gas mileage. I consider Mr. Sheppick's question "right on target." A Treasury Department study recently completed indicates that utilizing available technology, mileage on American automobiles could be increased an average of 75 percent.Why have not improvements been made? The answer is simply that such improvements could add hundreds of dollars to the cost of the heavier new cars. When gasoline was plentiful and cheap there appeared to be little incentive to make mileage improving changes.

The current fuel crisis has shown how unfortunate such an approach was. The fuel crisis has also made it mandatory that we quickly take advantage of available approaches to increase automobile efficiency.

For this reason, 5 months ago, I introduced S. 2036, a bill designed to increase automoble efficiency. My bill placed a levy on the sale of new cars based on mileage.

The Treasury study I previously mentioned provided added information on the amount of levy required to motivate automobile manufacturers to improve mileage on new cars. The study calculated the cost of gasoline saving improvements on various weights of automobiles to achieve a uniform mileage of 20 miles per gallon. Naturally the cost would be highest on the heaviest cars. The lightest American cars would require no improvements since they already achieve 20 miles per gallon or more.

Accordingly, I have modified the levy schedule of S. 2036 to that shown in the Treasury study.

I, together with my colleagues Senator PERCY and Senator NELSON, am submitting as an amendment to H.R. 8214 an amendment to the Internal Revenue Code of 1954 to provide a levy on the sale of new automobiles with respect to their fuel consumption rates. This levy is designed to make it more logical for automobile manufacturers to achieve an automobile mileage of 20 miles per gallon than to pay the levy.

I am convinced that with the right incentives to apply our available technology we can have both the comfortable cars and the full mobility we have enjoyed in the past.

Hobart Rowen in his column for today said, "The Nation's being ill-served by half-baked measures" to cope with the energy crisis. He said:

At the same time, American industry has shown that it, too, has been wearing blinders. In Detroit, where the chief executives haul down anywhere from $440,000 a year (Chrysler's Lynn Townsend) to $875,000 (Henry Ford II) for their efforts, the auto companies have been caught flat footed, with huge inventories of gas-guzzling monsters.

As a result, auto stocks are plunging and thousands of workers are facing layoffs that needn't have come if the top men had really earned their plush salaries.

Michael Evans of Chase Econometric Associates, Inc. puts this latter point as well and as bluntly as anyone:

The market share of standard-size cars fell 7 percent last year, which is as much as it had fallen during the previous seven years. These facts simply could not have been a secret from executives in an industry which has more daily and weekly data than any other.

I personally know of several instances where middle management argued strenuously last year that production lines should be reoriented toward small cars. Yet this argument fell mostly on deaf ears at the top executive level. John de Lorean's abrupt departure from GM was based on more than long boring staff meetings.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

APPROVAL OF LOAN TO CORN BELT POWER COOPERATIVE, HUMBOLDT, IOWA

A letter from the Administrator, Rural Electrification Administration, U.S. Department of Agriculture, transmitting, pursuant to information requested in Senate Report No. 497, Department of Agriculture and Related Agencies Appropriation bill, 1964, the approval of a loan to Corn Belt Power Cooperative of Humboldt, Iowa, to finance increased costs of previously-loaned generation facilities. Referred to the Committee on Appropriations.

REPORT OF DEPARTMENT OF STATE

A letter from the Acting Secretary, Department of State, transmitting, pursuant to law, a report on U.S. Contributions to international organizations for fiscal year 1972 (with an accompanying report). Referred to the Committee on Foreign Relations.

REPORT OF NATIONAL ADVISORY COUNCIL ON EDUCATIONAL PROFESSIONS DEVELOPMENT

A letter from the Chairman, National Advisory Council on Educational Professions Development, transmitting, pursuant to law, a report entitled "Vocational Education: Staff Development Priorities for the 70's," (with an accompanying report). Referred to the Committee on Labor and Public Welfare.

POST OFFICE, COURTHOUSE, AND FEDERAL OFFICE BUILDING, AUBURN, N.Y.

A letter from the Administrator, General Services Administration, transmitting, pursuant to law, a request that the House and Senate committees rescind their approval and that the authorization be canceled for the proposed construction of a Post Office, Courthouse, and Federal Building for Auburn, N.Y. Referred to the Committee on Public Works.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SPARKMAN, from the Committee on Banking, Housing and Urban Affairs, with an amendment:

H.R. 8449. An act to expand the national flood insurance program by substantially increasing limits of coverage and total amount of insurance authorized to be outstanding and by requiring known flood-prone communities to participate in the program, and for other purposes (Rept. No. 93-583), together with additional views.

By Mr. BARTLETT, from the Committee on Interior and Insular Affairs, without amendment:

S. 1976. A bill to study an Indian nations trail within the national trails system (Rept. No. 93-584).

By Mr. ERVIN (for Mr. JACKSON), from the Committee on Interior and Insular Affairs, without amendment:

H.R. 3436. An act to provide for the conveyance of certain mineral rights in and under lands in Onslow County, N.C. (Rept. No. 93-585).

By Mr. BURDICK (for Mr. BIBLE), from the Committee on Interior and Insular Affairs, with an amendment:

S. 1468. A bill to authorize the establishment of the Knife River Indian Villages National Historic Site (Rept. No. 93-586).

By Mr. FANNIN (for Mr. BIBLE), from the Committee on Interior and Insular Affairs, with amendments:

S. 417. A bill to amend the act of June 28, 1948, to provide for the addition of certain property in Philadelphia, Pa., to Independence National Historical Park (Rept. No. 93-587).

By Mr. ERVIN, from the Committee on Government Operations, with amendments:

H.R. 8245. An act to amend Reorganization Plan No. 2 of 1973 (Rept. No. 93-588).

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. PELL (for himself and Mr. JACKSON):

S. 2754. A bill to prohibit all military assistance to Greece until it is determined that Greece is fulfilling its obligations under the North Atlantic Treaty. Referred to the Committee on Foreign Relations.

By Mr. DOMENICI:

S. 2755. A bill to require the Administrator of the National Aeronautics and Space Administration to study the feasibility of entering into certain international cooperative programs involving the utilization of space technology and application. Referred to the Committee on Aeronautical and Space Sciences.

By Mr. HUGH SCOTT (for himself and Mr. PERCY):

S. 2756. A bill to provide health care insurance for people of the United States and to improve the availability of health services, and for other purposes. Referred to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PELL (for himself and Mr. JACKSON):

S. 2754. A bill to prohibit all military assistance to Greece until it is determined that Greece is fulfilling its obligations under the North Atlantic Treaty. Referred to the Committee on Foreign Relations.

Mr. PELL. Mr. President, hardly had the sound of firing and the rumble of tanks subsided in the wake of former President Papadopoulos' bloody suppression of the defenders of Greek freedom, when a military coup toppled him from power. Although the situation following the coup is still murky, it does seem clear that the new regime is determined to move away from rather than toward the reestablishment of democratic government and the rule of law in Greece. Continuation for the time being of a military dictatorship thus seems inevitable, dashing any American hopes for the contrary.

It is reported that one reason for Papadopoulos' downfall was the reaction of moderate elements of the Greek military against the harsh and violent measures

used to quell the uprising. Hopefully these conservative, but more democratic members of the military will have a voice in the direction of the junta and exert a moderating influence.

I do not believe, however, that we can rely alone on this possible development to bring about a change for the better in Greece. Nor do I believe the United States can ignore the consequences stemming from the circumstances surrounding the crushing of the recent uprising against the junta, in which U.S. military equipment and tanks were involved. The situation calls, therefore, for a strong U.S. denunciation of the junta's policies and U.S. measures to implement words with action.

Let us examine more closely for a moment the tragic events that have been occurring in Greece. In many respects, these events are reminiscent of the uprising of the people of Hungary in 1956. There, students and workers took the lead in an open struggle to obtain freedom from the Soviet regime. In that struggle, they confronted Russian tanks.

In Greece, students and workers again took the lead in a struggle to free their country from dictatorship and return it to constitutional democracy. In that struggle, however, the Greek students and workers confronted American-made tanks, turned on the people by their own government.

There is, moreover, another important difference between these two uprisings. In Hungary, the students and workers rebelled against the imposition of a puppet government of the Soviet Union. In Greece, the wrath of the workers and students was directed toward both the Papadopoulos government and toward our own country, the United States.

The cry of the students was "Out with Papadopoulos" and "Out with the Americans."

It is more than sad—it is tragic that the United States should be viewed with such hatred by the people of Greece. But it is also understandable.

For 6 years, the people of Greece have watched the U.S. Government give moral and material support to a Greek regime that has denied democracy, destroyed freedom, and persecuted and tortured its political opponents.

For 6 years, the people of Greece have watched while American admirals and generals made highly publicized public appearances with the admirals and generals of the junta.

For 6 years, the people of Greece have watched while the flow of arms and munitions from the United States to the Greek Government continued unabated.

It is little wonder, with this background, that the people of Greece concluded that their government—a junta of colonels that did not dare face the people in a democratic election—was being supported by the United States.

Several years ago, when I proposed here in the Senate that the United States discontinue its military assistance to the Greek regime, I was told that cutting off military assistance would be an act of interference in the internal affairs of Greece. I could not agree then, and I do not agree now, that continuing military assistance to the Greek junta is an act of noninterference. The Greek people—who now face the muzzles of American-made tanks—obviously do not consider the arms supplies an act of noninterference.

The excuse given, through the years, for continuing military aid to Greece, has been that Greece is an essential element in the overall NATO strategy and a kingpin in our defense posture in the Mediterranean.

In pursuit of that policy, the administration put forward and moved ahead with a program to homeport U.S. naval forces in Greece, moving destroyers from U.S. ports, including Newport, R.I., to Greece. This policy went unchanged despite repeated reports from Navy families of rising anit-American sentiment in Greece because of apparent support of the junta.

The cries of the Greek people—"Out with the Americans"—make it clear that military assistance to Greece as a NATO partner has come at a very high price. Unfortunately, it is quite clear that the goal of strengthening NATO has not been achieved. The Greek Navy has practically been confined to home ports for fear that more Greek naval vessels will revolt against the junta, and I understand the Greek Air Force has been rationed in gasoline so that its planes cannot fly beyond the borders of Greece.

We are learning, I believe, a lesson we should have learned long ago—that a nation cannot be strong unless its government has the free and willing support of the people. It is a lesson we should have learned in South Vietnam.

Greece obviously cannot be a strong partner in NATO while government energies are devoted to suppressing its people. The tragic error of U.S. policy toward Greece is that the administration believed that lack of democracy in that country was of no concern; that the United States could maintain a strong Greek participation in NATO simply by continuing a flow of military assistance to a dictatorship.

We have talked a great deal about democracy, but in our policy toward Greece, the U.S. Government consistently has turned its back on those Greeks who have looked to this Nation for support in their courageous stand for democratic rights and freedom.

I emphasize that I am not advocating intervention in the internal affairs of Greece by the United States. I am urging that the United States end its implicit endorsement of the undemocratic Greek Government by ending the flow of military assistance.

In June of this year, I introduced with the distinguished junior Senator from Washington (Mr. JACKSON) an amendment to the Foreign Military Assistance Act, which would have made continued military assistance to Greece contingent upon the Greek Government's adherence to the principles of NATO, including respect for democratic institutions and individual freedoms.

The Senate, after full debate, adopted that amendment. I regret very much that the committee of conference on that bill struck the amendment from the bill, an action that was at least pleasing to the administration, and in fact largely the result of fierce administration opposition to the amendment.

During debate on that amendment last June, the junior Senator from Washington, an expert on NATO military affairs, said:

> It is just common horsesense that if the democratic order in Greece continues to be subverted, and the best people, the best professionals they had, in their military service are forced out, Greece's contribution to NATO will end up at zero.

He continued,

> I think it is high time that we blow the whistle on the operations of the Greek colonels.

It is now past time to blow the whistle. At this point, I can see no argument for continuing military assistance to a government that has crippled its effectiveness in NATO through unrelenting pursuit of undemocratic, dictatorial government.

In support of this conclusion, let me quote from the excellent report of the Committee of Nine on improving NATO, made to the recent session of the North Atlantic Assembly in Ankara. Commenting on alliance solidarity, the report states:

> The Committee is convinced that the common interests which brought North America and Western Europe into military alliance and intimate political and economic association remain compelling. Strong forces continue to induce the two sides of the Atlantic to remain together.
>
> These forces consist, first of a common and deep-seated attachment to the ideals of individual liberty, democratic institutions, and the rule of law. The Committee considers it the duty of the states of Western Europe and North America to do all that they can properly to aid in the establishment and maintenance of such conditions in each of the member-nations. In a period of détente, the strength of the Western position and the public respect which the Alliance itself can command will be profoundly affected by the extent to which member-nations uphold the ideals upon which the Alliance was founded. The failure on behalf of any member to live up to these ideals must inevitably weaken the political and moral position of the Alliance as a whole.

We can only sadly conclude that Greece, under a military dictatorship, is just such a member, when its government uses force of arms to suppress its people, having denied them time and again the promised opportunity to express themselves in democratic elections.

Accordingly, I am today introducing a bill which would prohibit military assistance in any form to Greece until such time as it is determined that Greece is fulfilling its obligations under the North Atlantic Treaty.

I ask unanimous consent that the text of the bill be printed in the RECORD at the conclusion of my remarks.

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

S. 2754

Be it enacted by the Senate and House of Representatives of the United States of

America in Congress assembled, That the Congress declares that it is the policy of the United States Government to provide military assistance and military sales, credit sales, and guaranties to or for the Government of Greece only when that government fulfills its obligations under the North Atlantic Treaty, including both adherence to the political principles stated in the preamble to the Treaty and the maintenance of its capability to perform common defense functions assigned under the current North Atlantic Treaty Organization defense plans. Therefore, no military assistance and no sales, credit sales, or guaranties shall be provided to or for the Government of Greece under the law until the President (1) undertakes a comprehensive review of United States policy toward Greece, (2) has made a full report with respect to such review to Congress, and (3) finds and reports to Congress that, as a result of such review, the Government of Greece is in full compliance with its political and military obligations under the North Atlantic Treaty. The provisions of this section shall not apply to funds obligated prior to such date of enactment.

By Mr. DOMENICI:

S. 2755. A bill to require the Administrator of the National Aeronautics and Space Administration to study the feasibility of entering into certain international cooperative programs involving the utilization of space technology and application. Referred to the Committee on Aeronautical and Space Sciences.

Mr. DOMENICI. Mr. President, events of the last several months, especially those in the Middle East, have brought to our attention the immediate energy shortage. We have all heard many comments regarding this energy crisis but I feel it is important to note that we are not really facing an energy crisis per se but more specifically a petroleum shortage.

I think we all realize and accept the fact that the use of petroleum products will continue to be our most needed source of energy. While, as I have stated, fossil fuels are our most important source of energy, we must continually search for new supplemental forms of energy. We have known for years that our available petroleum supply has remained relatively constant while our demand has increased. Today we are just beginning to experience the effects of this petroleum shortage.

We have just recently passed legislation that will give the President the power to most effectively utilize our present resources. I feel that this was a very important initial step in meeting our present energy crisis but we must now look to the means by which to supply this Nation with its future energy needs. This will require an increased utilization of our fossil fuels, which can only be accomplished by cooperation between the Government and private enterprise. This joint effort to produce maximum quantities of energy resources must be done in a manner that will not harm our enviromental quality. I will be the first to admit that this is a difficult problem but I am confident through diligence on our part we may achieve these goals.

I believe it is important to remind ourself that the countries of Western Europe and Japan are also sharing in a petroleum shortage. These countries do not possess the capabilities to produce their needed petroleum resources and like the United States have found the possibility of an oil embargo a serious threat to their economy.

As a member of the Aeronautical and Space Sciences Committee, I have recently heard testimony as to the utilization of solar energy as a possible supplemental form of energy. We have small communities today that are heated and cooled by solar rays from the sun. The National Science Foundation and the National Aeronautics and Space Administration are investigating the possibilities of building large solar arrays in space that would beam solar energy to Earth. I feel that these and other uses of solar energy could possibly be an excellent supplemental form of energy to be used in the future.

It was during these hearings that I realized the possible benefits from an international cooperative R. & D. effort to explore the possibilities of utilizing solar energy. It would appear that all countries involved could mutually benefit from a pooling of R. & D. as to how solar energy might be used as a supplemental form of energy. I am therefore introducing a bill today that would require the Administrator of the National Aeronautics and Space Administration to study the feasibility of entering into certain international cooperative programs involving the utilization of space technology and application for the conversion of solar energy. This bill would call for the Administrator of the National Aeronautics and Space Administration to work in conjunction with the Secretary of State, Secretary of Defense, and the Director of the National Science Foundation to make a full and complete study of the desirability for international cooperation and cost sharing in the development of a system for the collection and conversion of solar energy.

I am introducing this bill because I feel that the Administrator of the National Aeronautics and Space Administration could advise the President and the Congress as to the possible benefits gained in an international pooling of research and development for the conversion of solar energy. It is my sincere hope that Congress take upon its own initiative to explore all possibilities of supplemental forms of energy that might help us alleviate our energy shortage.

Mr. President, I ask unanimous consent to have printed in the RECORD the bill to require the Administrator of the National Aeronautics and Space Administration to study the feasibility of entering into certain international cooperative programs for the conversion of solar energy. This bill would enable the Administrator of the National Areonautics and Space Administration to explore the possible benefits from an international cooperative effort of research and development.

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

S. 2755

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in accordance with applicable provisions of title II of the National Aeronautics and Space Act of 1958, as amended, the Administrator of the National Aeronautics and Space Administration, in conjunction with the Secretary of State, the Secretary of Defense, and the Director of the National Science Foundation, is authorized and directed to make a full and complete study of the possibilities for international cooperation and complete study of the possibilities for international cooperation and cost sharing in the development of a system for the collection and conversion of solar energy. Such study shall include, but not be limited to, a consideration of the feasibility and desirability of—

(1) establishing an international consortium, and

(2) utilizing other existing international organizations, or establishing a new international organization, in the development of such an energy collection and transmission system.

(b) The Administrator shall invite and permit representatives of the public, of other nations, and of international organizations to submit for his consideration reports and information concerning the subject of the study required by this Act.

(c) The Administrator shall report the results of the study required by this Act to the President and the Congress no later than one year after the date of enactment of this Act.

SEC. 2. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

By Mr. HUGH SCOTT (for himself and Mr. PERCY):

S. 2756. A bill to provide health care insurance for people of the United States and to improve the availability of health services, and for other purposes. Referred to the Committee on Finance.

HEALTH RIGHTS ACT OF 1973

Mr. HUGH SCOTT. Mr. President, reform of the Nation's health care system is a matter of the highest urgency. The financial disaster which a prolonged illness can cause a family is often more tragic and debilitating than the disease itself. We have seen this often—a family's savings literally wiped out because of the inordinate costs of health care, particularly round-the-clock hospital care which catastrophic illness requires. The examples are numerous and the consequences calamitous.

In an effort to remedy this national health crisis, I am happy to introduce today, along with the distinguished Senator from Illinois (Mr. PERCY), the Health Rights Act of 1973. In essence, our proposal will assure all Americans solid protection against the skyrocketing costs of medical care. It will make a reality of the total comprehensive health care which our Nation deserves.

There is a growing consensus among the American people that reform of our Nation's health delivery system is essential; that improvement in the overall quality of health care is essential; and that action on a national level is essential to make good health care available to all citizens.

The Health Rights Act of 1973 will replace medicare and medicaid, and will allow all citizens, regardless of age, income or family size, to be eligible to participate. The act is a two-part plan providing both inpatient "major illness"

protection for all individuals and an outpatient health maintenance insurance plan. Both the inpatient and outpatient plans will be administered by insurance carriers or other public or private agencies on a regional basis, under contract with the newly created Office of Health Care within the Department of Health, Education, and Welfare.

The inpatient "major illness" protection differs from traditional catastrophic plans by covering all costs above each family's health cost ceiling, which is determined by a formula taking into account both family income and family size. Money for the plan would be financed in part through the present health insurance portion of the social security payroll taxes and in part through general revenues.

The outpatient plan would be financed in part through family premium payments which would be supplemented in whole or part with Federal payments for low-income families. Employers could arrange to finance all or part of their employees' premiums.

The act would also establish a 2-year, Presidentially appointed Health Delivery Committee to study the current and long-range needs for medical personnel and facilities. It would make recommendations to the President and Congress.

As my colleagues know, in 1971 Senator PERCY and I introduced our original Health Rights Act. In addition, just last month, we both joined as cosponsors of the Long-Ribicoff Catastrophic Health Insurance and Medical Assistance Act of 1973. In introducing our own bill today, which is a revision of our 1971 plan, our aim is to bring before the Finance Committee and the Congress all possible proposals and plans for health reform. By so doing, I believe we emphasize the critical need for such legislation and encourage prompt attention to and expeditious treatment of this need.

I believe our Health Rights Act is the most comprehensive offered to date to lift the burden of presently unmeetable financial obligations caused by the extremely high costs of health maintenance and recovery from illness. The Health Rights Act of 1973 is must legislation for this session of Congress because its goal is to serve every American at a critical time.

I ask unanimous consent that at the conclusion of the remarks of the Senator from Illinois (Mr. PERCY) the complete text of the Health Rights Act of 1973 and a summary of its major provisions, be printed in the RECORD.

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

(See exhibit 1.)

Mr. PERCY. Mr. President, I am delighted to join with the distinguished minority leader (Mr. HUGH SCOTT) in introducing the Health Rights Act of 1973. This is an improved version of the bill which we first introduced in 1971. A national health insurance program that can assure every American access to comprehensive medical care as a right is needed today more than ever. The health crisis first announced by President Nixon in 1969 has not been resolved. American families still face the ever present risk of losing their life savings, their homes, or their psychological and material well-being because of the costs of a major illness or injury. Chronic disease victims still face the tragic consequences of inability to pay for available treatment. Despite medicare and medicaid, and despite increased government subsidies for the medically indigent and the elderly, people's health is still directly linked with economic well-being. The disability days index indicates that the health of most Americans has made a modest improvement from the mid-1960's to 1970, with higher income people showing greater improvement. The health of those Americans earning less than $7,000 a year, however, has been steadily getting worse. The verdict seems to be—those who can afford adequate health care enjoy health; those who cannot, suffer sickness or, even, death.

Without the benefit of a comprehensive national health insurance program, health care will become more and more a problem for Americans. That health expenditures have been rising at a staggering rate is no longer news. In fiscal year 1972, America spent $83.4 billion, or 7.6 percent of the GNP, for health care, the highest in the world. Although in fiscal year 1972 health expenditures registered the lowest annual percentage gain in 6 years, partly as a result of the economic stabilization program, it still increased 10.3 percent over 1971. America's health bill has climbed so quickly that it has doubled in 8 years; more than tripled in 12 years; and increased sixfold in 21 years.

Despite compelling problems that urgently require solution, congressional impasse has prevented the enactment of national health insurance legislation in two Congresses. Such an impasse can be broken only through the cooperation, coordination, and support of all interested parties, including Senators, Congressmen, the Administration, health care providers and intermediaries, and consumers.

Several weeks ago Senator HUGH SCOTT and I joined Senators LONG and RIBICOFF in sponsoring the Catastrophic Health Insurance and Medical Assistance Reform Act of 1973. At that time I stated that I believed that proposal would provide both the vehicle and catalyst needed to pass national health legislation during this Congress. The Health Rights Act, which Senator HUGH SCOTT and I originally introduced in 1971, is our own contribution to the national health insurance dialog—a dialog which, hopefully, will lead to the establishment of a health financing system that will assure every American his right to quality health care.

In introducing our bill, Senator HUGH SCOTT and I set as our goals:

The establishment of a unified health care delivery system—for the rich and the poor, the young and the old;

The assurance that comprehensive health care benefits will be made available to every citizen and that each citizen will bear the costs of such benefits only in proportion to his financial capability;

The removal of the barriers to preventive care;

The protection of every American family against the devastating costs of catastrophic illness by placing a ceiling on the maximum out-of-pocket expenses a family will have to pay for health care;

The provision of incentives to produce voluntary actions toward the development of a more efficient health care delivery system, drawing on the private enterprise system and assuring a Federal private partnership in health care.

Obviously, new programs, however worthy, cannot be allowed to run up a budget deficit at a time when economic conditions call for fiscal restraint. While the "ability to pay" concept of the Health Rights Act creates a substantially smaller drain on Federal revenues than similar national health proposals, its cost is necessarily significant. The Department of Health, Education and Welfare estimated the Federal cost of our original proposal at $22 billion per year. We estimate that improvements in the administrative and cost control provisions of the Health Rights Act of 1973 will bring this figure down to under $20 billion.

Accordingly, as soon as actuarial determinations which we have requested from the Treasury Department and the Social Security Administration are available, we will make specific proposals as to how the Health Rights Act could be financed if adopted as now drafted. In addition, we will insist that any national health plan adopted by the Congress be fully financed, as is required for unbudgeted spending proposals under S. 1541, the Congressional Budget Reform Act.

Mr. President, national health insurance will not solve all our health care problems, but it will go a long way toward providing every American the right to adequate health care. The assurance of that right, I firmly believe, is in the national interest. A country can boast no greater resource than a healthy people.

EXHIBIT 1

S. 2756

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Health Rights Act of 1973".

TITLE I—ADMINISTRATIVE AND GENERAL PROVISIONS DEFINITIONS, ETC.

SEC. 101. For the purposes of this Act—

Inpatient Hospital Services

(a) The term "inpatient hospital services" means the following items and services furnished to an inpatient of a hospital and (except as provided in paragraph (3)) by the hospital—

(1) bed and board;

(2) such nursing services and other related services, such use of hospital facilities, and such medical-social services as are ordinarily furnished by the hospital for the care and treatment of inpatients, and such drugs, biologicals, supplies, appliances, and equipment, for use in the hospital, as are ordinarily furnished by such hospital for the care and treatment of inpatients, including the use of equipment for renal dialysis;

(3) such other diagnostic or therapeutic items or services, furnished by the hospital or by others under arrangements with them

made by the hospital, as are ordinarily furnished to inpatients either by such hospital or by others under such arrangements;

(4) medical or surgical services provided by a physician, resident, or intern;

(5) medical or surgical services provided by a doctor of dentistry or oral surgery, but only to the extent that such services would be covered services when performed by a physician under this title where the dentist is legally licensed to perform such service as provided in section 105; and

(6) the services of a private-duty nurse or other private-duty attendant, when certified by the attending physician as necessary.

Inpatient Psychiatric Hospital Services

(b) The term "inpatient psychiatric hospital services" means inpatient hospital services furnished to an inpatient of a psychiatric hospital where the patient is under an active program of diagnosis or treatment by a psychologist or psychiatrist.

Inpatient Tuberculosis Hospital Services

(c) The term "inpatient tuberculosis hospital services" means inpatient hospital services furnished to an inpatient of a tuberculosis hospital where the patient is under an active program of diagnosis or treatment by a physician.

Hospital

(d) The term "hospital" means an institution which—

(1) is primarily engaged in providing, by or under the supervision of physicians, to inpatients (A) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) maintains clinical records on all patients;

(3) has bylaws in effect with respect to its staff of physicians;

(4) has a requirement that every patient must be under the care of a physician;

(5) provides twenty-four-hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or registered professional nurse on duty at all times;

(6) has in effect a hospital utilization review plan which meets the requirements of section 105;

(7) in the case of an institution in any State in which State or applicable local law provides for the licensing of hospitals, (A) is licensed pursuant to such law or (B) is approved, by the agency of such State or locality responsible for licensing hospitals, as meeting the standards established for such licensing; and

(8) meets such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the institution, except that such other requirements may not be higher than the comparable requirements prescribed for the accreditation of hospitals by the Joint Commission on Accreditation of Hospitals.

Psychiatric Hospital

(e) The term "psychiatric hospital" means an institution which—

(1) is primarily engaged in providing, by or under the supervision of a doctor of psychology or a doctor of psychiatry, psychiatric services for the diagnosis and treatment of mentally ill persons;

(2) has a requirement that every patient be under the care of a psychologist or psychiatrist;

(3) has bylaws in effect with respect to its staff of psychologists or psychiatrists;

(4) satisfies the requirements of paragraphs (5) through (8) of subsection (d);

(5) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals entitled to hospital insurance benefits under title II;

(6) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution; and

(7) is accredited by the Joint Commission on Accreditation of Hospitals.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a "psychiatric hospital" if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary.

Tuberculosis Hospital

(f) The term "tuberculosis hospital" means an institution which—

(1) is primarily engaged in providing, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis;

(2) satisfies the requirements of paragraphs (3) through (8) of subsection (d);

(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals covered by the insurance program established by title II;

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution; and

(5) is accredited by the Joint Commission on Accreditation of Hospitals.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a "tuberculosis hospital" if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary.

Secondary Care Services

(g) The term "secondary care services" means the following items and services furnished to an inpatient of a secondary care facility and (except as provided in paragraphs (3) and (6)) by such secondary care facility—

(1) skilled nursing care provided by or under the supervision of a registered professional nurse;

(2) bed and board in connection with the furnishing of such nursing care;

(3) physical, occupational, or speech therapy furnished by the secondary care facility or by others under arrangements with them made by the facility;

(4) such drugs, biologicals, supplies, appliances, and equipment, furnished for use in the secondary care facility, as are ordinarily furnished by such facility for the care and treatment of inpatients;

(5) medical services provided by an intern or resident-in-training of a hospital with which the facility has in effect a transfer agreement (meeting the requirements of subsection (i)), under a teaching program of such hospital approved as provided in the last sentence of subsection (a), and other diagnostic or therapeutic services provided by a hospital with which the facility has such an agreement in effect; and

(6) such other services necessary to the health of the patients as are generally provided by secondary care facilities;

excluding, however, any item or service if it would not be included under subsection (a) if furnished to an inpatient of a hospital.

Secondary Care Facility

(h) The term "secondary care facility" means an institution (or a distinct part of an institution) which has in effect a transfer agreement (meeting the requirements of subsection (i)) with one or more hospitals and which—

(1) is primarily engaged in providing to inpatients (A) skilled nursing care and related services for patients who require medical or nursing care, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) has policies, which are developed with the advice of (and with provision of review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more registered professional nurses, to govern the skilled nursing care and related medical or other services it provides;

(3) has a physician, a registered professional nurse, or a medical staff responsible for the execution of such policies;

(4) (A) has a requirement that the health care of every patient must be under the supervision of a physician, and (B) provides for having a physician available to furnish necessary medical care in case of emergency;

(5) maintains clinical records on all patients;

(6) provides twenty-four-hour nursing service which is sufficient to meet nursing needs in accordance with the policies developed as provided in paragraph (2), and has at least one registered professional nurse employed full time;

(7) provides appropriate methods and procedures for the dispensing and administering of drugs and biologicals;

(8) has in effect a utilization review plan which meets the requirements of section 105;

(9) in the case of an institution in any State in which State or applicable local law provides for the licensing of institutions of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing; and

(10) meets such other conditions relating to the health and safety of individuals who are furnished services in such institution or relating to the physical facilities thereof as the Secretary may find necessary;

except that such term shall not include any institution which is primarily for the care and treatment of mental diseases or tuberculosis.

Agreements for Transfer Between Secondary Care Facilities, Hospitals and Home Health Agencies

(i) A hospital, secondary care facility, and a home health agency shall be considered to have a transfer agreement in effect if, by reason of a written agreement between them or (in case the institutions are under common control) by reason of a written undertaking by the person or body which controls them, there is reasonable assurance that—

(1) transfer of patients will be effected between them whenever such transfer is medically appropriate as determined by the attending physician; and

(2) there will be interchange of medical and other information necessary or useful in the care and treatment of individuals transferred between the institutions, or in determining whether such individuals can be adequately cared for otherwise than in either of such institutions.

Any secondary care facility or home health agency which does not have such an agreement in effect, but which is found by the Secretary to have attempted in good faith

to enter into such an agreement where geographically feasible, shall be considered to have such an agreement in effect if and for so long as the Secretary finds that to do so is in the public interest and essential to assuring extended care services for persons in the community who are eligible for payments with respect to such services under this title.

Home Health Services

(j) The term "home health services" means the following items and services furnished to an individual, who is under the care of a physician, by a home health agency or by others under arrangements with them made by such agency which has in effect a transfer agreement (meeting the requirements of subsection (l)) with one or more hospitals or secondary care facilities, under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician, which items and services are, except as provided in paragraph (6) provided on a visiting basis in a place of residence used as such individual's home—

(1) part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse;

(2) physical, occupational, or speech therapy;

(3) to the extent permitted in regulations, part-time or intermittent services of a home health aide;

(4) medical supplies (other than drugs and biologicals), and the use of medical appliances, while under such a plan;

(5) in the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital, under a teaching program of such hospital approved as provided in the last sentence of subsection (a); and

(6) any of the foregoing items and services which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or secondary care facility, or at a rehabilitation center which meets such standards as may be prescribed in regulations, and—

(A) the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in such place of residence, or

(B) which are furnished at such facility while he is there to receive any such item or service described in clause (A), but not including transportation of the individual in connection with any such item or service;

excluding, however, any item or service if it would not be included under subsecton (a) if furnished to an inpatient of a hospital.

Post-Inpatient Home Health Services

(k) The term "post-inpatient home health services" means home health services furnished an individual within one year after his most recent discharge from a hospital of which he was an inpatient or (if later) within one year after his most recent discharge from a secondary care facility of which he was an inpatient entitled to payment under title II, but only if the plan covering the home health services is established within fourteen days after his discharge from such hospital or secondary care facility.

Home Health Agency

(l) The term "home health agency" means a public agency or private organization, or a subdivision of such an agency or organization, which—

(1) is primarily engaged in providing skilled nursing services and other therapeutic services;

(2) has policies, established by a group of professional personnel (associated with the agency or organization), including one or more physicians and one or more registered professional nurses, to govern the services (referred to in paragraph (1)) which it provides, and provides for supervision of such services by a physician or registered professional nurse;

(3) maintains clinical records on all patients;

(4) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, (A) is licensed pursuant to such law, or (B) is approved by the agency of such State or locality responsible for licensing agencies or organizations of this nature, as meeting the standards established for such licensing; and

(5) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such agency or organization;

except that such term shall not include a private organization which is not a nonprofit organization exempt from Federal income taxation under section 501 of the Internal Revenue Code of 1954 (or a subdivision of such organization) unless it is licensed pursuant to State law and it meets such additional standards and requirements as may be prescribed in regulations; and except that for purposes of title II such term shall not include any agency or organization which is primarily for the care and treatment of mental diseases.

Outpatient Physical Therapy Services

(m) The term "outpatient physical therapy services" means physical therapy services furnished by a provider of services, a clinic, rehabilitation agency, or a public health agency or by an independent therapist who meets standards prescribed by the Secretary, to an individual as an outpatient—

(1) who is under the care of a physician, and

(2) with respect to whom a plan prescribing the type, amount, and duration of physical therapy services that are to be furnished such individual has been established, and is periodically reviewed, by a physician;

excluding, however—

(3) any item or service if it would not be included under subsection (a) if furnished to an inpatient of a hospital; and

(4) any such service—

(A) if furnished by a clinic or rehabilitation agency, unless such clinic or rehabilitation agency—

(i) provides an adequate program of physical therapy services for outpatients and has the facilities and personnel required for such program or required for the supervision of such a program, in accordance with such requirements as the Secretary may specify.

(ii) has policies, established by a group of professional personnel, including one or more physicians (associated with the clinic or rehabilitation agency) and one or more qualified physical therapists, to govern the services (referred to in clause (i)) it provides,

(iii) maintains clinical records on all patients,

(iv) if such clinic or agency is situated in a State in which State or applicable local law provides for the licensing of institutions of this nature, (I) is licensed pursuant to such law, or (II) is approved by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing; and

(v) meets such other conditions relating to the health and safety of individuals who are furnished services by such clinic or agency on an outpatient basis, as the Secretary may find necessary, or

(B) if furnished by a public health agency, unless such agency meets such other conditions relating to health and safety of individuals who are furnished services by such agency on an outpatient basis, as the Secretary may find necessary.

Physician

(n) The term "physician" means—

(1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery as provided in section 501; and

(2) a doctor of optometry, podiatry or chiropractry, but only to the extent that the services of such optometrist, podiatrist or chiropractor would be covered services when performed by a physician under this Act and where the optometrist, podiatrist or chiropractor is legally authorized to perform such services as provided in section 501.

Nondiagnostic Medical Examination

(o) The term "nondiagnostic medical examination" means examination of an outpatient by a physician or by other medical or paramedical personnel under a physician's direction, to determine whether an undetected diseased condition exists.

Medical and Other Health Services

(p) The term "medical and other health services" means any of the following items or services provided for the diagnosis, treatment or rehabilitation of an individual:

(1) physicians' services;

(2) (A) services and supplies (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered) furnished as an incident to a physician's professional service, of kinds which are commonly furnished in physicians' offices and are commonly either rendered without charge or included in the physicians' bills;

(B) hospital services (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered) incident to physicians' services rendered to outpatients;

(C) diagnostic services which are—

(i) furnished to an individual as an outpatient by a hospital or by others under arrangements with them made by a hospital, and

(ii) ordinarily furnished by such hospital (or by others under such arrangements) to its outpatients for the purpose of diagnostic study;

(3) diagnostic X-ray tests (including tests under the supervision of a physician, furnished in a place of residence used as the patient's home, if the performance of such tests meets such conditions relating to health and safety as the Secretary may find necessary), diagnostic laboratory tests, and other diagnostic tests;

(4) X-ray, radium, and radioactive isotope therapy, including materials and services of technicians;

(5) surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations;

(6) durable medical equipment, including iron lungs, oxygen tents, hospital beds, and wheelchairs used in the patient's home, whether furnished on a rental basis or purchased;

(7) ambulance service where the use of other methods of transportation is contraindicated by the individual's condition, but only to the extent provided in regulations;

(8) prosthetic devices (other than dental) which replace all or part of an internal body organ, including replacement of such devices; and

(9) leg, arm, back, and neck braces, and artificial legs,

(10) diagnostic tests performed in a laboratory which is independent of a physician's office or a hospital shall be included within paragraph (3) where—

(i) the patient has been referred by a physician, and only for such tests as specified by the physician; and

(ii) such laboratory meets such conditions relating to the health and safety of individ-

uals with respect to whom such tests are performed as the Secretary may find necessary.

There shall be excluded from the diagnostic services specified in paragraph (2)(C) any item or service (except services referred to in paragraph (1)) which—

(i) would not be included under subsection (b) if it were furnished to an inpatient of a hospital; or

(ii) is furnished under arrangements referred to in such paragraph (2)(C) unless furnished in the hospital or in other facilities operated by or under the supervision of the hospital or its organized medical staff.

None of the items and services referred to in the preceding paragraphs (other than paragraphs (1) and (2)(A)) of this subsection which are furnished to a patient of an institution which meets the definition of a hospital shall be included unless such other conditions are met as the Secretary may find necessary relating to health and safety of individuals with respect to whom such items and services are furnished.

Provider of Services

(q) The term "provider of services" means a medical care institution.

Reasonable Cost

(r)(1) The reasonable cost of any services shall be determined in accordance with regulations establishing the method or methods to be used and the items to be included, in determining such costs for various types or classes of institutions, agencies, and services; except that in any case to which paragraph (2) or (3) applies, the amount of the payment determined under such paragraph with respect to the services involved shall be considered the reasonable cost of such services. In prescribing the regulations referred to in the preceding sentence, the Secretary shall consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment, to be made by persons other than the recipients of services, to providers of services on account of services furnished to such recipients by such providers. Such regulations may provide for determination of the costs of services on a per diem, per unit, per capita, or other basis, may provide for using different methods in different circumstances, may provide for the use of estimates of costs of particular items or services, may provide for separate estimates in different geographical areas, and may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs. Such regulations shall (A) take into account both direct and indirect costs of providers of services in order that, under the methods of determining costs, the costs with respect to individuals covered by the insurance programs established by this title will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs, and (B) provide for the making of suitable retroactive corrective adjustments where, for a provider of services for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive.

Such regulations in the case of secondary services furnished by proprietary facilities shall include provision for specific recognition of a reasonable return on equity capital, including necessary working capital, invested in the facility and used in the furnishing of such services, in lieu of other allowances to the extent that they reflect similar items. The rate of return recognized pursuant to the preceding sentence for determining the reasonable cost of any services furnished in any fiscal period shall not exceed one and one-half times the average of the rates of interest, for each of the months any part of which is included in such fiscal period, on obligations issued for purchase by the Federal Health Care Trust Fund.

(2)(A) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or secondary care services is in accommodations more expensive than semiprivate accommodations, the amount taken into account for purposes of payment under this Act with respect to such services may not exceed an amount equal to the reasonable cost of such services if furnished in such semiprivate accommodations unless the more expensive accommodations were required for medical reasons.

(B) Where a provider of services which has an agreement in effect under this Act furnishes to an individual items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under part A or part B, as the case may be, the Secretary shall take into account for purposes of payment to such provider of services only the equivalent of the reasonable cost of the items or services with respect to which such payment may be made.

(3) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or secondary care services is in accommodations and the use of such other accommodations other than, but not more expensive than, semiprivate accommodations and the use of such other accommodations rather than semi-private accommodations was neither at the request of the patient nor for a reason which the Secretary determines is consistent with the purposes of this act, the amount of the payment with respect to such bed and board under part A shall be the reasonable cost of such bed and board furnished in semi-private accommodations (determined pursuant to paragraph (1)) minus the difference between the charge customarily made by the hosptial or extended care facility for bed and board in semiprivate accommodations and the charge customarily made by it for bed and board in the accommodations furnished.

(4) For purposes of this subsection, the term "semiprivate accommodations" means two-bed, three-bed, or four-bed accommodations.

Family

(s)(1) The term "family" means—

(A) two or more individuals—

(i) who are related by blood, marriage, or adoption, and

(ii) who are living in a place of residence maintained by one or more of them as his or their home.

but excluding any adult individual who—

(iii) is not a dependent of any other of such individuals, or

(iv) does not provide more than 50 per centum of the economic support of any other of such individuals, or

(v) is not the spouse of any other of such individuals;

(B) an adult individual who is not included as a member of any family under subparagraph (A); or

(C) any individual who is not included within subparagraphs (A) and (B).

(2) For purposes of paragraph (1)(A)(ii), a child of an individual who is attending school away from home shall be considered to be living in the place of residence of his parent.

(t) The term "dependent" means one who depends upon another for more than 50 per centum of his economic support.

(u) The term "adult" means a person over eighteen years of age.

(v) The term "child" means a person under eighteen years of age.

(w) The term "family income" means the total of the adjusted gross income for all family members, as defined by section 62 of the Internal Revenue Code of 1954, and any other cash income received which is otherwise exempt from taxation, including but not limited to Federal or State public assistance and social security payments.

(x) The term "family health cost ceiling" means 15 per centum of the annual per person family income rounded to the nearest $1,000, except where the annual per person family income is $2,000 or less, then 10 per centum of the annual per person family income rounded to the nearest $500.

(y) The term "per person family income" means the quotient of the total family income divided by the family size percentage.

(z) The term "family size percentage" means—

(1) in the case of a family consisting of one adult, 1.25;

(2) in the case of a family consisting of one adult, plus spouse or one dependent, 1.75;

(3) in the case of each additional dependent, 0.50.

(aa) The term "State" means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa. The term "United States", when used in a geographical sense, includes all the States as defined in this subsection.

Medical Care Institutions

(bb) The term "medical care institutions" includes hospitals, psychiatric hospitals, tuberculosis hospitals, secondary care facilities, and other facilities rendering medical and mental health services covered by this Act.

Health Maintenance Organization

(cc) The term "health maintenance organization" means a public or private organization which—

(1) provides, either directly or through arrangements with others, health services to enrollees on a per capita prepayment basis;

(2) provides, either directly or through arrangements with others, with respect to enrollees for benefits under title IV to whom this section applies (through medical care institutions) all of the services and benefits covered under titles II and III of this Act;

(3) provides physicians, psychologists', psychiatrists', or dentists' services directly through such professionals who are either employees or partners of such organization or under arrangement with an organized group or groups of such professionals which is or are reimbursed for services on the basis of an aggregate fixed sum or on a per capita basis;

(4) demonstrates to the satisfaction of the Secretary proof of financial responsibility and proof of capability to provide comprehensive health care services, including institutional services, efficiently, effectively, and economically; and

(5) has arrangements for assuring that the health services required by its members are received promptly and appropriately and that the services that are received measure up to quality standards which it establishes in accordance with regulations.

OFFICE OF HEALTH CARE

SEC. 102. (a) There is hereby established within the Department of Health, Education, and Welfare, under the general authority of the Secretary of Health, Education, and Welfare (hereinafter referred to as the "Secretary"), an Office of Health Care, the functions of which shall be the administration of the provisions of this Act.

(b) The Office of Health Care shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The functions of the Secretary under this Act shall be administered through the Director of the Office of

Health Care (hereinafter referred to as the "Director").

ADMINISTRATIVE POWERS

SEC. 103. (a) In carrying out his functions under this Act, the Secretary shall—

(1) establish such geographical regional areas as he deems necessary for the efficient administration of this Act;

(2) contract with an insurance carrier or public or private administrative intermediary within each region to administer provisions of titles II and III of this Act;

(3) promulgate standards for qualification of the insurance carriers and others contracting with the Secretary under subsection (2);

(4) appoint and fix the compensation of such personnel as the Director deems necessary in accordance with title 5, United States Code;

(5) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 per day for individuals;

(6) promulgate such rules, regulations, and procedures, in accordance with section 553, title 5, United States Code, as may be necessary to carry out the functions vested in him, and delegate authority for the performance of any function to any officer or employee of the United States under his direction and supervision;

(7) utilize, with their consent, the services, personnel and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

(8) request such information, data, and reports, from any Federal agency as the Director may from time to time require, and as may be produced consistent with other law;

(9) with approval of the President, arrange with and reimburse the heads of other Federal agencies for the performance of any of his functions under this Act;

(10) enter into and perform such contracts (including those entered into pursuant to paragraph (2)), leases, cooperative agreements, or other transactions, in the conduct of his functions consistent with the purposes of this Act, in accordance with section 3648 of the Revised Statutes (31 U.S.C. 529).

(b) Notwithstanding any other provision of law, the Secretary is authorized, solely for the purposes of determining or confirming eligibility for benefits under this Act, to examine the records of any Federal office which directly pertain to such eligibility. The Secretary may review the benefit eligibility of a family, not more often than bi-annually, where he has reason to believe that circumstances have changed and that those changed circumstances have resulted in a change in the health cost ceiling of a family.

(c) A family shall request a review of its benefit eligibility prior to utilizing benefits under this Act whenever there has been a change of circumstances which would result in a change in the health cost ceiling of a family.

COMPENSATION

SEC. 104. Section 5314, title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(58) Director, Office of Health Care".

UTILIZATION REVIEW

SEC. 105. (a) Each medical care institution providing services or receiving payments under this Act shall develop a utilization review plan.

(b) Such review plans shall include provisions for a review of the medical necessity and professional competence—

(1) of all medical and other health services received by individuals from such medical care institutions;

(2) of hospitalization for over seven days and every seven days thereafter; and

(3) of additional medical and other health services which may be required from such medical care institution.

(c) Reviews shall be conducted by a committee of members of the organization providing such services, composed of three or more physicians, or dentists, or psychiatrists or psychologists as the case may be reflective of each profession's provision of service in the medical care institution. However, where the size of the organization is such that the establishment of an internal review committee is impractical, a similar committee established by the local medical, dental, or mental health association shall be established to carry out the purposes of subsection (b) of this section.

PROFESSIONAL STANDARDS REVIEW

SEC. 106. (a) The matter preceding paragraph (1) of section 1155(b) of the Social Security Act and paragraph (1) of section 1155(b) of such Act are amended to read as follows:

"(b) To the extent necessary or appropriate for the proper performance of its duties and functions, the Professional Standards Review Organization serving any area shall, in accordance with regulations prescribed by the Secretary—

"(1) include within its membership and utilize the services of persons who are practitioners of or specialists in the various areas of health care whose professional services are covered services under this Act and which persons shall, to the maximum extent practicable, be individuals engaged in the practice of their profession within the area served by such organization;".

(b) Section 1165 of the Social Security Act is amended to read as follows:

"SEC. 1165. The Secretary shall by regulations provide for such correlation of activities, such interchange of data and information, and such other cooperation consistent with economical, efficient, coordinate, and comprehensive implementation of this part (including, but not limited to, usage of existing mechanical and other data-gathering capacity) between and among agencies and organizations which are parties to agreements or contracts entered into pursuant to this Act and Professional Standards Review Organizations, as may be necessary or appropriate for the effective administration of this Act."

(c)(1) Section 1163 of the Social Security Act is amended to read as follows:

"NATIONAL PROFESSIONAL STANDARDS REVIEW COUNCIL

"SEC. 1163. (a) There is hereby established in the Department of Health, Education, and Welfare a National Professional Standards Review Council (hereinafter referred to as the Council), to be composed of eleven members appointed by the President, by and with the consent of the Senate, without regard to the provisions of title 5, United States Code. The members of such Council shall be appointed within one hundred and twenty days after the date of enactment of this Act. Each member so appointed shall be a person who, as a result of his training, experience, and attainments, is exceptionally qualified to appraise programs and activities under this Act. A majority of the members of the Council shall consist of physicians recommended to the President by national organizations representing practicing physicians, consumer groups and other health care interests. Other members of the Council shall be representative of the other professionals whose services are covered services under this Act and who have been recommended by their respective professional organizations, consumer groups and other health care interests.

"(b) The Committee shall select its own Chairman from among its members. Members shall be appointed for three-year terms, except that of the members first appointed, three shall be appointed for terms of one, four shall be appointed for terms of two year, four shall be appointed for terms of two of three years, as designated by the President at the time of appointment. Any member appointed to fill a vacancy prior to the expiration of the term for which his predecessor was appointed shall serve only for the remainder of such term. Members shall be eligible for reappointment and may serve after the expiration of their terms until their successors have taken office. A vacancy in the Council shall not affect its activities and six members thereof shall constitute a quorum. The Secretary shall be an ex officio member of the Council. During his term of office no member shall engage in any other business, vocation, or employment. A member of the Council who is an officer or employee of the Federal Government shall serve without additional compensation.

"(c) The Secretary shall make available to the Council such staff, information, and other assistance as it may require to carry out its activities.

"(d) The Council shall—

"(1) review the operations of Statewide Professional Standards Review Councils and Professional Standards Review Organizations with a view to determining the effectiveness and comparative performance of such review councils and organizations in carrying out their duties and functions and provide for the development and distribution of information and data which will assist such review councils and organizations in carrying out the purposes of this part;

"(2) continually review the overall administration of this Act and advise the Secretary thereon;

"(3) develop and issue minimum national standards of training for physicians, dentists, psychologists, psychiatrists and nurses providing services covered by this Act;

"(4) develop and issue minimum standards of training for allied health personnel employed by, or to be employed by providers, including, but not limited to, medical technologists, radiologic technologists, optometric technologists, dental hygienists, dental assistants, dental laboratory technicians, dietary technicians, practical nurses, nursing aides, pharmacy aides, physical therapists, physical therapy assistants, inhalation therapy technicians, electrocardiograph technicians, electroencephalograph technicians, and surgical aides;

"(5) hold hearings and consult with appropriate professional or other organizations and publicize for public comment standards developed pursuant to paragraphs (3) and (4);

"(6) in its discretion, require the revision of a provider's staffing patterns, or its standards for the selection and retention of professional or other personnel, which fail to meet said minimum standards;

"(7) in its discretion, provide for the allied health personnel covered in paragraph (4), special programs for the training, or retraining of personnel employed by providers who fail to meet minimum standards of training;

"(8) compile a generic list of prescription drugs (i) for use by organizations supplying services under titles II and IV, and (ii) for use outside such organizations under titles III and IV when furnished by or on prescription of a physician, psychiatrist, or dentist, subject to the provisions of section 303(b);

"(9) prescribe national standards for health service organizations, corporations, and associations in the health care field; and

"(10) make an annual report, to the Congress through the Secretary, containing a review of the over-all effectiveness and administration of this Act and recommending new legislation if needed."

(2)(A) Section 5315, title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(96) Chairman, National Professional Standards Review Council.".

(B) Section 5316 of such title is amended by adding at the end thereof the following new paragraph:

"(132) Members, National Professional Standards Review Council (10).".

(d) Sections 1155 (g) and 1168 of the Social Security Act are repealed.

TITLE II—INPATIENT HEALTH CARE BENEFITS

PROGRAM ESTABLISHED

SEC. 201. There is hereby established an insurance program to provide insurance benefits, in accordance with the provisions of this title, financed by the Federal Government.

ELIGIBILITY

SEC. 202. (a) Except as provided in subsection (b) of this section every resident of the United States and every nonresident citizen thereof, while within the United States, who has, directly or indirectly, procured coverage under title III of this Act, is eligible to receive health care benefits under this Act.

(b) (1) The Secretary is authorized to enter into agreements with foreign governments, international organizations, or other entities to extend the benefits of this title to persons within the United States who are alien employees (as defined in regulations) of a foreign government, of an instrumentality of a foreign government exempt from the tax imposed by section 3111(b) of the Internal Revenue Code of 1954, or of an international organization (as defined in the International Organization Immunity Act). An alien admitted as a permanent resident and living in the United States, or an alien admitted for employment and employed within the United States, is for the purposes of this title a resident of the United States.

(2) Agreements entered into by the Secretary in accordance with paragraph (1) of the subsection shall be in consideration of payment to the United States of the estimated cost of furnishing benefits to such persons, or of reciprocal agreement.

(c) Every individual who is eligible for benefits under this title shall be entitled to benefits for medical and other health services rendered after July 1, 1975, which are covered by this title. An individual receiving medical and other health services at the time he becomes eligible for benefits under this title shall receive benefits only from the date that he becomes eligible for such benefits.

(d) The Secretary shall prescribe regulations providing for automatic coverage of newly born children up to the age of three months.

SCOPE OF BENEFITS

SEC. 203. (a) Every eligible individual shall be entitled to have payment made on his behalf, or in such situations as the Secretary allow, to him, for any covered service which is furnished to him within the United States by an approved hospital or medical care facility if such service is certified necessary and appropriate by the attending physician, dentist, psychologist, or psychiatrist, for the diagnosis, treatment, or rehabilitation of such individual.

(b) Every individual who is eligible for benefits under ths title shall be covered for the cost of—

(1) inpatient hospital services;

(2) inpatient tuberculosis hospital services;

(3) inpatient psychiatric hospital services, not to exceed sixty days per year, with an individual lifetime limit of one hundred eighty days;

(4) secondary care services; and

(5) post-inpatient home health services.

(c) Any service furnished otherwise than in accordance with this title or rules promulgated thereunder is not a covered service, except that, as specified in regulations prescribed by the Secretary, the services of a Christian Science sanatorium are covered services if it is operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

PAYMENT OF BENEFITS

SEC. 204. (a) As a condition precedent to any benefits paid under this title a family or individual must expend for services covered by this title an amount equal to one-half its family health cost ceiling (as defined in section 101(x)) plus an amount equal to 50 per centum of the cost of such services that are above one-half of the family health cost ceiling and the family health cost ceiling.

(b) In no case shall benefits be paid for services that are performed for cosmetic reasons unless such services are performed to restore the patient to a condition equivalent to his condition immediately prior to the injury or disease on account of which such services are performed.

PROCEDURE FOR PAYMENT

SEC. 205. Payment for services described in this title shall be made in accordance with such rules and regulations as are promulgated by the Secretary.

FINANCING

SEC. 206. (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Health Care Trust Fund" (hereinafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of such amounts as may be deposited in, or appropriated to, such fund as provided in this section.

(b) There are hereby appropriated to the Trust Fund for the fiscal year ending June 30, 1976, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equal to 100 per centum of—

(1) the taxes imposed by section 3101(b) and 3111(b) of the Internal Revenue Code of 1954 with respect to wages reported to the Secretary of the Treasury or his delegate to subtitle F of such Code after December 31, 1965, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such wages, which wages shall be certified by the Secretary of Health, Education, and Welfare on the basis of records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with such reports; and

(2) the taxes imposed by section 1401(b) of the Internal Revenue Code of 1954 with respect to self-employment income reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income, which self-employment income shall be certified by the Secretary of Health, Education, and Welfare on the basis of records of self-employment established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns.

The amounts appropriated by the preceding sentence shall be transferred from time to time from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in the preceding sentence, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such sentence.

(b) With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Commissioner of Social Security shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) hold the Trust Fund;

(2) report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next two fiscal years;

(3) report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next two fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(c) It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) The interest on, and the proceeds from

the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f)(1) The Managing Trustee is directed to pay from time to time from the Trust Fund into the Treasury the amount estimated by him as taxes imposed under section 3101(b) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954 with respect to wages paid after June 30, 1975. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, and the Secretary of Health, Education, and Welfare shall furnish the Managing Trustee such information as may be required by the Managing Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections.

(2) Repayments made under paragraph (1) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(g) The Managing Trustee shall also pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses.

(h) There are hereby transferred to the Trust Fund all assets and liabilities of the Federal Hospital Insurance Trust Fund established by section 1817, title XVIII, of the Social Security Act. This subsection shall become effective on the date that benefits under this title begin.

(i) There are hereby appropriated such funds as may be necessary to defray the expenses of the Trust Fund.

TITLE III—SUPPLEMENTARY MEDICAL INSURANCE

PROGRAM ESTABLISHED

SEC. 301. There is hereby established a voluntary insurance program to provide medical insurance benefits, in accordance with the provisions of this title to those individuals who elect to enroll under such program, to be financed from premium payments by enrollees together with contributions from funds by the Federal Government.

ELIGIBILITY AND ENROLLMENT

SEC. 302. (a) Every individual who is eligible for benefits under title II of this Act is eligible to enroll for benefits under this title.

(b) An individual may enroll for coverage under this title only in such manner and form as shall be prescribed by the Secretary by regulation, and only during enrollment periods prescribed in or under this Act.

(c) There shall be a general enrollment period, during which all eligible individuals may enroll, beginning on June 1, 1974 and ending on March 31, 1975. Thereafter enrollment shall be open during the months of February and March of each year for coverage to begin on July 1 of that year.

(d) Aliens shall be eligible to enroll in accordance with the provisions of the agreements reached under section 202(b)(1).

(e) The Secretary shall prescribe regulations providing for automatic coverage of newly born children up to the age of three months.

SCOPE BENEFITS

SEC. 303. (a) The benefits provided to an individual by the insurance program established by this title shall consist of—

(1) entitlement to have payment made to him or on his behalf (subject to regulations prescribed by the Secretary) for medical and other health services;

(2) entitlement to have payment made on his behalf for—

(A) home health services; and

(B) outpatient physical therapy services;

(3) entitlement to have payment to him or made on his behalf for professional services of a doctor of dentistry or oral surgery, including diagnostic and therapeutic services, provided on an outpatient basis, except that—

(A) orthodontry and services of orthodontists are excluded unless performed in relation to restoration of a prior condition; and

(B) for persons above the age of eleven years, services are covered only to the extent that they would be a covered service when performed by a physician under this title where the dentist is legally licensed to perform such service as provided in section 501;

(4) entitlement to have payment made to him or on his behalf for professional services of a psychologist or a psychiatrist provided on an outpatient basis or as incident to inpatient hospital services (subject to regulations prescribed by the Secretary), for up to twenty-six visits during the calendar year and up to one hundred four visits during his lifetime;

(5) entitlement to have payment made to him or on his behalf for nondiagnostic medical examinations (as provided by regulations prescribed by the Secretary (but including—

(A) biyearly examinations for children between birth and the age of four; and

(B) pre-natal care.

(b) The benefits provided to an individual by the insurance program established by this title shall include drugs which are—

(i) used in the treatment of long-term or chronic illnesses (as prescribed by the Secretary); and

(ii) are prescribed by a physician from the list developed in accordance with the provisions in section 107(d)(8).

PAYMENT OF BENEFITS

SEC. 304. (a) Subject to the provisions of this section, there shall be paid from the Supplementary Health Care Trust Fund, in the case of each individual who is covered under the insurance program established by this title and incurs expenses for services with respect to which benefits are payable under this title, amounts equal to—

(1) 100 per centum of the reasonable costs of the services described in section 303(a)(1), (2), (4), and (5), less (A) $50 per person per calendar year, where the per person family income exceeds $2,000 per year, or (B) $25 per person per calendar year where the per person family income is $2,000 or $1,500, or (C) $10 per person per calendar year where the per person family income is $1,000 or less.

(2) 100 per centum of the reasonable costs of the services described in section 303(a)(3) less (A) $25 per person per calendar year, where the per person family income exceeds $2,000 per year, or (B) $15 per person per calendar year where the per person family income is greater than $2,000 or $1,500, or (C) $10 per person per calendar year where the per person family income is $1,000 or less.

(b) No payment may be made under this title wth respect to any services furnished an individual to the extent that such individual is entitled to have payment made with respect to services under title II.

(c) No payment may be made under this title to any provider of services or other person under this title unless there have been furnished such information as may be necessary in order to determine the amounts due such provides or other person under this title for the period with respect to which the amounts are being paid or for any prior period.

PROCEDURE FOR PAYMENT

SEC. 305. Payment for services described in section 303(a) shall be made by the insurance carrier or other administrative intermediary who has contracted to cover the region in which the services were rendered upon the submission to such insurance carrier, a claim in such manner as prescribed by the Secretary by published regulations.

FINANCING

SEC. 306. (a)(1) The Secretary shall, during January 1975, and of each year thereafter determine and promulgate the dollar amount which shall be applicable for premiums for each region and subregion for months occurring in the twelve-month period commencing July 1 of that year. Such dollar amount shall be such amount as the Secretary estimates will be equal to the Federal share of the total of the premium costs which he estimates will be payable from the Supplementary Health Care Trust Fund for such twelve-month period.

(2) The Federal share of the premiums for Supplementary Health Care under this title shall be equal to—

(A) 100 per centum of the premium where the per person family income is $1,000 or less;

(B) 75 per centum of the premiums where the per person family income is $1,500;

(c) 50 per centum of the premiums where the per person family income is $2,000; and

(D) 25 per centum of the premiums where the per person family income is $2,500.

The balance (of the premium) not covered by the Federal share shall be paid by the family and where the per person family income exceeds $2,500 per person the Federal share shall be 0 per centum.

(b) If any monthly premium determined under the foregoing provisions of this section is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.

PAYMENT OF PREMIUMS

SEC. 307. (a) Payment of the family share of the premium under this title shall be made, in a manner specified by regulations promulgated by the Secretary, to the designated insurance carrier or other administrative intermediary in the region in which the family resides.

(b) The Secretary shall encourage and provide regulations for the administrative intermediary of the regions to enter into agreements with employers to deduct from the salaries and wages of their employees the amount of their premiums.

(c) Nothing in this Act shall be construed as impairing or restricting any labor-management contract or employee health-benefit agreement now in effect or to become effective in the future. Employers may enter into agreements with administrative intermediaries to cover all or part of an employee's premium cost.

(d)(1) In the case of an individual who is entitled to monthly benefits under section 202 of the Social Security Act, his monthly premiums under this title (except as provided in subsection (g) of this section) shall be collected by deducting the amount of such monthly benefits. Such deductions shall be made in such manner and at such times as the Secretary shall by regulations prescribe.

(2) The Secretary of the Treasury shall from time to time, transfer from the Federal old-age and survivors insurance trust fund or the Federal disability insurance trust fund to the supplementary health care trust fund the aggregate amount deducted under paragraph (1) of this subsection, for the period to which such transfer relates from benefits under section 202 of the Social Security Act which are payable from such

trust fund. Such transfer shall be made on the basis of a certification by the Secretary of Health, Education, and Welfare and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(e)(1) In the case of an individual who is entitled to receive for a month an annuity or pension under the Railroad Retirement Act of 1937, his monthly premiums under this title shall (except as provided in subsection (g)) be collected by deducting the amount thereof from such annuity or pension. Such deduction shall be made in such manner and at such times as the Secretary shall by regulations prescribe. Such regulations shall be prescribed only after consultation with the Railroad Retirement Board.

(2) The Secretary of the Treasury shall, from time to time, transfer from the railroad retirement account to the supplementary health care trust fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfers shall be made on the basis of a certification by the Railroad Retirement Board and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(f) In the case of an individual who is entitled both to monthly benefits under section 202 and to an annuity or pension under the Railroad Retirement Act of 1937 at the time he enrolls under this title, subsection (d) shall apply so long as he continues to be entitled both to such benefits and such annuity or pension. In the case of an individual who becomes entitled both to such benefits and such an annuity or pension after he enrolls under this part, subsection (d) shall apply if the first month for which he was entitled to such benefits was the same as or earlier than the first month for which he was entitled to such annuity or pension, and otherwise subsection (e) shall apply.

(g) If an individual to whom subsection (d) or (e) applies estimates that the amount which will be available for deduction under such subsection for any premium payment period will be less than the amount of the monthly premiums for such period, he may (under regulations) pay to the Secretary such portion of the monthly premiums for such period as he desires.

(h)(1) In the case of an individual receiving an annuity under subchapter III of chapter 83 of title 5, United States Code, or any other law administered by the Civil Service Commission providing retirement or survivorship protection, to whom neither subsection (d) nor subsection (c) applies, his monthly premiums under this part (and the monthly premiums of the spouse of such individual under this part if neither subsection (d) nor subsection (e) applies to such spouse and if such individual agrees) shall, upon notice from the Secretary of Health, Education, and Welfare to the Civil Service Commission, be collected by deducting the amount thereof from each installment of such annuity. Such deduction shall be made in such manner and at such times as the Civil Service Commission may determine. The Civil Service Commission shall furnish such information as the Secretary of Health, Education, and Welfare may reasonably request in order to carry out his functions under this part with respect to individuals to whom this subsection applies. A plan described in section 8903 of title 5, United States Code, may reimburse each annuitant enrolled in such plan an amount equal to the premiums paid by him under this part if such reimbursement is paid entirely from funds of such plan which are derived from sources other than the contributions described in section 8906 of such title.

(2) The Secretary of the Treasury shall, from time to time, but not less often than quarterly, transfer from the civil service retirement and disability fund, or the account (if any) applicable in the case of such other law administered by the Civil Service Commission, to the supplementary health care trust fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfer shall be made on the basis of a certification by the Civil Service Commission and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(i) In the case of an individual who participates in the insurance program established by this title but with respect to whom none of the preceding provisions of this section applies, or with respect to whom subsection (g) applies, the premiums shall be paid to the designated insurance carrier at such times, and in such manner, as the Secretary shall by regulations prescribe.

(j) Amounts paid to the Secretary under subsection (g) or (i) shall be deposited in the Treasury to the credit of the supplementary Health Care Trust Fund.

(k) In the case of an individual who participates in the insurance program established by this title, premiums shall be payable for the period commencing with the first month of his coverage period and ending with the month in which he dies, or, if earlier, in which his coverage under such program terminates.

(l) The Managing Trustee shall pay from time to time, but not less than yearly, to the insurance carriers such amounts as the Secretary certifies are necessary to pay the Federal share of the premiums under this title.

(m) Where an individual or family fails to pay his share of the premium, coverage shall continue either partially or fully, for a period not to exceed one year, subject to regulations prescribed by the Secretary.

SUPPLEMENTARY HEALTH CARE TRUST FUND

SEC. 308. (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Supplementary Health Care Trust Fund" (hereinafter in this section referred to as the "Trust Fund"): The Trust Fund shall consist of such amounts as may be deposited in, or appropriated to, such fund as provided in this title.

(b) There are hereby transferred to the Trust Fund, all assets and liabilities of the "Federal Supplementary Medical Insurance Trust Fund", established by section 1842, title XVIII of the Social Security Act. This section shall be effective on the date on which benefits under this title begin.

(c) With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Commissioner of Social Security shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) hold the Trust Fund;

(2) report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next two fiscal years;

(3) report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next two fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(d) It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations, issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-being obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(e) Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(f) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(g) There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to this Act. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpay-

ments to the Railroad Retirement Board pursuant to this Act.

(h) There are hereby appropriated such funds as may be necessary to defray the expenses of the Trust Fund.

(i) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to make the payments provided for by this title, and the payments with respect to administrative expenses.

TITLE IV—HEALTH MAINTENANCE ORGANIZATIONS

GRANTS FOR DEVELOPMENT

SEC. 401. (a) The Secretary shall, upon the recommendations of the Health Delivery Committee (as provided in section 504) promulgate rules and regulations for the establishment and financing of public or private prepaid health maintenance organizations (as defined in section 101(cc)).

(b)(1) There is hereby authorized for the fiscal years ending June 30, 1975, June 30, 1976, and June 30, 1977, such sums as may be necessary to carry out the provisions of this title, which shall be used by the Secretary to make grants or loans to cover the costs of planning and establishing such organizations including construction costs, to such groups or entities which meet the qualifications, for such grants or loans, as established by the Secretary.

(2) In no case shall a grant to any one health maintenance organization exceed 50 per centum of the development costs of the organization, except that organizations which locate in and serve areas that are located in physician shortage areas (as defined by the Secretary) may receive grants up to 70 per centum of the total development costs.

(3) Loans to such organizations shall be made on such terms and conditions as the Secretary may prescribe by regulation or in the agreement with the organization. Such loans shall be repayable in equal or graduated installments over a twenty-year period which begins upon the date of commencement of such organizations. Such loans shall bear interest on the unpaid balance, computed only for periods during which the loan is repayable, at the rate of 3 per centum per annum.

CONTRACTS WITH HEALTH MAINTENANCE ORGANIZATIONS

SEC. 402. (a) The Secretary may enter into contracts (without regard to section 3709 of the revised statutes or any other provision of law requiring competitive bidding) with qualified health maintenance organizations to provide the services described in titles II and III to be rendered after June 30, 1975.

(b) The total Federal and family payments for services provided under contracts authorized under subsection (a) shall not be made in any amount that is in excess of the average total cost of such services for families in that region.

FINANCING

SEC. 403. (a) The Federal share of the premium or prepayment for participants in the health maintenance organizations shall be determined in accordance with section 306 (a)(2) and section 204(a).

(b) The Secretary shall during 1975, and each year thereafter determine and promulgate the dollar amount which shall be payable to organizations within each region (under section 402) for months occurring in the twelve-month period commencing July 1 in each succeeding year. Such dollar amount shall be such amount as the Secretary estimates will be equal to the Federal share of the total of the premium or prepayment costs which he estimates will be payable from the Supplementary Health Care Trust Fund and the Federal Health Care Trust Fund for such twelve-month period.

PAYMENT OF PREMIUMS

SEC. 404. Family payment of premiums under this title shall be made in a manner similar to the payment of premiums prescribed by section 307 and any regulations prescribed by the Secretary.

ELIGIBILITY

SEC. 405. Any individual who is eligible for benefits under titles II and III shall be eligible to enroll for benefits under this title.

ENROLLMENT

SEC. 406. (a) A family may enroll for coverage under this title only in such manner and form as shall be prescribed by the Secretary by regulation, and only during enrollment periods prescribed in or under this Act.

(b) The Secretary may provide for limited membership in health maintenance organizations except that no applicant for membership may be denied membership solely because of age or health condition.

TITLE V—MISCELLANEOUS PROVISIONS

FEDERAL HEALTH CARE STANDARDS

SEC. 501. Health personnel and allied health personnel listed in section 107(d) (3) and (4) who are legally authorized by a State to practice their respective professions and who meet national standards established by the Council pursuant to section 107(d) (3), (4), and (5) are hereby authorized to practice such profession in any other State, either independently or on behalf of an organization (including hospitals).

CORPORATE PRACTICE

SEC. 502. If any proposed or existing medical care institution or health maintenance organization meets the standards prescribed by the Council is ineligible to incorporate under State law for reasons deemed incompatible by the Secretary, with the purposes of this Act, the Council shall issue a certificate of incorporation allowing such medical care institution or health maintenance organization to provide the services described in this Act in accordance with provisions of State law applicable corporations in such State.

APPEALS

SEC. 503. (a) The determination of whether an individual is entitled to benefits under titles II, III, and IV, and the determination of the amount of benefits under title II, shall be made by the Secretary in accordance with regulations prescribed by him.

(b) Any individual dissatisfied with any determination under subsection (a) as to entitlement under titles II, III, and IV, or as to amount of benefits under title II, where the matter in controversy is $100 or more, shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b) of the Social Security Act, and in the case of determination as to entitlement or as to amount of benefits where the amount in controversy is $1,000 or more, to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g) of the Social Security Act.

(c) Any individual or organization dissatisfied with any determination by the Secretary that he does not qualify under this Act, to provide services, shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b) of the Social Security Act, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g) of the Social Security Act.

HEALTH DELIVERY COMMITTEE

SEC. 504. (a) There is hereby established in the Department of Health, Education, and Welfare a Health Delivery Committee (hereinafter referred to as the Committee) to be composed of nine members appointed by the President, by and with the advice and consent of the Senate, for terms of two years without regard to the provisions of title 5, United States Code. Each member so appointed from the medical and allied health fields shall be a person who as the result of his training, experience and attainments is exceptionally qualified to perform his duties on this Committee. A vacancy in the Committee shall not affect its activities and six members thereof shall constitute a quorum. The members shall choose their own chairman. A member of the Committee who is an officer or employee of the Federal Government shall serve without additional compensation. During his term of office no member shall engage in any other business, vocation or employment.

(b) The Committee shall—

(1) study the current need for medical personnel and facilities in the United States;

(2) study the estimated need for such personnel and facilities in the next succeeding two decades;

(3) study the solution to meeting the needs found, with particular emphasis on the effectiveness of prepaid or health maintenance plans, operating under title IV of this Act; and

(4) publish a report, every six months, of its findings and recommendations.

(c) The Secretary shall make available to the Committee such staff, information, and other assistance as it may require to carry out its activities.

(d) The Committee shall be appointed within one hundred and eighty days after the date of enactment of this Act, and shall continue for two years thereafter.

(e) There is hereby appropriated such sums as may be necessary to carry out the provisions of this section.

(f)(1) Section 5315, title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(97) Chairman, Health Delivery Committee."

(2) Section 5316 of such title is amended by adding at the end thereof the following new paragraph:

"(133) Members, Health Delivery Committee (8)."

EFFECTIVE DATES

SEC. 505. (a) Benefits conferred by titles II and III of this Act shall commence July 1, 1976.

(b) Benefits conferred by title IV of this Act shall commence July 1, 1976.

(c) Titles I and V are effective as of the date of enactment of this Act.

FREE CHOICE BY PATIENT GUARANTEED

SEC. 506. Any individual entitled to insurance benefits under titles II and III may obtain health services from any institution, agency, or person qualified to participate under titles II and III if such institution, agency, or person undertakes to provide him such services.

OPTION TO INDIVIDUALS TO OBTAIN OTHER HEALTH INSURANCE PROTECTION

SEC. 507. Nothing contained in this title shall be construed to preclude any State from providing, or any individual from purchasing or otherwise securing, protection against the cost of any health services.

EFFECT UPON OTHER ACTS

SEC. 508. (a) Title XVIII of the Social Security Act is repealed, effective upon the date that the health benefits of this Act become effective.

(b) Chapter 89, title 5, United States Code, is repealed effective upon the date the health benefits of this Act become effective.

(c) The Retired Federal Employees Health Benefits Act (74 Stat. 849) is repealed effective upon the date the health benefits of this Act become effective.

(d) After the effective date of health security benefits provided under this Act no

State (as defined in section 1101(a)(1) of the Social Security Act) shall be required, as a condition of approval of its State plan under title XIX of that Act, to furnish any service which constitutes a covered service under title I of this Act, and any amount expended for the furnishing of any such service to a person eligible for services under title I of this Act shall be disregarded in determining the amount of any payment to a State under such title XIX. The Secretary shall by regulation prescribe the minimum scope of services required (in lieu of the requirements of section 1902(a)(13) of the Social Security Act) as a condition of approval, after the effective date of health security benefits, of a State plan under such title XIX. Such minimum scope of services shall, to the extent the Secretary finds practicable, be designed to supplement the benefits available under title II of this Act, and with respect to the furnishing of dental services and of drugs to persons not entitled to such services or not entitled to such drugs, under title II of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 509. There are authorized to be appropriated, for each fiscal year, such sums as are necessary to carry out the provisions of this Act.

SUMMARY OF THE MAJOR PROVISIONS OF THE HEALTH RIGHTS ACT

The Health Rights Act establishes a two part program to assure all Americans of protection from unmeetable financial obligations due to the costs of health maintenance and recovery from illness. It replaces both the medicare and medicaid programs now in effect.

The first part provides inpatient, "major illness' protection for all individuals. It differs from traditional catastrophic plans by covering all costs above each family's "health cost ceiling."

The second part is an outpatient health maintenance insurance plan. All families subscribing to the outpatient plan are eligible for the inpatient plan.

ADMINISTRATION

Both the inpatient and outpatient plans are administered by insurance carriers or public or private agencies on a regional basis, under contract with the newly created Office of Health Care within the Department of Health, Education, and Welfare.

FINANCING

Inpatient plan: Federal share is financed in part through present health insurance portion of Social Security payroll taxes and in part through general revenues. Individual family deductibles cover the patient's share.

Outpatient plan: is financed in part through family premium payments which will be supplemented in whole or part with Federal payments for low income families. Employers may arrange to finance all or part of their employees premiums under this plan.

BENEFITS

(See sample figures in chart below)

Inpatient plan pays all covered costs above each family's "health cost ceiling." This health cost ceiling is determined on a family by family basis, by use of a formula taking into account both family income and family size (rounded to the nearest $1,000 for those with adjusted "family incomes" of over $2,000, to the nearest $500 for those with adjusted "family incomes" $2,000 and under).

The family must spend an amount equal to one-half its cost ceiling on covered expenses before there is any Federal contribution. Covered expenses between one-half the cost ceiling and the cost ceiling will be matched on a 50%–50% coinsurance basis. Families may cover costs which fall under their health cost ceiling either with their own assets or through a personally purchased insurance policy. All covered expenses above the family's cost ceiling are covered by Federal payments. For low income families, this program completely supplements the outpatient program.

Outpatient plan pays all covered costs above an individual deductible of $50 per year, with lower individual deductibles for low income persons. There is an additional individual deductible for low income persons. The small initial payment for, and the breadth of, covered outpatient services will encourage illness prevention and discourage overutilization of inpatient services.

COVERED SERVICES

Inpatient plan covers hospital inpatient service, secondary care inpatient services (without a prior requirement of hospital care), and home health services following inpatient status in either a hospital or secondary care facility. Inpatient mental health services are also covered, with a yearly limit of sixty days and an overall lifetime limit of 180 days.

Outpatient plan covers outpatient physicians' services, including diagnostic services, limited "check-up" examinations, pre-natal and well-child care, dental care for children under the age of 12, and outpatient mental health services, with a yearly limit of 26 treatments and an overall lifetime limit of 104 treatments.

UTILIZATION REVIEW AND COORDINATION OF HEALTH SERVICES

This Act incorporates provisions of newly-enacted Professional Standards Review program, with some modifications. It requires such correlation of activities and interchange of data as is necessary to provide quality health services in the most economically possible manner. It establishes a National Professional Standards Review Council, appointed by the President, with the advice and consent of the Senate, to oversee and coordinate the activities of Professional Standards Review Councils and Professional Standards Review Organizations, and to make both executive and legislative recommendations for improvement in the program.

PLANNING FOR HEALTH MANPOWER RESOURCES TO MEET NATIONAL NEEDS

The Act establishes a two year, Presidentially appointed, Health Delivery Committee. The Committee is charged with determining the current need for medical personnel and facilities in the United States, assessing the need for such personnel and facilities in the succeeding two decades, assessing the viability of health maintenance organizations in helping to meet this need, and making recommendations to the President and to the Congress for the fulfillment of these needs.

PROGRAM TO ENCOURAGE THE DEVELOPMENT AND UTILIZATION OF HEALTH MAINTENANCE ORGANIZATIONS

The Health Rights Act authorizes Federal grants and loans for the planning and development, including construction, of prepaid health maintenance organizations. Grants for the planning and development of health maintenance organizations may cover 50% of the development costs. For health maintenance organizations which locate in and serve patients in physician shortage areas, grants may cover 70% of the development and initial operating costs. The Secretary of Health, Education, and Welfare is authorized to enter into contracts with qualified health maintenance organizations to provide the services covered by the outpatient and inpatient plans described above.

SAMPLE FIGURES FOR COST PROVISIONS UNDER HEALTH RIGHTS ACT

Family size and income	Inpatient plan, family health cost ceiling (deductible)	Outpatient insurance plan: Insurance cost (percent)		Outpatient insurance plan: Deductibles (per person)	
		Individual payment	Federal payment	Medical	Dental
Family size—1:					
$1,000	$80	0	100	$10	$10
$1,500	120	25	75	25	15
$2,000	160	50	50	25	15
$4,000	480	100	0	50	25
$6,000	720	100	0	50	25
$10,000	1,200	100	0	50	25
$14,000	1,680	100	0	50	25
$20,000	2,400	100	0	50	25
Family size—2:					
$1,000	57	0	100	10	10
$1,500	86	0	100	10	10
$2,000	114	25	75	25	15
$4,000	342	75	25	50	25
$6,000	514	100	0	50	25
$10,000	857	100	0	50	25
$14,000	1,200	100	0	50	25
$20,000	1,714	100	0	50	25
Family size—4:					
$1,000	$36	0	$100	10	$10
$1,500	54	0	100	10	10
$2,000	73	0	100	10	10
$4,000	145	25	75	25	15
$6,000	327	75	25	50	25
$10,000	545	100	0	50	25
$14,000	763	100	0	50	25
$20,000	1,090	100	0	50	25
Family size—6:					
$1,000	27	0	100	10	10
$1,500	40	0	100	10	10
$2,000	53	0	100	10	10
$4,000	107	25	75	25	15
$6,000	161	50	50	25	15
$10,000	400	100	0	50	25
$14,000	560	100	0	50	25
$20,000	800	100	0	50	25

ADDITIONAL COSPONSORS OF BILLS

S. 513

At the request of Mr. Moss, the Senator from California (Mr. CRANSTON) was added as a cosponsor of S. 513, to amend section 232 of the National Housing Act to authorize insured loans to provide fire safety equipment for nursing homes.

S. 1283

At the request of Mr. JACKSON, the Senator from South Dakota (Mr. ABOUREZK), the Senator from Oklahoma (Mr.

BARTLETT), the Senator from Maryland (Mr. BEALL), the Senator from Massachusetts (Mr. BROOKE), the Senator from New York (Mr. BUCKLEY), the Senator from Arizona (Mr. FANNIN), the Senator from Wyoming (Mr. HANSEN), the Senator from New York (Mr. JAVITS), the Senator from Idaho (Mr. MCCLURE), the Senator from Maryland (Mr. MATHIAS), the Senator from Montana (Mr. METCALF), the Senator from Wisconsin (Mr. NELSON), and the Senator from Pennsylvania (Mr. SCHWEIKER) were added as cosponsors of S. 1283, the National Energy Research and Development Policy Act of 1973.

ORDER FOR STAR PRINT OF S. 2735

Mr. SPARKMAN. Mr. President, I ask unanimous consent that a star print be made on S. 2735, the Emergency Mortgage Credit Act of 1973, because of certain errors contained in the original print.

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

EMERGENCY DAYLIGHT SAVING TIME ENERGY CONSERVATION ACT OF 1973

AMENDMENT NO. 743

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

Mr. HUMPHREY submitted an amendment intended to be proposed by him to the bill (S. 2702) the Emergency Daylight Saving Time Energy Conservation Act of 1973.

PRISONER OF WAR AND MISSING IN ACTION TAX ACT—AMENDMENTS

AMENDMENT NO. 744

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

Mr. MOSS. Mr. President, on behalf of myself, Mr. PERCY, and Mr. NELSON, I submit an amendment intended to be proposed by me to H.R. 8214, to modify the tax treatment of members of the Armed Forces of the United States and civilian employees who are prisoners of war or missing in action, and for other purposes, and ask unanimous consent to have the amendment printed in the RECORD.

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

AMENDMENT NO. 744

At the end thereof, insert the following:

TITLE II—AUTOMOBILE EFFICIENCY TAX

The purposes of this Title are to encourage the development and manufacture of American automobiles which efficiently consume fuel and to stimulate the conservation of energy.

SEC. 202. (a) Part I of subchapter A of chapter 36 of the Internal Revenue Code of 1954 (relating to motor vehicle excise taxes) is amended by adding at the end thereof the following new section:

"SEC. 4064. AUTOMOBILE FUEL CONSUMPTION TAX

"(a) IMPOSITION OF TAX.—There is hereby imposed upon every new automobile manufactured, produced, or imported a tax at whichever of the following rates is applicable with respect to the fuel consumption rate (as determined under subsection (b)) of such automobile:

"(1) for the period beginning July 1, 1976, and ending June 30, 1978:

"If the consumption rate (in miles per gallon) is:	The tax is:
Over 20	$0
Over 19 but not over 20	20
Over 18 but not over 19	45
Over 17 but not over 18	70
Over 16 but not over 17	100
Over 15 but not over 16	130
Over 14 but not over 15	170
Over 13 but not over 14	210
Over 12 but not over 13	260
Over 11 but not over 12	320
Over 10 but not over 11	390
Not over 10	480

"(2) for the period after July 1, 1978:

"If the consumption rate (in miles per gallon) is:	The tax is:
Over 20	$0
Over 19 but not over 20	60
Over 18 but not over 19	130
Over 17 but not over 18	205
Over 16 but not over 17	295
Over 15 but not over 16	390
Over 14 but not over 15	505
Over 13 but not over 14	630
Over 12 but not over 13	785
Over 11 but not over 12	960
Over 10 but not over 11	1,175
Not over 10	1,435

"(b) DETERMINATION OF FUEL CONSUMPTION RATE.—The fuel consumption rate of new automobiles taxable under subsection (a) shall be determined solely on the basis of the Automobile Fuel Consumption Schedule prepared by the Administrator of the Environmental Protection Agency.

"(c) LIABILITY FOR PAYMENT.—The tax imposed by this section shall be paid by the manufacturer, producer, or importer at such time and in such manner as the Secretary of the Treasury in consultation with the Administrator shall prescribe.

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

"(1) the term 'new automobile' means every vehicle, equipped with an internal combustion engine, designed for use on the highway which has never been transferred to the ultimate purchaser, but shall not include any commercial vehicle, or any farm vehicle, as defined by the Administrator, and

"(2) the term 'ultimate purchaser' means, with respect to any new automobile, the first person who in good faith purchases such automobile for purposes other than resale."

(b) The table of sections for such part I is amended by adding at the end thereof the following new item:

"SEC. 4064. Automobile fuel consumption tax.".

(c) The amendments made by this section shall take effect on July 1, 1976.

SEC. 203. (a) The Administrator of the Environmental Protection Agency (hereinafter referred to as the "Administrator"), shall, from time to time, study and investigate the fuel consumption rate of automobiles which are subject, or may be subject to the tax imposed by section 4064 of the Internal Revenue Code of 1954 (relating to automobile fuel consumption taxes).

(b) The studies and investigation conducted under subsection (a) shall include tests—

(1) of each automobile model subject to such tax equipped—

(A) with each available engine size (measured by horsepower), and available rear axle ratio, and

(B) with and without each, and combinations of each, type of other accessory available which is determined by the Administrator to have a significant effect on fuel consumption economy; and

(2) which shall be conducted—

(A) under driving conditions representative of an average composite of urban and nonurban driving speeds and circumstances,

(B) with the fuel used being of the quality normally recommended for use in such automobile, and

(C) with such automobile carrying the average weight load for which it was designed.

(c) Based upon the studies and investigations conducted under subsection (a), the Administrator shall determine the fuel consumption rate of each such automobile model with and without fuel consumption effective accessories and with each available engine size. The Administrator shall, not later than June 1, 1976, and each year thereafter, prepare and transmit to the Secretary of the Treasury a schedule of all such rates to be known as the Automobile Fuel Consumption Schedule (interim revisions of which are to be made by the Administrator as he deems appropriate). The Automobile Fuel Consumption Schedule shall be made available for sale as a public document.

(d)(1) Any person engaged in manufacturing, producing, or importing new automobiles shall, with respect to the fuel consumption rate of such automobiles—

(A) maintain and provide such records, make such reports, conduct such tests, and provide such information as the Administrator may by regulation require,

(B) upon request, permit the Administrator to have access to and copy any books, papers, records, or documents pertaining to such fuel consumption rates, for the purpose of verifying the accuracy of such records, reports, tests, and information, and

(C) upon request, permit the Administrator to inspect or test any such automobile.

(2) Any record, report, or information obtained under paragraph (1) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that any record, report, or information, or particular part thereof, which the Administrator has obtained under paragraph (1), if made public would divulge any methods, processes, or information entitled to protection as a trade secret of such person, the Administrator shall consider that any such record, report, or information, or any particular portion thereof, confidential in accordance with the purposes of section 1905 of title 18, United States Code. Nothing in this section shall authorize the withholding by the Administrator of any records, reports, or information from either House of Congress, or any duly authorized committee thereof.

(e) Any person who violates subsection (d)(1) shall be subject to a civil penalty of not more than $10,000.

(f) The Administrator, in consultation with the Secretary of the Treasury and the Secretary of Transportation, shall prepare a report for submission to Congress not later than July 1, 1979. This report shall contain an evaluation of the effectiveness of this Act in improving the efficiency of automobiles, and recommendations for legislation to provide for the improvement in the fuel consumption efficiency of all vehicles designed for use on the highway.

(g) The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this section. The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of his powers and duties under this section, except the making of regulations, as he may deem necessary or expedient.

SEC. 204. (a) Section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232) is amended by inserting "(a)" after "SEC. 3"

and by adding at the end thereof the following:

"(b) Every label required to be affixed under subsection (a) shall include, in the case of any automobile on which a tax was imposed by section 4064 of the Internal Revenue Code of 1954 (relating to automobile fuel economy taxes)—

"(1) the fuel consumption rate determined to be applicable for such automobile, and

"(2) the tax paid under such section 4064."

(b) The amendments made by this section shall take effect on July 1, 1976.

AUTO FUEL CONSUMPTION TAX AMENDMENT

Mr. PERCY. Mr. President, today Senators MOSS, NELSON, and I are submitting a new version of the auto fuel consumption tax in the form of an amendment to H.R. 8214, a House-passed tax bill which has been reported by the Senate Finance Committee. In recent months similar legislation has been proposed by several Senators and Congressmen, including S. 2428, the auto fuel consumption tax bill which I introduced on September 18. The amendment we are presenting this afternoon combines many of the features of S. 2428 and the other earlier proposals.

It includes a sliding scale tax on new automobiles based on their fuel consumption rates. This will be a one-time tax on the producers and importers of automobiles. It will go into effect in two stages beginning in 1976, with higher rates being imposed in 1978. Cars with fuel consumption rates of better than 20 miles per gallon would be completely exempt from the tax.

The Environmental Protection Agency would be directed to test new car fuel efficiency rates beginning in 1976. The tests would be conducted under normal city and highway driving conditions using ordinary auto fuel. The agency would be required to publish a fuel consumption schedule for each make, model, and engine configuration.

The amendment would also require new car labels to state the fuel consumption rate, as determined by EPA, and the amount of the tax paid on the car.

The purposes of this amendment are to encourage the development and manufacture of fuel efficient automobiles, to increase revenues which could be devoted to energy research and other vital national needs, and to stimulate energy conservation.

Mr. President, improved automobile fuel efficiency is an essential step toward ending our Nation's present energy waste crisis. Almost one half of our total oil supplies are consumed in the form of gasoline. The private automobile accounts for 13 percent of our total energy consumption. Automobile energy use constitutes one of the fastest growing segments of our total energy budget, having grown 171 percent between 1950 and 1970. In this period the fuel efficiency of the average automobile declined by about 11 percent. Decreased fuel efficiency has multiplied the effects of a larger vehicle population and more intensive use of automobiles.

It seems evident that in the present energy emergency we must limit the use of automobiles by reducing speed limits, curtailing nonessential weekend driving, and similar measures. But a fuel efficient car traveling at 70 miles per hour consumes less than a gas guzzler at 50 miles per hour. In the longer perspective, the problem of automobile fuel efficiency must be faced.

Fortunately, there is great potential for improving the fuel economy of American automobiles. The potential does not necessarily depend on making cars smaller. Tests by EPA on 1974 model cars indicate that some of the heavier cars get better gas mileage than some of the lighter ones.

Nor is it dependent on development and application of "exotic" new automotive technologies. In Septmeber of 1972 a Federal interagency research committee submitted a "Summary Technical Report of Transportation Energy R. and D. Goals." The report included:

> In the near term, within the next few years, it appears possible to demonstrate as much as a 30% reduction in fuel consumption by standard automobiles with 1976 emissions controls without substantially affecting performance or losing the gains made in controlling emissions. This reduction in fuel consumption would be accomplished by using existing technology and optimizing vehicle and engine designs for that purpose rather than for lowest first cost, as is now the industry practice.

More recently, a Department of the Treasury report reached a similar conclusion. It determined that a fuel consumption tax could encourage application of energy conservation technology sufficient to improve average fuel efficiency to 20 miles per gallon. By 1980 the gasoline savings from such a tax would total over 1 million barrels per day. This figure is slightly larger than the projected daily gasoline production from the trans-Alaska pipeline. The potential savings, therefore, are substantial.

In addition to furthering the goal of energy self-sufficiency, these savings are important to the consumer. The Energy Policy Task Force of the Consumer Federation of America has recently pointed out that the tax will save consumers millions of dollars in long-term automobile operating costs. These savings will become even larger as the price of gasoline increases. The labeling provisions of the amendment, as well as the tax itself, will serve to make consumers more conscious of the efficiency and operating costs of the cars they purchase.

In addition to its primary purpose of conserving the Nation's energy resources, the automobile fuel consumption tax would also generate revenue. At its peak, the tax would bring in approximately $2 billion per year. As automobile producers react by increasing efficiency, revenue would decline to slightly less than $600 million per year. This money would then be available for energy research and development, research on low-pollution, fuel-efficient automobiles, or for other uses.

There is an inevitable timelag before either the conservation or the revenue raising effects of this measure can be felt. The automobile industry is characterized by exceptionally long leadtime between the beginning of design and actual production. For this reason the first tax would not be assessed until July 1, 1976.

The industry would, therefore, be given a 2½-year period for redesign and retooling. Another 2 years would elapse before the stiffer final tax schedule would go into effect. Thus, the industry would be given every opportunity to avoid the tax by producing more efficient automobiles.

The effects of shifting to production of cars with lower fuel consumption will in the long run benefit the American automobile industry. A full-sized, American-made, fuel-efficient car would be an extremely competitive product for both the domestic market and for export.

Thus, the automobile fuel consumption tax would bring about vitally important conservation measures. It would save money for the consumer. And it would encourage Detroit to face the challenge of the imports. Enactment of a fuel consumption tax should be considered a high priority for the Congress.

Mr. NELSON. Mr. President, we are rapidly approaching a worldwide resource shortage involving a broad spectrum of critically important food, fiber, mineral, and energy materials. We will either make rational decisions respecting the use of these resources or time and events will surely impose a result upon us that will spell disaster for the whole world of social and economic institutions.

One of these critical resources is oil. Major economies can and must be achieved in energy use. One area of economy is the consumption of fuel by automobiles. For 15 years the automobile industry has shortsightedly persisted in producing more expensive, heavier gas consuming vehicles despite persistent public demands for lighter and more economical cars. The result has been a major invasion of the American market by foreign cars. We have been exporting jobs and importing cars. This will continue at an accelerated pace unless dramatic action is taken.

Will Rogers said that the United States is the only country in the world that will drive to the poorhouse in an automobile. While this may be an exaggeration it emphasizes our unwise waste of precious gasoline. Although the United States is the leading producer of automobiles in the world and has more accumulated automobile manufacturing experience than any other country, American automobiles on the average are less efficient at using fuel than those produced by any other country. In recent years, the efficiency of the American automobile has seriously declined. In 1950, automobiles were averaging 14.95 miles per gallon. By 1972 this has dropped to 13.57.

The declining efficiency of the American built cars threatens American jobs and encourages the rise in foreign car sales in the United States. Now, with the

onset of the oil squeeze jobs in the U.S. automobile industry are threatened even more. Last week, as the popularity of big cars skidded, General Motors took an extraordinary step. It ordered 16 of its assembly plants in the United States and Canada to shut down for the week beginning December 17 to cut scheduled production by 79,000 cars, mainly large and intermediate models. It was the first time that GM has closed plants to reduce production since February 1970, when car sales were slumping badly. Normally GM turns out 120,000 to 130,000 units a week.

We simply cannot let jobs in the auto industry and our rapidly diminishing natural resources to continue to be at the mercy of unwise production decisions made in Detroit.

Last year, 1,428,447 foreign cars were sold in the United States representing 14.5 percent of the market. Less than 7 years ago in 1965 foreign car sales were only 6.1 percent of the market and in 1962 they were only 4.9 percent of the market.

It is estimated that in 1973 registration of foreign new cars will represent 15.9 percent of the total U.S. market. Not only have foreign cars gained an increasing share of the market but standard size cars, where the bulk of Americans jobs are, have been steadily losing their share of the market.

Mr. President, I ask unanimous consent to insert in the CONGRESSIONAL RECORD at this time a table showing the registration of new cars and their percentages by general market class from the years 1967 to 1973.

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

REGISTRATION OF NEW CARS BY GENERAL MARKET CLASS

Market class	1967 to 1973 calendar years, percentage of total registration							1973 sales (thousands)
	1967	1968	1969	1970	1971	1972	1973	
High price class (Cadillac, Lincoln, etc.)	2.9	2.6	2.9	2.3	2.7	2.7	2.4	238
Medium price class (Pontiac, Olds, Buick, etc.)	17.8	17.0	16.8	13.7	15.1	14.5	12.7	1,257
Regular size (Ford, Chevrolet, Plymouth, etc.)	28.6	27.0	25.7	22.5	20.9	19.3	16.3	1,614
Special sports type (Chevrolet Monte Carlo, Ford Mustang, Chevrolet Camaro, etc.)	12.8	11.7	11.1	10.3	8.6	8.2	9.9	980
Intermediate size (Ford Torino, Chevrolet, Olds Cutlass)	21.8	24.0	22.2	21.0	18.1	19.2	18.8	1,861
Compact size (Chevrolet Nova, Ford Maverick, Dodge Dart, Plymouth Valiant, etc.)	6.7	7.1	9.8	13.8	12.1	12.9	14.4	1,425
Subcompact size (Vega, Pinto, Gremlin)				1.6	7.4	8.2	9.6	950
Foreign cars	9.3	10.5	11.2	14.7	15.1	14.5	15.9	1,574
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	9,900

Mr. NELSON. Mr. President, this table reveals that the percentage of large cars—medium, regular size, intermediate size, and special sports cars—excluding high price cars which constitutes about 2.6 percent of the market regardless of time and price—has fallen from 81 percent in 1967 to 57.7 percent in 1973 while the percentage of compacts, subcompacts, and foreign cars has risen from 16 percent in 1968 to 39.9 percent in 1973.

High paid automobile executives just refuse to recognize the changes occuring in the market. As Michael Evans of Chase Econometric Associates, Inc., wrote:

> The market share of standard-size cars fell 7 percent last year, which is as much as it had fallen during the previous seven years. These facts simply could not have been a secret from executives in an industry which has more daily and weekly data than any other.
>
> I personally know of several instances where middle management argued strenuously last year that production lines should be reoriented toward smaller cars. Yet this argument fell mostly on deaf ears at the top executive level. John deLorean's abrupt departure from GM was based on more than long boring staff meetings.

I am offering, with Senator Moss of Utah and Senator PERCY of Illinois, an amendment that will induce American automobile manufacturers to produce more fuel efficient cars and consequently make substantial savings in the amount of gasoline used by automobiles. We propose that a fuel economy tax be levied on new automobiles beginning July 1, 1976. The tax will be based upon miles per gallon ratings developed by uniform testing procedure to be conducted by the Environmental Protection Agency. Basically the tax would establish a national automobile standard of 20 miles per gallon. Cars getting that mileage or better would pay no excise tax. Less efficient cars would pay a tax proportional to their fuel consumption.

Because of differences in construction and operation, commercial vehicles and farm vehicles are exempt from the tax. The tax would be imposed only once on the manufacturers of new automobiles at the time of the sale. It would be enacted now but would not take effect until July 1, 1976, in order to allow the automobile industry sufficient advance leadtime to design and produce a standard size car which, because of more efficient use of gasoline, would not be subjected to the tax.

A recent Department of Treasury study which recommended a fuel economy tax stated that—

> The (automobile) industry can produce large cars which yield close to 20 miles per gallon using existing technology without sacrificing comfort, styling, or exhaust emission standards.

It is mileage that counts, not size. We must pay the price of our love affair with these gas-guzzling dinosaurs. Convincing evidence exists that Americans can have full-sized automobiles which will get far better mileage. The average American vehicle converts only 25 percent of the energy supplied to it to useful work. Average American automobile mileage has been decreasing every year.

In September 1927, a Federal interagency research committee confirmed this conclusion. The summary technical report of the Transportation Energy R. & D. Goals found:

> In the near term, within the next few years, it appears possible to demonstrate as much as a 30% reduction in fuel consumption by standard automobiles with 1976 emission controls without substantially affecting performance or losing the gains made in controlling emissions. This reduction in fuel consumption would be accomplished by using existing technology and optimizing vehicle and engine designs for that purpose rather than for lowest first cost, as is now the industry practice.

The EPA study indicates clearly that lighter cars do make significant savings in gasoline. This test was made of 630 1973 vehicles. It shows that the mileage of the heaviest vehicle—5,500 pounds—averaged 8.8 miles per gallon while that of the smallest vehicle—2,000 pounds—averaged 25.5 miles per gallon.

The amendment is carefully drafted so that the American industry has sufficient warning and leadtime to allow the automobile industry to design and produce a standard size car which, because of more efficient use of gasoline would not be subject to the tax.

America is very strong technically, and with the right incentive will develop cars which not only give better mileage, but also will be safer and more comfortable. More efficient automobiles will also help our balance of payments. According to current projections, by 1985 the United States will be dependent for over one-half of its petroleum upon foreign sources. If we allow these projections to come true, it is estimated that the value of petroleum imports will have risen to the staggering sum of $17 billion a year, and some estimates are even higher.

The tax that we are proposing today will, by inducing automobile manufacturers to produce more efficient cars and reduce automobile purchase of large cars, save substantial amounts of gasoline.

Using a tax schedule similar to the one proposed, the Treasury Department has estimated that 1 million barrels of gasoline per day could be saved by 1980—that is the equivalent of over 2 million barrels per day of crude oil or roughly one-half of the projected output of the Alaska pipeline by 1980.

The revenue from the tax would be $2.78 billion in 1976. Thereafter, it would rapidly decline as cars became more efficient and motorists increase their purchases of smaller cars. By 1980, the tax would raise about $600 million per year.

The amendment that I am proposing today is sound fiscal and energy conservation policy. It allows every individual

the freedom of choice and it does not have the inherent inflexibility of bureaucratic standards or regulations. The tax proposed today is consistent with sound tax policy because it is based on the ability to pay. This is a much more sound and equitable way to pay for the inevitable increases in gasoline costs than by a flat gasoline tax which has been proposed from time to time by various administration spokesmen. A flat gasoline tax is highly regressive, placing a disproportionate tax burden on the average American driving to his place of work, compared to the wealthy individual driving to his vacation home.

AMENDMENT NO. 745

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

Mr. PERCY. Mr. President, I submit an amendment intended to be proposed by me to H.R. 8214, to modify the tax treatment of members of the Armed Forces of the United States and civilian employees who are prisoners of war or missing in action, and for other purposes, and ask unanimous consent to have the amendment printed in the RECORD.

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

AMENDMENT NO. 745

At the appropriate place in the bill insert the following:

SEC. . INCREASE OF TAX CREDIT AND DEDUCTION FOR POLITICAL CONTRIBUTIONS.

(a) IN GENERAL.—

(1) TAX CREDIT.—Section 41(b)(1) of the Internal Revenue Code of 1954 (relating to contributions to candidates for public office) is amended to read as follows:

"(1) MAXIMUM CREDIT.—The credit allowed by subsection (a) for a taxable year shall be limited to $25 ($50 in the case of a joint return under section 6013).".

(2) TAX DEDUCTION.—Section 218(b)(1) of such Code (relating to contributions to candidates for public office) is amended to read as follows:

"(1) AMOUNT.—The deduction under subsection (a) shall not exceed $100 ($200 in the case of joint return under section 6013).".

(b) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 1973.

AMENDMENT NO. 746

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

Mr. TAFT. Mr. President, today, I am submitting an amendment intended to be proposed by me to the pending tax bill, H.R. 8214. This amendment would require the Federal Government to withhold city income taxes from its employees. Such a requirement would benefit directly hundreds of thousands of Federal workers.

Because local income taxes are not withheld from the wages of Federal employees, these workers are forced to pay the taxes in lump sums on a quarterly or annual basis. The obligation to pay a substantial amount in local taxes at one time presents a serious hardship to many Federal workers. As of early 1972, one-third of Cleveland's postal workers had not been able to meet this obligation, and owed the city hundred of dollars per person in back taxes.

This amendment would allow Federal workers to pay their city taxes in the same convenient manner as other workers, by making the payments in even installments throughout the year. The amendment would also provide some extra money for the cities. Because the cities' tax collection departments will no longer have to devote extra attention to Federal workers, administrative costs will decrease. In my own State of Ohio, the cities of Akron, Columbus, and Toledo expect that they could each save $20,000 to $35,000 in this manner. The major new source of income, however, would occur as a result of a reduction in tax delinquencies and an increase in the cities' ability to collect delinquent taxes. Cleveland's tax department has estimated that because of fewer losses in uncollected taxes, the city's income could be increased by $300,000 to $400,000 annually. The city of Cincinnati has estimated that the enactment of this legislation would save its taxpayers about $100,000. Similar savings would be realized by cities in other States.

My amendment would apply to cities with populations of 60,000 or more. When legislation pertaining to this subject was debated on the Senate floor during the last Congress, an amendment was added to exempt residents of States other than that in which the taxing city is located from the withholding requirement unless they consent to withholding. In the interest of making my legislation acceptable to all concerned and thus facilitating its passage, I have included this amendment in today's proposal.

The major organizations representing groups which my amendment would affect strongly support it. These organizations include the National League of Cities-U.S. Conference of Mayors, the National Postal Union and other major Federal employees' associations. The Treasury Department and the Office of Management and Budget have historically supported legislation along these lines, and I have been informed that their positions have not changed.

As I have mentioned, legislation identical to this amendment was passed by the Senate during the 92d Congress, but the House of Representatives did not have time to act on the measure. The House passed similar legislation several years ago.

I hope that this time both Houses of Congress will seize the opportunity to provide equal treatment for our Federal workers and additional assistance for our cities.

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

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

AMENDMENT NO. 746

At the proper place in the bill insert the following new section:

SEC.—.(a) Section 5517 of title 5 of the United States Code is amended—

(1) by inserting "or city" after "State" each place it appears in subsections (a) and (b), and

(2) by inserting before the period at the end of subsection (c) the following: ", and city' means only a city which is incorporated under the law of a State and which had a population (according to the last decennial census before the request under subsection (a)) one thousand or more individuals".

(b) Section 5517 of such title is further amended by adding at the end of subsection (a) the following sentence: "The agreement may not permit withholding of a city tax from the pay of an employee who is not a resident of the State in which that city is located unless he consents to such withholding."

(c) The heading for such section 5517 is amended to read as follows:

"§ 5517. Withholding State and city income taxes".

(d) The analysis for subchapter II of chapter 55 of title 5 of the United States Code is amended by striking out the item relating to section 5517 and inserting in lieu thereof the following:

"5517. Withholding State and city income taxes.".

(e) The amendments made by this section shall apply only in respect of agreements entered into after the date of the enactment of this Act.

AMENDMENT OF THE SOCIAL SECURITY ACT—AMENDMENTS

AMENDMENT NOS. 747 THROUGH 750

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

Mr. CRANSTON submitted four amendments intended to be proposed by him to the bill (H.R. 3153) to amend the Social Security Act to make certain technical and conforming changes.

AMENDMENT NO. 751

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

Mr. McINTYRE submitted an amendment intended to be proposed by him to H.R. 3153, supra.

AMENDMENT NO. 752

Mr. PELL submitted an amendment intended to be proposed by him to H.R. 3153, supra.

NOTICE OF HEARING ON FEDERAL PAPERWORK BURDEN

Mr. McINTYRE. Mr. President, on December 13, 1973, at 10 a.m., in room 6202 of the Dirksen Senate Office Building, the Subcommittee on Government Regulation of the Senate Select Committee on Small Business, which I have the honor to chair, will resume its hearings into the Federal paperwork burden.

The hearing on December 13 will examine the reporting requirements of the Bureau of the Census as they relate to small business. Representatives from the Bureau of the Census, small business associations, and the accounting profession are scheduled to appear as witnesses.

Further information may be obtained by calling the subcommittee staff on 225-5175.

NOTICE OF OVERSIGHT HEARINGS ON FEDERAL ADVISORY COMMITTEE ACT

Mr. METCALF. Mr. President, I wish to announce that the Subcommittee on Budgeting, Management and Expenditures will continue its oversight hearings on Public Law 92-463, the Federal Advisory Committee Act, next Thursday,

December 6, at 10 a.m., in room 457, Russell Senate Office Building.

Questions regarding the hearing may be directed to the subcommittee staff in room 161, Russell Senate Office Building, 225-1474.

ADDITIONAL STATEMENTS

FREEDOM OF PRESS HEARINGS: THE ADMINISTRATION FINALLY TESTIFIES

Mr. ERVIN. Mr. President, late in 1971 and continuing in February 1972 the Constitutional Rights Subcommittee held a set of hearings on freedom of the press. The hearings had become necessary, in the subcommittee's opinion, because of increasing hostility between the news media and the administration. A whole series of issues had risen which badly needed exposure, discussion, and clarification. Let me quote briefly from my remarks of September 27, 1971, when the hearings opened:

These hearings, and the subcommittee study of which they are a part, have been organized because it is apparent that in today's America, many people doubt the vitality and significance of the first amendment's guarantee of freedom of the press. There have been at least four recent examples of this:

First, the increased subpenaing of journalists by grand juries and congressional committees;

Second, the recent publication by several newspapers of classified information and the government's unsuccessful attempt to enjoin the publication;

Third, the widespread use of false press credentials by government investigators; and

Fourth, new fears about government control and regulation of the broadcast media.

These developments have brought into sharp relief existing concern about the relationship between government and the working press.

In addition, we have heard sharp and angry attacks upon the news mdia by high government officials. These attacks have brought forth equally hostile responses from spokesmen for the press. Some government officials appear to believe that the purpose of the press is to present the Government's policies and programs to the public in the best possible light. These officials have forgotten Jefferson's words. Indeed, they appear to have lost sight of the central purpose of a free press in a free society.

Likewise, some members of the press appear to have forgotten that the First Amendment's guarantee of free speech and free press was not intended as their exclusive possession. Those enlightened men who devised our constitutional system did not mean to secure freedom of the press by suppressing the right of Americans, whether private citizens or public officials, to criticize the press. Not every critical word about the press is an attack on the first amendment.

These continuing controversies, and the bitterness and suspicion that accompany them, make it evident that many Americans are uncertain about both the role of a free press in a free society and the necessary conditions for its preservation.

In my judgment, it is time to challenge this uncertainty by considering again the reasons underlying the Constitution's guarantee of freedom of the press.

It is time to reexamine and to reemphasize First Amendment principles.

And, it is time to measure developments in the law as they affect both the printed and broadcast press against these principles. Such are the objects of these series of hearings.

The hearings proceeded for 13 days spread over September and October 1971 and throughout 1972. They served as a valuable exploration of the issues that then had embittered relations between the press and the Nixon administration. And they served as that "recourse to fundamental principles," without which none of our civil liberties would long survive.

The subcommittee endeavored in those hearings to give voice to as many different viewpoints as was possible. Fully 62 witnesses appeared before us, and the hearing record runs to over 1,300 pages. Unfortunately, despite our best efforts, there was one glaring omission in our hearings. No representative from the White House appeared. We invited Fred Malek and Charles Colson to appear, as well as Herb Klein. The White House declined, per a letter from John Dean using what has now become a classic refrain:

With respect to your request for the appearance of Mr. Malek and Mr. Colson before your Subcommittee, it has been a matter of long-established principle and precedent that members of the President's immediate staff do not appear before Congressional committees to testify in regard to the performance of their duties as members of the President's staff. This practice is, indeed, fundamental to the operation of our system of government.

Because of this White House shyness, the administration was deprived of a perfect forum from which to express its complaints about the press. I always thought it strange that an administration which apparently was so deeply concerned about its treatment by the press, and the failure of the press to present the White House viewpoint, should have forgone such an ideal opportunity to speak to the Congress and to the public. We had very broad press, TV, and radio coverage and the testimony of White House representatives would have been generously covered had they chosen to appear.

Events have come a long way since those comparatively innocent days. Some issues of 1971 and 1972 have receded in importance. New ones have arisen. Unhappily, relations between the press and the Administration are worse, if anything, than they were then. Still, the 1971-72 subcommitee hearings have a continuing importance, and there remains the need to complete the record of those proceedings.

Several days ago, Senator WEICKER released to the press several White House memoranda, some of which were written by White House aides at about the time when the Subcommittee was seeking their testimony for our hearings. While these memos are not written in the polished, formal manner of some prepared testimony, they do contain elements of candor and directness often lacking in formal statements.

These memos speak for themselves. While their authors and the functionaries of which they speak have largely passed from the White House scene, the memos have continued relevance. They bring a new, if belated, perspective to the issues debated in our hearings and, sadly, confirm some of my own worst fears. They deserve the careful attention of every member, and of the general public.

I ask unanimous consent, therefore, that the "testimony" of Mr. H. R. Haldeman, Mr. Lawrence Higby, Mr. Jeb S. Magruder, Mr. Charles W. Colson, and Mr. Alvin Snyder not presented before the Constitutional Rights Subcommittee hearings on freedom of the press, be printed in full in the RECORD.

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

THE WHITE HOUSE,
Washington, October 17, 1969.

MEMORANDUM

Memorandum for H. R. Haldeman.
From J. S. Magruder.
Re the Shot-gun versus the Rifle.

Yesterday you asked me to give you a talking paper on specific problems we've had in shot-gunning the media and anti-Administration spokesmen on unfair coverage.

I have enclosed from the log approximately 21 requests from the President in the last 30 days requesting specific action relating to what could be considered unfair news coverage. This enclosure only includes actual memos sent out by Ken Cole's office. In the short time that I have been here, I would gather that there have been at least double or triple this many requests made through other parties to accomplish the same objective.

It is my opinion this continual daily attempt to get to the media or to anti-Administration spokesmen because of specific things they have said is very unfruitful and wasteful of our time. This is not to say that they have not been unfair, without question many situations that have been indicated are correct, but I would question the approach we have taken. When an editor gets continual calls from Herb Klein or Pat Buchanan on a situation that is difficult to document as to unfairness, we are in a very weak area. Particularly when we are talking about interpretation of the news as against factual reporting.

The real problem that faces the Administration is to get this unfair coverage in such a way that we make major impact on a basis which the networks-newspapers and Congress will react to and begin to look at things somewhat differently. It is my opinion that we should begin concentrated efforts in a number of major areas that will have much more impact on the media and other anti-Administration spokesmen and will do more good in the long run. The following is my suggestion as to how we can achieve this goal.

1. Begin an official monitoring system through the FCC as soon as Dean Birch is officially on board as Chairman. If the monitoring system proves our point, we have then legitimate and legal rights to go to the networks, etc., and make official complaints from the FCC. This will have much more effect than a phone call from Herb Klein or Pat Buchanan.

2. Utilize the anti-trust division to investigate various media relating to anti-trust violations. Even the possible threat of anti-trust action I think would be effective in changing their views in the above matter.

3. Utilizing the Internal Revenue Service as a method to look into the various orga-

nizations that we are most concerned about. Just a threat of an IRS investigation will probably turn their approach.

4. Begin to show favorites within the media. Since they are basically not on our side let us pick the favorable ones as Kennedy did. I'm not saying we should eliminate the open Administration, but by being open we have not gotten anyone to back us on a consistent basis and many of those who were favorable toward us are now giving it to us at various times, i.e., Ted Lewis, Hugh Sidey.

5. Utilize Republican National Committee for major letter writing efforts of both a class nature and a quantity nature. We have set up a situation at the National Committee that will allow us to do this, and I think by effective letter writing and telegrams we will accomplish our objective rather than again just the shotgun approach to one specific Senator or one specific news broadcaster because of various comments.

I would liken this to the Kennedy Administration in that they had no qualms about using the power available to them to achieve their objectives. On the other hand, we seem to march on tip-toe into the political situation and are unwilling to use the power at hand to achieve our long term goals which is eight years of a Republican Administration. I clearly remember Kennedy sending out the FBI men to wake up the Steel Executives in the middle of the night. It caused an uproar in certain cases but he achieved his goal and the vast majority of the American public was with him. If we convince the President that this is the correct approach, we will find that various support groups will be much more productive and much more cooperative; and at the same time I think we will achieve the goals this Administration has set out to do on a much more meaningful planned basis.

PRESIDENT'S REQUEST

ITEM AND DATE

To P. Flanigan—President's request that you take action to counter Dan Rather's allegation that the Hershey move was decided upon because of the moratorium. (Log 1733); October 17.

To J. Ehrlichman—President's request that you talk to Ted Lewis concerning the present status of discipline within the Administration. (Log 1699); October 15.

To P. Buchanan—President's request for a report on what actions were taken to complain to NBC, *Time* and *Newsweek* concerning a recent article coverage on the Administration. (Log 1688); October 14.

To H. Klein—President's request for letters to the editor of *Newsweek* mentioning the President's tremendous reception in Miss. and last Sat. Miami Dolphin football game. (Log 1627); October 10.

To H. Klein—President's request that you take appropriate action to counter biased TV coverage of the Adm. over the summer. (Log 1644); CONFIDENTIAL; October 14.

To H. Klein—President's request that you ask Rogers Morton to take action to counter Howard K. Smith's remarks concerning the three House seats lost by the GOP this year. (Log 1558); October 8.

To P. Buchanan—President's request that appropriate columnists be informed of the extemporaneous character of Presidential press conferences. (Log 1551), October 10.

To H. Klein—President's request that you demand equal time to counter John Chancellor's commentary regarding the Haynsworth nomination. (Log 1559), October 7.

To H. Klein—President's request for a report on what action is taken concerning Sen. Muskie's appearance on the "Merv Griffin Show." October 8.

To A. Butterfield—President's request for a report what resulted from our PR efforts following up the Friday Press Conference. (Log 1496), October 3.

H. Klein—President's request that we have the Chicago Tribune hit Senator Percy hard on his ties with the peace group. (Log 1495), Confidential, October 3.

To H. Klein—President's request for letters to the editor regarding Newsweek's lead article covering the President's U.N. speech. (Log 1443), September 30.

To H. Klein—President's request that we counter Ralph Nader's remarks regarding Virginia Knauer accessability to the President. (Log 1404), September 29.

To H. Klein and Ron Ziegler—President's request that you attack *Life* Magazine's editorial accusing the Administration of creating a Coherence Gap. (Log. 1366), September 27.

To H. Klein—President's request that you contact Howard K. Smith and give him the true record on what the Administration has done. (Log 1367), September 26.

To A. Butterfield—Sen. Kennedy's Boston speech alleging that the war in Vietnam remains virtually unchanged. (Log 1292), September 23.

To P. Flanigan—Ralph Nader's charge that the President pays little attention to consumer affairs. (Log 1293), September 24.

To Dr. Kissinger—Article by Jack Anderson which alleges that some U.S. officers in Vietnam favor Thieu's hard line over the President's moderate policy and are sabotaging the truce efforts. (Log 1281), September 23.

To H. Klein—President's request that you inform Walter Trohan about our substantive programs and that you place the blame for inaction on the Democratic Congress. (Log 1246), September 20.

To J. Ehrlichman—President's request for a report on possible answers to Evans-Novak charge of an Administration retreat on tax reform. (Log 1224), September 23.

To Dr. Kissinger—President's request for a report on Walter Cronkite's comment that the South Vietnamese did not observe the truce resulting from Ho Chi Minh's death. (Log 1154), September 16.

THE WHITE HOUSE,
Washington, February 4, 1973.

(Confidential)

Memorandum for Mr. Magruder.

High Priority

A couple of points that I did not want to cover in the general meeting, but that you do need to move ahead on quickly.

First, I'm sure you have studied that TV summary done by Buchanan, which is a devastating indictment of NBC, especially of David Brinkley.

Specifically, Brinkley was completely off base factually on his budget criticism, and we need to get that one straightened out.

The need, probably, is to concentrate on NBC and give some real thought as to how to handle the problem that they have created in their almost totally negative approach to everything the Administration does. I would like to see a plan from you; don't worry about fancy form, just some specific thinking on steps that can be taken to try to change this, and I should have this by Friday. Get Klein and Ziegler both involved in the thinking on this, and I would suggest also Nofziger, who could be very helpful, and perhaps get Pat Buchanan in. In fact, I think definitely you should get Pat Buchanan in to work with you on it; but move quickly.

Another area is the mobilization of the Silent Majority, which we touched on briefly in the meeting today. We just haven't mobilized them, and we have got to move now in every effective way we can to get them working to pound the magazines and the networks in counter-action to the obvious shift of the establishment to an attack on Vietnam again. Concentrate this on the few places that count, which would be NBC, Time, Newsweek and Life, the New York Times, and the Washington Post. Don't waste your fire on other things.

Next point, and this is also highly urgent priority. The State of the Union evoked a tremendous number of very strong editorials praising the content, delivery, etc. Now we need, very quickly, a well-edited, well-packaged, compellingly-presented mailing piece that summarizes the highlights of those editorials, especially the ones from surprising sources like Reston of the Times, so that we can get out to our people especially the reaction that the country's newspapers have had to the President's address.

This is something that should have been automatically done immediately, and perhaps it is underway. The point here is that delay makes any action much less effective, since it should be an immediate response and get out while the speech is still alive. Our main failure in this whole area is dullness, and let's not let this effort fall into that category. Get it done on good paper in interesting style, rather than just a mimeographed glob of editorial excerpts.

This is the kind of thing our Outside Group should automatically pick up for us once we get them; but until we have them, we have to fill the gap ourselves, and it's terribly important to move quickly on this. Perhaps the National Committee can help you with editorial and layout facilities, but hold them to very high standards and make it come out good. Leonard over there is probably the best guy for this kind of thing and maybe would be the one to get working on it, but give him about a one-day deadline, so that we get it done instead of talked about.

H. R. HALDEMAN.*

THE WHITE HOUSE,
Washington, July 16, 1970.

(Secret)

Memorandum for Mr. Magruder.
From L. Higby.

As I indicated to you the other day, we need to get some creative thinking going on an attack on Huntley for his statements in Life. One thought that comes to mind is getting all the people to sign a petition calling for the immediate removal of Huntley right now.

The point behind this whole thing is that we don't care about Huntley—he is going to leave anyway. What we are trying to do here is to tear down the institution. Huntley will go out in a blaze of glory and we should attempt to pop his bubble.

Most people won't see Life Magazine and for that reason I am asking Buchanan to draft a statement for the Vice President [Finch**] to give.** We should try to get this statement on television. Obviously there are many other things that we can do, such as getting independent station owners to write NBC saying that they should remove Huntley now; having broadcasting people look into this due to the fact that this is proof of biased journalism, etc.

Let's put a full plan on this and get the thing moving. I'll contact Buchanan and forward copies of my correspondence with

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*Note: Under Haldeman's initial appeared the following in pencil: "Note: See Action Memo P 191 for copy of memo to H re this subject."

**Note: In the original copy, "the Vice President" was crossed through and "Finch" was substituted in pencil in the margin.

him to you so that you will know what the Vice President is doing.

THE WHITE HOUSE,
Washington, August 26, 1973.

Memorandum for H. R. Haldeman.

It is obvious that the other side is really being hurt as they begin to understand the FCC decisions. The Democratic National Committee is using every procedural move (and CBS is cooperating) to stay the decisions. Also, Herblock has turned his acid to work (see attached from today's Post). I think it is time for us to generate again a PR campaign against the Democrats and CBS.

CHARLES W. COLSON.*

THE WHITE HOUSE,
Washington, July 17, 1970.

(Confidential/eyes only)

Memorandum for: Mr. Haldeman and Mr. Klein.

From: Jeb S. Magruder.

Enclosed is a tentative plan on press objectivity. Please indicate your comments.

Thank you.

(Confidential/eyes only)

TENTATIVE PLAN

PRESS OBJECTIVITY

Description: In the July 17th issue of Life Magazine a prominent television newscaster is quoted as making some extremely disparaging remarks about the President. It is understood that the newscaster intends to send a letter to the editor of the magazine claiming he was misquoted and will also send a letter of apology to the President.

Objective: To question the overall objectivity of a television newscaster who has expressed opinionated views in an influential consumer publication while still employed as a supposedly objective television newscaster and to question the motivation for such remarks and the possible breach of professional ethics by allowing such remarks to be published prior to retirement into private life. Further, to extend these questions to cover the professional objectivity and ethics of the whole media and to generate a public re-examination of the role of the media in American life.

Tactics: Since the newscaster enjoys a very favorable public image and will apologize for his remarks, claiming to be misquoted, we should not attempt to discredit him personally. Also, since his remarks were expressed as an individual, we would have difficulty attacking his network directly. The focus of our effort should be to raise the larger question of objectivity and ethics in the media as an institution. To do this, we will have to turn objectivity into an issue and a subject of public debate.

Follow-up: Release the letter of apology to the press along with a gracious reply from the President.—Ziegler

Plant a column with a syndicated columnist which raises the question of objectivity and ethics in the news media. Kevin Phillips could be a good choice.—Klein

Arrange for an article on the subject in a major consumer magazine authored by Stewart Alsop, Buckley or Kilpatrick. Also, request Hobe Lewis to run a major article.—Klein

Through an academic source, encourage the Dean of a leading graduate school of journalism to publicly acknowledge that press objectivity is a serious problem that should be discussed. Also, attempt to arrange an in-depth analysis in a prestigious journal like the Columbia Journalism Review.—Klein/Safire

Arrange a seminar on press objectivity with broadcast executives and working newsmen. Attempt to have this televised as a public service.—Klein

Make this issue a major item at the Radio-Television News Directors Convention this Fall and at the next major NAB meeting.—Klein

Ask the Vice President to speak out on this issue. He could point out that the LIFE quote has proved his point.—Buchanan

Have Rogers Morton go on the attack in a news conference. He could tie-in the quote with the free-time grants to the Democrats. Also, revive the WETA-Woestendiek affair. Have him charge that the great majority of the working press are Democrats and this colors their presentation of the news. Have him charge that their is a political conspiracy in the media to attack this Administration.—Klein/Colson.

Have Dean Burch "express concern" about press objectivity in response to a letter from a Congressman.—Nofziger

Through independent Hill sources, stimulate non-partisan Congressional questioning of the issue. Place such remarks in the *Record*.—Nofziger

Arrange for an "expose" to be written by an author such as Earl Mazo or Victor Lasky. Publish in hardcover and paperback—Klein

Produce a prime-time special, sponsored by private funds, that would examine the question of objectivity and show how TV newsmen can structure the news by innuendo. For instance, use film clips to show how a raised eyebrow or a tone of voice can convey criticism.—Klein/Magruder.

Have outside groups petition the FCC and issue public "statements of concern" over press objectivity.—Colson

Generate a massive outpouring of letters-to-the-editor.—Magruder

LIFE occasionally runs an opposition view column entitled "Guest Privilege". Position an appropriate writer, preferably a professor of journalism, to discuss this issue in that column.—Klein/Safire

Form a blue-ribbon media "watchdog" committee to report to the public on cases of biased reporting. John Cosgrove, a former president of the National Press Club, could set this up. This group could sponsor the TV special mentioned above, conduct a speaking campaign to service groups and colleges, issue press releases, etc.—Magruder

Have a Senator or Congressman write a public letter to the FCC suggesting the "licensing" of individual newsmen, i.e. the airwaves belong to the public, therefore the public should be protected from the misuse of these airwaves by individual newsmen.—Nofziger

Through contacts in the ASNE and NAB, bring up the question of a "fairness pledge" for members.—Klein. Project Manager—Magruder.

WASHINGTON, *February 24, 1971.*

Memorandum For: Mr. Magruder.

From: Alvin Snyder.*

The Cronkite News wants to do a piece on our domestic PR operation, including interviews with Ed Morgan and Chuck Colson. In addition, they would like to film any of our in-house activity in this area.

Dan Rather is being assigned to the piece, and may make direct approaches to Messrs. Morgan and Colson and perhaps others on the domestic side in an attempt to set up a filming schedule.

It appears obvious that CBS is out to do a job on us, and I am sure you will agree that it would not be in our best interest to open anything up to them. I think the only person who should see Rather is Herb Klein.

THE WHITE HOUSE,
Washington, August 28, 1970.

(Administratively confidential)

Memorandum for: Mr. Higby.

From: Jeb S. Magruder.

Re: Press Objectivity.

The issue of Chet Huntley is fairly well played out. We leaked his letter of apology to the President and it got very good coverage.

We will continue to hammer at press favoritism on a regular basis. We will ask the Vice President to make this a standard fare while he's on the stump in the Congressional campaigns.

We will keep tabs on examples of partisan press treatment and feed them into the Vice President (and Cabinet officers on the stump) on a regular basis. Now that Huntley is out, he is no longer the issue. However, the general question can be kept in the news as we find more and more examples of unfair treatment by the press. This will simply be a continuing function.

THE WHITE HOUSE,
Washington, September 25, 1970.

For Herb Klein.

From Chuck Colson.

FYI—Eyes only, please

Memorandum for H. R. Haldeman.

The following is a summary of the most pertinent conclusions from my meeting with the three network chief executives.

1. The networks are terribly nervous over the uncertain state of the law, i.e., the recent FCC decisions and the pressures to grant Congress access to TV. They are also apprehensive about us. Although they tried to disguise this, it was obvious. The harder I pressed them (CBS and NBC) th more accommodating, cordial and almost apologetic they became. Stanton for all his bluster is the most insecure of all.

2. They were startled by how thoroughly we were doing our homework—both from the standpoint of knowledge of the law, as I discussed it, but more importantly, from the way in which we have so thoroughly monitored their coverage and our analysis of it. (Allin's analysis is attached. This was my talking paper and I gave them facts and figures.)

3. There was unanimous agreement that the President's right of access to TV should in no way be restrained. Both CBS and ABC agreed with me that on most occasions the President speaks as President and that there is no obligation for presenting a contrasting point of view under the Fairness Doctrine (This, by the way, is not the law—the FCC has always ruled that the Fairness Doctrine always applies—and either they don't know that or they are willing to concede us the point.) NBC on the other hand argues that the fairness test must be applied to every Presidential speech but Goodman is also quick to agree that there are probably instances in which Presidential addresses are not "controversial" under the Fairness Doctrine and, therefore, there is no duty to balance. All agree no one has a right of "reply" and that fairness doesn't mean answering the President but rather is "issue oriented." This was the most important understanding we came to. What is important is that they know how strongly we feel about this.

4. They are terribly concerned with being able to work out their own policies with respect to balanced coverage and not to have policies imposed on them by either the Commission or the Congress. ABC and CBS said that they felt we could, however, through the FCC make any policies we wanted to. (This is worrying them all.)

5. To my surprise CBS did not deny that the news had been slanted against us. Paley merely said that every Administration has

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*Note: In the original, the following appeared in pencil in the margin: "To M[Magruder] *Absolutely* H[Haldeman]".

* Note: in the original, the initials "A S" appeared beside "Alvin Snyder"

felt the same way and that we have been slower in coming to them to complain than our predecessors. He, however, ordered Stanton in my presence to review the analysis with me and if the news has not been balanced to see that the situation is immediately corrected. (Paley is in complete control of CBS—Stanton is almost obsequious in Paley's presence.)

6. CBS does not defend the O'Brien appearance. Paley wanted to make it very clear that it would not happen again and that they would not permit partisan attacks on the President. They are doggedly determined to win their FCC case, however; as a matter of principle, even though they recognize that they made a mistake, they don't want the FCC in the business of correcting their mistakes.

7. ABC and NBC believe that the whole controversy over "answers" to the President can be handled by giving some time regularly to presentations by the Congress—either debates of the State-of-The-Congress-type presentations with both parties in the Congress represented. In this regard ABC will do anything we want. NBC proposes to provide a very limited Congressional coverage once or twice a year and additionally once a year "loyal opposition" type answers to the President's State of the Union address (which has been the practice since 1966). CBS takes quite a different position. Paley's policy is that the Congress cannot be the sole balancing mechanism and that the Democratic leadership in Congress should have time to present Democratic viewpoints on legislation. (On this point, which may become the most critical of all, we can split the networks in a way that will be very much to our advantage.)

CONCLUSION

I had to break every meeting. The networks badly want to have these kinds of discussions which they said they had had with other Administrations but never with ours. They told me anytime we had a complaint about slanted coverage for me to call them directly. Paley said that he would like to come down to Washington to spend time with me anytime that I wanted. In short, they are very much afraid of us and are trying hard to prove they are "good guys."

These meetings had a very salutary effect in letting them know that we are determined to protect the President's position, that we know precisely what is going on from the standpoint of both law and policy and that we are not going to permit them to get away with anything that interferes with the President's ability to communicate.

Paley made the point that he was amazed at how many people agree with the Vice President's criticism of the networks. He also went out of his way to say how much he supports the President, and how popular the President is. When Stanton said twice as many people had seen President Nixon on TV than any other President in a comparable period, Paley said it was because this President is more popular.

The only ornament on Goodman's desk was the Nixon Inaugural Medal. Hagerty said in Goldenson's presence that ABC is "with us." This all adds up to the fact that they are damned nervous and scared and we should continue to take a very tough line, face to face, and in other ways.

As to follow-up I believe the following is in order:

1. I will review with Stanton and Goodman the substantiation of my assertion to them that their news coverage has been slanted. We will go over it point by point. This will, perhaps, make them even more cautious.

2. There should be a mechanism (through Herb, Ron or me) every time we believe coverage is slanted whereby we point it out either to the chief executive or to whomever he designates. Each of them invited this and we should do it so they know we are not bluffing.

3. I will pursue with ABC and NBC the possibility of their issuing declarations of policy (one that we find generally favorable as to the President's use of TV). If I can get them to issue such a policy statement, CBS will be backed into an untenable position.

4. I will pursue with Dean Burch the possibility of an interpretive ruling by the FCC on the role of the President when he uses TV, as soon as we have a majority. I think that this point should be very favorably clarified and it would, of course, have an inhibiting impact on the networks and their professed concern with achieving balance.

5. I would like to continue a friendly but very firm relationship whenever they or we want to talk. I am realistic enough to realize that we probably won't see any obvious improvement in the news coverage but I think we can dampen their ardor for putting on "loyal opposition" type programs.

I have detailed notes on each meeting if you'd like a more complete report.

CHARLES W. COLSON.

THE WHITE HOUSE,
Washington.

TALKING PAPER—JEB MAGRUDER

1. Put someone on the Washington Post to needle Kay Graham. Set up calls or letters every day from the viewpoint of I hate Nixon but you're hurting our cause in being so childish, ridiculous and over-board in your constant criticism, and thus destroying your credibility.

2. Nofziger should work out with someone in the House a round robin letter to the Post that says we live in Washington, D.C., read the D.C. papers, but fortunately we also have the opportunity to read the papers from our home districts and are appalled at the biased coverage the people of Washington receive of the news, compared to that in the rest of the country, etc.

3. Follow up on the yacht story—get something in Monday, etc. so that we can get some mileage out of that. Also, see if you can think of any other things to do to follow up on it.

4. [Illegible] on his courage in pointing out the discrepancies in the case.

THE WHITE HOUSE,
Washington, March 9, 1970.
(Confidential)

Memorandum for Mr. Magruder.

(1) I have talked with Connie Stuart about the need to follow up on the highly inaccurate article in the NEW YORK TIMES Magazine this Sunday regarding White House social activities. There are numerous factual errors and other very erroneous implications. I suggested to Connie that she might want to give the facts to another rival columnist and let him go to town and start a battle Also, I think we ought to get some letters to the editors going, and show some indignation and activity on this front. They should not be allowed to get away with this. Perhaps you, Herb and the others can think of some other possible points of attack.

(2) Would you please give me once every two weeks a summary of the various hatchetman operations—letters to the editors, counterattack, etc., so that I can report to the President on the activity in this regard.

(3) We also need to be sure that the Pat Nixon trip story keeps going because there won't be another such trip in the near future. I have talked with Connie about this, but you should follow up too. For one thing, let's be sure the National Committee builds this up. I think Leonard ought to do a whole issue on the Pat Nixon Tour, and we ought to really push for maximum continuing coverage on the things that were accomplished from this. We could get back to the cities where she was and get some follow up stories on the aftermath results of her visit, etc. Please don't let this drop, and please let me know what you are doing on it.

H. R. HALDEMAN.

THE WHITE HOUSE,
Washington, May 6, 1970.

Memorandum for: H. R. Haldeman.
From: Jeb S. Magruder.

Here is a report on the talking paper given to me last week:

1. We have a team of letter-writers who are pestering the Washington Post from the viewpoint that was suggested.

2. I have asked Lyn Nofziger to work up the House round robin letter to the *Post*.

3. We worked, as you know, on the yacht story with Chuck Larson and the press office. Miss Nixon and the *Patricia* were pictured in MONDAY and TIME. The decommissioning has been mentioned in several newspaper stories and a number of columns. It was also featured on the TODAY show and the evening news programs. Now that it has appeared in TIME, I frankly think we have as much mileage out of it as we can get—except to cite it from time to time as an example of our attempts to save the government money.

4. We have arranged for letters to be sent to Justice Boyle, complimenting him on his courage in telling the Kennedy case the way it is.*

"TEMPORARY" TAXES BECOME PERMANENT

Mr. BARTLETT. Mr. President, an editorial appearing in the November 23, 1973, Mobile Register includes very important statements made by Senator HANSEN and Senator MANSFIELD concerning their opposition to combating the energy crisis by adding additional prohibitive taxes to gasoline.

The distinguished Senators made two particular points which should be repeated.

I agree with Senator HANSEN from Wyoming that it makes no sense to place an extra tax on something in short supply.

Any price increases should be reserved. to provide additional encouragement and financial means to increase our short supplies of domestic energy. Our citizens are in no mood for the imposition of another large tax. As pointed out by Senator MANSFIELD, a 30 or 40 cents tax increase on gasoline would mean an increase in the sales tax by six or eight times.

Mr. President, I ask unanimous consent that the editorial from the Mobile Register be printed in full in the RECORD.

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

TEMPORARY TAXES BECOME PERMANENT

The agitation carried on by some bureaucrats and politicians in Washington, D.C., to seize upon the energy shortage as an excuse for increasing gasoline taxes is running into outspoken opposition, as it well should.

A noteworthy example in Congress is the position taken by Sen. Clifford P. Hansen, Wyoming Republican. In a discussion of the gasoline tax issue on the floor of the Senate, he stated:

"The fact is that we do not need an extra tax on something that is in short supply."

He said he stands 'squarely with" Senate

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* Note: In the original, "What Happened?" appeared in pencil in the margin beside paragraph 2, and "O K" appeared in pencil in the margin beside paragrah 3. A check mark appeared beside paragraph 4.

Democratic leader Mike Mansfield of Montana "in opposing the imposition of any additional tax on gasoline, gas, fuel oil or anything else."

Senator Hansen added that he knows "there are some in the administration—not everyone down there—who think we should have a tax."

His own feeling, he emphasized, is that the Senate Democratic leader is "precisely right in railing against" a higher tax. "I agree with him 100 per cent."

Senator Mansfield commented that he hoped the "administration is getting the smoke signals which are emanating from the Senate."

The American people in general should hope so, too.

Mr. Mansfield spoke of "some of the administration people" as hinting at an "increase in the federal gasoline tax from 4 cents at present to 30 or 40 cents."

That, if done, he said, would be an "outrageous way of handling a shortage because, once again, the imposition of a 30 to 40 cents increase per gallon added on to the 4 cents present gasoline tax . . . would mean that the present national sales tax would be increased by anywhere from six to eight times."

He predicted that Congress "would not vote for such a tax." Congress would commit an outrage against the people if it did vote for "such a tax."

But citizens all over the United States who oppose higher taxes on gasoline because of the short supply should make their opposition clear to Congress.

The absence of a strong expression of public sentiment against increased taxes would encourage the bureaucrats and politicians who are agitating for increased taxes and at the same time might play right into the hands of those eager to see the stamp of congressional approval placed on an increase.

The people should not lose sight of the difficulty of getting higher gasoline taxes repealed once imposed.

The talked-of increased taxes presumably would be called a temporary measure adopted because of the gasoline shortage.

But the people should be alert to the familiar saying that there is no such thing as a temporary tax. It does not take a temporary tax long, in many cases, to become a permanent tax.

GENOCIDE

Mr. PROXMIRE. Mr. President, in the days of America's struggle for independence, our Founding Fathers were confronted with a challenge as imposing as the war itself, the formation of a new republic. Searching for the perfect form of government, these dedicated men were caught in the dilemma between the rights of individual freedom and the necessity of individual responsibility.

The American Revolution was fought to obtain the natural rights of life, liberty, and happiness. These were concepts kindled by the writings of John Locke and ignited in the British Commonwealth in the 1640's. But the goal was not so clear cut. For the American revolutionists were inescapably heirs of the Puritan tradition, the products of Winthrop and his pious brethren. The quest for freedom was tempered by this strict sense of temporal and spiritual duty. By the time the Constitution was penned, however, a unique republic had been constructed which resolved this tension through a revolutionary balance between individual freedom and responsibility.

But, of paramount concern is the fact that Washington, Franklin, Adams, and their compatriots welded together a union of 13 colonies which ultimately served the world as a model upholding human rights and dignity. The very words of Locke, which European intellectuals had debated a generation earlier, became reality for the American people. Tyranny and injustice were left behind, and a democracy predicated on the rights of man was constituted by an independent republic.

The history of the American people has been one of diligent support for human dignity at home and abroad. Enriched by the legacy of Locke we have long been in the vanguard for liberty and justice. Today, however, we have arrived at a moment of indecision. For over two decades the nations of the world have supported the Genocide Convention while we remain idle. Tragically the United States refrains from restating its true commitment to human life, liberty and happiness by not endorsing the articles of this humanitarian convention.

The time to reawaken the principles of Locke is long overdue and, therefore, I strongly urge the Senate to ratify the Genocide Convention and recommit itself to the most important of human rights: The right to live.

GASOLINE RATIONING

Mr. FANNIN. Mr. President, the more study that I do on the subject of rationing the more I am convinced that President Nixon is absolutely correct in his determination to use it only as a very last resort.

One of the main causes of our current energy shortage is the lack of incentives for petroleum producers to bring in new wells. Today we have only 10,000 independents drilling for oil as compared with 17,000 just two decades ago. Only about one-half the money is being invested in the chancy business of exploration as was invested in the mid-1950's.

If we are to have an expanded supply of fuels, there will have to be incentives. During the past two decades the actions of our Federal Government—and especially the Congress—has been to control prices and suppress profits which are essential to encourage exploration.

If we ration gasoline, we will be doing nothing to increase our gasoline supply. In fact, we may prolong the crisis through rationing.

The Arab nations already have made it clear that even if the Mideast peace is restored to their satisfaction, there will continue to be severe limitations on the amount of petroleum they will export. In other words, the crisis we face will not be shortlived; it will be chronic unless we can develop our own energy resources to meet our needs.

So the only rational solution to our problem is to allow our fuel producing industry to earn the profits which will encourage investment in exploration.

Rationing would be counterproductive and additional gas taxes likewise would not be the answer. Our free market system works pretty good if we do not allow the Government to botch it up. I think that it would respond if we would take the lid off of gasoline prices and if we would move immediately to deregulate the price of natural gas.

Aside from this, rationing presents so many problems that it is almost inconceivable that we could come up with a system that would be both equitable and effective in today's complex society. In yesterday's Washington Post there was an interesting article by J. W. Anderson delving into the many questions and inevitable inequities that rationing causes.

Mr. President, I ask unanimous consent to have this article printed in the RECORD so that those of my colleagues who are so enthusiastic in their support for immediate rationing can ponder some of the questions.

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

HOW FAIR IS RATIONING?

(By J. W. Anderson)

Rationing gasoline, the argument goes, is fairer than rising prices. A surtax on gasoline, to cut consumption, would hurt the poor. The administration is deeply divided on the issue. The economists in the Treasury and the Council of Economic Advisers favor a stiff surtax, perhaps as much as 40 cents a gallon. The politicians in the other agencies are generally horrified by the idea and lean strongly to rationing with books and coupons as in World War II. President Nixon is going to have to make up his mind soon, for even an immediate decision could hardly put a rationing system into actual operation before March.

Since the issue is fairness, a lot depends on the way a rationing system would actually work. The dilemmas are clear enough. The more closely you look at the structure of a rationing scheme, the less obvious it becomes that a rationing is necessarily and absolutely fairer than even a stiff surtax.

The first question is whether to give ration books to cars, or to drivers—or, perhaps, to everybody. Suppose that three households, side by side in the same block, have roughly the same commuting pattern. The first is a bachelor with a car. The second is a couple with three children, all over 16, with three cars. The third is also a couple with three children over 16, but they have only one car. How do you distribute the ration books?

If families get a book for each car, that gives the second family three times as much gas as the third family. That's fairness? It only encourages people to buy cars (including as in World War II, wrecked cars) to get the books. But if you give a ration book to each driver then both of the families with children have five times as much gas as the bachelor. But they don't have five times as many errands or five times as much shopping to do. That doesn't seem fair, either. And then what about the people, of whom there are thousands in every big city, who have driver's licenses but no cars? Many of them occasionally rent cars. Are they going to be cut in, or cut out?

Before you make up your mind on those choices, consider the next one, which is even worse. Should the ration coupons be transferable? In other words, should it be legal to sell them? A legal market—call it a "white market"—eliminates the otherwise inevitable black market. More important, it rescues the government from the necessity of entangling itself, as it did in World War II, in literally hundreds of categories and subcategories of users, with hair-splitting distinctions among degrees of need and hardship. With a white market, everybody would get a basic weekly ration. People who use less could sell coupons. People who need more can buy them at the going price.

But hold on a minute. If the coupons are saleable, then they are in fact money. By mailing out the ration books, the government is distributing a subsidy that can be used to buy gas or, through the white

market, to buy anything else. (Let's try to avoid frivolous suggestions about using gas coupons to solve the energy shortage and reform the welfare system simultaneously.)

If the government is going to start handing out cash subsidies in the form of gasoline ration coupons, how can it possibly justify limiting them to drivers? If our purpose is fairness, then surely people who do not drive have the same right to this subsidy as the drivers. That takes us back to the first question. Perhaps we have to give ration books to all citizens over 16 years old. But the more people who get books, the less gasoline each book is going to be worth and the more coupons will have to be bought and sold on the market.

World War II rationing does not offer any very useful guide for the experience on which we may shortly have to embark. There are nearly three times as many cars in the country today as in 1940. The average American car, having grown steadily bigger and less efficient, gets 30 to 40 per cent less fuel mileage today than it did in 1940. Since the war, we have built vast suburban subdivisions miles from any shops or public transportation. We have built whole industries, from resorts to roadside restaurants, that depend on the automobile.

During the war, the basic A ration was four gallons a week. To get more, drivers had to prove need. Government officials believe that by next March we shall have to get consumption down to an average of about 10 gallons a week for each of our 90 million private cars. That would pull our national demand down by about one-fourth of our current level.

Fuel oil for home heating is also going to have to be rationed, of course, but here there is no need for ration books or coupons. Distributors will simply deliver somewhat less to each house than they did last winter. If you run out, it's your own fault.

But what about the houses heated by gas or electricity? What about the oil-heated house whose owner installs a couple of electric space heaters, or leaves the oven on? The only solution in sight is a very heavy tax on each household's utility bill for any gas or power beyond the amounts that it used last year. But that would require new legislation, and that legislation is still a long way off.

The cutbacks will assume that the householder is turning his thermostat down six degrees. If the average setting was 74 degrees, it will have to go down to 68. But what about the family that has always kept the house cool? If it was down to 68 last winter, will it have to go now to 62? Is it fair that the family that has always been economical must now suffer unusual cold, compared with its more wasteful neighbors? By the end of the winter, fairness is likely to have joined the long list of commodities in shortage.

A TRIBUTE TO SIDNEY BLACKMER

Mr. ERVIN. Mr. President, with the recent death of Sidney Blackmer, the State of North Carolina lost one of its most exemplary sons. He was a brilliant actor, a classmate and close friend of mine, and a lifelong friend of the State in which he was born.

He was a leader in the truest sense of the word. Appearing in more than 200 movies, 40 plays, and numerous television productions, he achieved a national reputation that culminated with his receipt of the Tony Award for best actor of 1950 for his performance in the Broadway play, "Come Back Little Sheba." His career spanned more than 50 years, and his versatility as an actor was seldom matched.

But his leadership extended beyond the acting profession. He was very active in a number of charities, most notably the Muscular Distrophy Association of America. In his home State, he played an important role in the development of the North Carolina School of the Performing Arts, and saw it become the fine institution that it is today. Though he was an actor of national repute, he never forgot his loyalty for the State, and he participated actively in a wide variety of statewide functions.

North Carolina is proud of its son, Sidney Blackmer, and I join my fellow citizens and the acting community in mourning the loss of a great man. I ask unanimous consent that the obituary that appeared in the New York Times be printed in the RECORD.

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

SIDNEY BLACKMER DIES AT 78; WON TONY FOR "SHEBA"

Sidney Blackmer, the actor, died last evening at the Sloan-Kettering Institute for Cancer Research, 410 East 68h Street. He was 78 years old and lived at 100 Central Park South with his wife, the former Suzanne Kaaren.

Mr. Blackmer was a leader in his profession. He was a founder of the Actors Equity Association and took a major role in the bitter actor-manager struggle of 1919.

He was a member of the national executive board of the American Federation of Television and Radio Artists and president of Theater Authority, the clearinghouse for benefit performances.

He was a member of The Lambs and The Players, the two major clubs for actors in this city.

He also found time to serve as a national vice president of the Muscular Dystrophy Association of America, the organization that recently put on a national telethon headed by Jerry Lewis that raised millions of dollars to fight the crippling disease.

INVOLVEMENT IN PARTS

From his acting debut with Pearl White in "The Perils of Pauline" to his last major role as Ruth Gordon's husband in "Rosemary's Baby"—a span of 55 years—Mr. Blackmer always approached his parts with great seriousness.

For his first starring Broadway role, as an awkward young Virginia woodsman in the play "The Mountain Man," Mr. Blackmer prepared by living, for the summer of 1921, unannounced and uninvited, with the isolated mountain people of the northern Georgia, studying their dress, their speech, even the expressions in their eyes.

Nearly 30 years later, when he was playing Doc, Shirley Booth's alcoholic husband in the Willima Inge drama "Come Back, Little Sheba," Mr. Blackmer threw himself into the character's drunken scenes with such relish that during the run of the play he suffered two broken ribs, a sprained ankle, a bloody nose, and severe bruises on his legs and chest.

He won both the Donaldson Award and the Antoinette Perry (Tony) Award as best actor of the 1950 season for that role, the critical high point of his career.

However, Mr. Blackmer was probably better known to the general public for his characterization of Theodore Roosevelt, whom he played 10 times in plays and movies including "The Rough Rider."

With the right pair of glasses and a little makeup, Mr. Blackmer bore a startling resemblence to President Roosevelt. "It was my father," Alice Roosevelt Longworth, Mr. Roosevelt's daughter, remarked after seeing one of Mr. Blackmer's performances.

In all, Mr. Blackmer appeared in more than 40 Broadway plays, 200 movies, and numerous television dramas. He played opposite nearly every leading lady of his era, from Shirley Temple (he was her adopted father in "Heidi") to Helen Hayes, Eva LaGallienne and Tallulah Bankhead.

Mr. Blackmer was born in Salisbury, N.C. on July 13, 1895. He planned to be a lawyer, but was more attracted to football at the University of North Carolina, where he was the star of the team. He went to Europe for a year, tried in vain to enlist in the Army, returned to college and graduated in 1915. He held a B.A. and an LL.B. from North Carolina. He eventually did spend two years as a lieutenant in the field artillery in World War I.

Mr. Blackmer's debut on the New York stage was in "The Morris Dance" in February, 1917. His marriage to Lenore Ulric, an actress, created a sensation in 1928. They were divorced in 1939. Three years later he married Miss Kaaren, also an actress. They had two sons.

CONTROLLING THE BUDGET

Mr. BROCK. Mr. President, the end of the year is rapidly descending upon us, and we have remaining many important matters which should be considered before the end of the session. One of those very important issues is that of controlling the budget. I feel Congress should act as quickly as possible upon the measures which would give the Congress control over the budgetmaking process again, and the action should come immediately. While inflation continues, it is easily pointed out that the main contributing factor in creating that situation is excessive Government spending. We must quickly enact legislation to put a halt to this excess spending, and give the Congress a tool to keep tabs on spending, and also set priorities for our Nation. The Memphis Commercial Appeal, in an editorial on November 11, 1973, pointed out the need for quick action by the Congress, and I would ask unanimous consent that this editorial be printed in the RECORD.

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

CONTROLLING THE BUDGET

Prospects for legislation to give Congress control over the federal budget are brighter now than they have been in a long time. It looks as though both houses will get around to action on this subject before the end of this year.

It has taken a lot of study to work out an acceptable plan. Work began early this year and the first recommendations for reform came out of the joint study committee in April.

With some prodding by representatives such as Jamie Whitten (D-Miss.), the project has now been pretty well whipped into shape.

What was needed and what the new legislation proposes, is some realism in the business of putting together spending and taxing measures during each session.

Both the House and Senate bills under consideration would set up a congressional office of the budget. That in itself is something that long has been needed. It was a function which Congress never should have transferred to the executive branch.

The bills also call for the formation of budget committees in both houses. The members of those committees would be selected from the Appropriations Committee, the Ways and Means Committee, and the legislative committees. The chairmanship would be rotated between the three groups.

Bills calling for new or enlarged govern-

mental programs would have to be passed by March 31 each year.

Then by May 1 a resolution would have to be passed establishing congressional targets on total outlays, total revenues, the level of public debt and the amount of the surplus or deficit considered necessary. Later in the summer a second resolution would be called for to fix the final spending and revenue totals.

Through a process of accumulation, the old system of voting appropriations willy-nilly would be ended and a single measure giving the grand total of appropriations would be presented. Then the taxing committees would be called upon to make any necessary reconciliations.

If Congress fails to enact a budget reconciliation bill, or enacts a bill not in conformity with the budget outlays and revenues approved in the second resolution, the budget committee would have the power of making proportionate reductions, by line item, in the spending proposals to keep the budget in proper balance.

This whole plan would give Congress considerably more power over the budget than it now is able to exercise.

But with that new power will come new responsibilities that will require greater discipline in Congress than it has sometimes displayed in the past.

The plan can work. It will work if Congress abides by what it decides needs to be done.

THE ATTORNEY GENERAL SALARY BILL

Mr. McINTYRE. Mr. President, yesterday I voted against S. 2673, the bill which lowers the salary of the Attorney General to pre-1969 levels. The purpose of this bill, of course, is to eliminate the Constitutional ineligibility of the distinguished Senator from Ohio to assume the office of Attorney General.

When and if the nomination of my friend, BILL SAXBE, comes before the Senate, I will reluctantly vote against confirmation. I feel it is important to explain the reasons for these votes.

The constitutional obstacle is clear:

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased, during such time.

Mr. President, much has been said and written about the purpose and intent behind this clause of the Constitution, and I shall not repeat those arguments. The issue resolves to these basic questions: Can Congress remove a clear constitutional prohibition by in effect repealing the law which created the barrier in the first place? And, is it proper to inquire into the Founding Father's intent in writing this clause of the Constitution?

Personally, I believe that the answer to both questions is "No." I recognize the accepted principles of construction that allow an expansive view of many clauses of the Constitution. However, I do not believe that these principles apply to the so-called mechanical clauses. For example, article I, section 3, clause 3 states:

No person shall be a Senator who shall not have attained to the Age of thirty years. . . .

Let us assume that this provision was intended to insure that all Senators possessed the degree of maturity required for their duties. I do not think any constitutional scholar could seriously argue that if it could be shown that a particular senatorial candidate who had not reached the age of 30 was as mature as a 30-year-old, he would therefore be eligible.

I view the clause which disqualifies Senator SAXBE from assuming the Attorney Generalship in the same light, and hence do not feel that S. 2673 can be used as a vehicle to overcome the disqualification.

Regardless of my personal interpretation of the Constitution, there is another compelling reason for voting against the nomination of the distinguished Senator from Ohio. The debate has shown a great deal of disagreement among experts as to the constitutionality of the appointment. Whatever the ultimate constitutional decision, the uncertainty surrounding this most important position which would be created by the appointment of BILL SAXBE would come at a time when our Nation can least afford it.

Even with expedited court challenges, the authority of the Attorney General and his office would be in doubt for several months at a minimum. We are in the midst of unprecedented inquiries and investigations into the conduct of public officials. Completion of these investigations is an essential first step in restoring a measure of public trust in their Government. Any further delays or uncertainty in the activities of the Justice Department and the Special Prosecutor will only add to this already too serious crisis of confidence.

And so I have reluctantly concluded that I must oppose the expected nomination of BILL SAXBE to be Attorney General of the United States. He has been a valued and respected colleague, and it is indeed unfortunate that this relatively obscure constitutional disqualification exists. I, for one, would welcome the presence of his independent mind, sense of fair play and willingness to speak with candor in an administration marked by secrecy and blind loyalty. However, the constitutional prohibition, and the uncertainties which would result from the appointment, will force me to vote against his confirmation.

NATIONAL SECURITY

Mr. CASE. Mr. President, all of us, I believe, are deeply concerned when we hear the claim of "the national security" raised as a justification for an illegal or a wrong action taken by a public official. Citizens have been followed about, private offices have been broken into and files and papers ransacked, telephone lines have been bugged without judicial warrant. And, more recently, the claim of national security has been asserted in the courts as a justification for not telling the truth under oath.

Several Senate committees concurrently are examining the broad issue of official lawlessness and the damage wrought by it on our political system. I am sure many Members will be interested in a brief, filed by the Special Prosecutor, Mr. Leon Jaworski, in the U.S. District Court for the District of Columbia, which discusses whether "the incantation 'national security' creates a unique immunity from criminal prosecution."

Mr. President, I ask unanimous consent that the Government's Memorandum in Opposition to Defendant's Motion To Dismiss Indictment, filed on November 12, 1973, in the case of the United States against Egil Krogh, Jr., be printed in the RECORD.

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

[U.S. District Court for the District of Columbia, Criminal No. 857–73]

UNITED STATES OF AMERICA VERSUS EGIL KROGH, JR.

GOVERNMENT'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS INDICTMENT

The United States submits this memorandum in opposition to the motion filed by defendant to dismiss the two-count indictment against him for knowingly making false material declarations in a proceeding ancillary to a grand jury in violation of 18 U.S.C. § 1623.

STATEMENT

On October 11, 1973, the grand jury returned a two-count indictment alleging that, while under oath and while testifying in a proceeding before and ancillary to a grand jury, defendant had knowingly made materially false declarations denying that he knew of certain travel by E. Howard Hunt (Count I) and G. Gordon Liddy (Count II). The relevant allegations of the indictment, together with the affidavits of John W. Dean III, Earl J. Silbert, and Donald E. Campbell annexed hereto as Exhibits A, B, and C respectively, must be taken as true for purposes of passing on defendant's motion. Taken together, these allegations and averments show that in conducting an investigation to determine whether convicted Watergate burglars Hunt and Liddy were acting under the direction or with the knowledge of other persons, in or out of government service, it was material for the grand jury to ascertain what their travel activities had been in the period shortly before the break-in. Defendant at the time was a member of the White House staff, was a former superior of Hunt and Liddy, and was one of the persons whose testimony was sought by the grand jury. Under arrangements made with then Counsel to the President John W. Dean III, defendant, (and other White House staff members) agreed to give sworn testimony before the Assistant United States Attorneys conducting the grand jury proceeding under conditions duplicating, as nearly as possible, the conditions under which a witness would physically appear in the grand jury room. The procedure was arranged in order to prevent possibly unfair publicity that might have adversely affected senior public officials. The proposed procedure was explained in advance to the grand jury and the grand jurors were told that, after the testimony was taken it would be presented to them, and that they would have an opportunity to have further questions asked, either under the proposed arrangement or in the grand jury room.

The Counsel to the President expressly advised defendant that his sworn testimony was being taken for presentation to the grand jury conducting Watergate-related matters. On August 28, 1972, defendant appeared at the Department of Justice, with counsel, to give testimony under this arrangement. In accordance with the normal conditions attending a grand jury investigation, counsel was excluded from the room, defendant took the oath, oral questions were asked by the Assistant United States Attorney, and a court reporter transcribed the proceedings. During the week of September

15, 1972, the transcript was duly read in its entirety to the grand jury.

On September 15, 1972, the grand jury indicted Hunt, Liddy, and five of their subordinates (McCord, Barker, Gonzalez, Sturgis, and Martinez) in connection with the Watergate break-in (D.D.C. Crim. No. 1827-72). No higher officials were indicted. The grand jury's investigation into this matter was only resumed in March 1973, after all seven of those defendants had been convicted, McCord had come forward to admit that higher government and campaign officials had been involved in the Watergate affair, and each of those defendants was ordered to testify before the grand jury under use immunity.

The facts relevant to defendant's alleged "retraction" defense are described in part III of this Memorandum.

I. DEFENDANT'S FALSE DECLARATIONS WERE MADE UNDER OATH IN A PROCEEDING BEFORE OR ANCILLARY TO A GRAND JURY OF THE UNITED STATES AND HENCE FALL WITHIN THE COVERAGE OF 18 U.S.C. § 1623

Defendant's first ground for urging the dismissal of the indictment is his claim that the examination in which his allegedly false declarations were made was not a proceeding covered by 18 U.S.C. § 1623. That statute by its express terms applies to false material declarations which are made "under oath in any proceeding before or ancillary to any court or grand jury of the United States . . ." 18 U.S.C. § 1623(a). As was set forth above, defendant was deposed pursuant to an arrangement arrived at between the prosecution and White House officials, whereby White House aides whose testimony was sought by the grand jury would be examined at the Department of Justice in lieu of physically appearing before the grand jury. This arrangement was not made to serve any interests of the prosecutors, but rather to accommodate the concerns of the potential witnesses that their appearance at the court house would generate unwarranted publicity. Defendant himself was told of this arrangement and of the purpose and intended use of the proposed testimony. This testimony was given under grand jury conditions, and he was placed under oath by a duly authorized court reporter. The transcript of his testimony was actually read to the grand jury. It is the government's contention that these circumstances surrounding defendant's testimony clearly establish that it was a "proceeding before or ancillary to a grand jury of the United States" within the meaning of Section 1623, and hence that his false declarations made during that proceeding constitute a violation of law. Neither the legislative history of Section 1623, nor any principles of statutory construction warrant a different conclusion.

A. The legislative history of Section 1623 provides no support for the argument that defendant's examination was not a proceeding within the meaning of the statute.

Section 1623 was enacted as Title IV of Pub. L. 91-452, the Organized Crime Control Act of 1970. The phrase "proceeding before or ancillary to any court or grand jury" appears not only in Section 1623, but also in three other provisions of that Act: 28 U.S.C. § 1826 (recalcitrant witnesses); 18 U.S.C. §§ 6001, 6002 (immunity). Nowhere in the history of the Act, however, is there any indication of Congressional attempt to define or delimit the activities that fall within the coverage of the phrase.

This exchange between Senator McClellan and Assistant Attorney General Wilson, discussed at pp. 5-6 of the Defendant's Memorandum of Points and Authorities, is somewhat illuminative, for it demonstrates that the words "ancillary to" were added to the draft of Section 1623 following Mr. Wilson's observation that the statute as originally drafted would not have covered such things as "pretrial depositions, affidavits, and certificates." *Hearings on S. 30, etc. Before the Senate Judiciary Subcommittee on Criminal Laws and Procedures,* 91st Cong., 1st Sess. 379 (1969). Both the addition of the word "ancillary," and Senator McClellan's letter to Mr. Wilson (*Senate Hearings* at 409) indicate that Congress intended that the expanded perjury provisions of Section 1623 are to be available when false testimony is given *for use* in a judicial proceeding, and not only when the declarations are physically *in* the court room. Notably, Senator McClellan's letter indicated that Congress had intended that result even prior to the addition of the "ancillary" language. No basis appears either in logic or the legislative history for imposing the interpretation that Section 1623 was not similarly intended to be available for prosecuting knowingly false statements given *for use* in a grand jury. Certainly such an interpretation is not required merely because Congress did not expressly consider proceedings such as the defendant's deposition. "[I]t is no bar to interpreting a statute as applicable that 'the question which is raised on the statute never occurred to the legislature.'" *Eastern Airlines, Inc.* v. *C.A.B.*, 354 F. 2d 507, 511 (D.C. Cir. 1965).[1]

Furthermore, the wording of the immunity statutes enacted as Title II of the Organized Crime Control Act provides some indication that Congress intended Section 1623 to apply to proceedings "ancillary" to a grand jury, as well as those ancillary to a court. The basic immunity statute, 18 U.S.C. § 6002, refers to a witness in a "proceeding before or ancillary to" (1) a court or grand jury, (2) an agency, (3) either House of Congress, or a Congressional committee. Of the succeeding specific immunity statute, however, only Section 6003, that dealing with immunity for court and grand jury proceedings refers to proceedings "before or ancillary to" those bodies; Sections 6004 and 6005 are respectively limited solely to proceedings "before" an agency, or "before" Congress or Congressional committees. This companion legislation to Section 1623 indicates that when Congress wished to restrict the applicability of a statute to proceedings "before" a body, it did so with clear language. Since no language limits coverage under Section 1623 to proceedings "before", as distinguished from "ancillary to" a grand jury, there is no reason to impute to Congress an intention to restrict its coverage in that way. *Cf. United States* v. *Fabrizio*, 385 U.S. 263 (1966).

B. As a matter of statutory construction, defendant's examination was a "proceeding . . . ancillary to . . . a grand jury" within the meaning of 18 U.S.C. § 1623.

As the defendant has observed in his Memorandum of Points and Authorities, general principles of statutory construction require that the word "proceeding" in Section 1623(a) "must be given its plain meaning unless that meaning would lead to 'absurd or futile results.'" Defendant's Memorandum, p. 7. As he notes, the Supreme Court has stated that ". . . legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him." *Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U.S. 607, 618 (1944). What the defendant has disregarded, however, is precisely the ordinary non-technical meaning of the word "proceeding". The examination . . . was conducted under formal circumstances. While the defendant was under oath, his counsel was excluded from the room, and a court reporter transcribed the questions and answers for presentation to the grand jury. Certainly a man of common intelligence would understand that the deposition was a "proceeding".

In contending that the term "proceeding" applies only to those hearings for which there is explicit statutory provision, it is the defendant who is attempting to add or subtract, delete or detract from the congressional purpose as expressed in the words of Section 1623. *Cf. 62 Cases of Jam* v. *United States*, 340 U.S. 593, 596 (1951). Defendant's assertion that whenever the word appears in Title 18 of the United States Code it contemplates an action for which there is statutory authority is both extravagant and irrelevant.[2]

In interpreting "proceeding" as the term is used in Section 1623, the question is whether the phrase "proceeding before or ancillary to any . . . grand jury" requires a reference to statutorily prescribed modes of handling its business. In the case of a grand jury, it would seem that the phrase cannot have as restricted a meaning for there are no statutorily prescribed procedures applicable to grand jury proceedings. The number of grand jurors and the manner of their selection are fixed by statute. The quorum for returning an indictment is set forth in Rule 6 of the Federal Rules of Criminal Procedure. Aside from these strictures, however, Rule 6 is silent. Indeed, it has long been settled that the grand jury, convened as a body of laymen, operates "free from technical rules." *Costello* v. *United States*, 350 U.S. 359 (1956). Unlike pre-trial depositions, for which explicit statutory authority might be necessary to secure the attendance of witnesses and to preserve testimony which could be introduced as evidence in court, there is no need for a provision specifically authorizing the taking of depositions to be used as evidence before a grand jury, especially by consent of the witness. A grand jury is free to indict on hearsay evidence, of course. *Costello* v *United States, supra*. And for similar reasons the grand jury may devise and follow flexible procedures to secure the evidence it needs, subject only to the implicit *restrictions* of the Constitution, statutes and rules. That kind of flexibility was involved in two recent decisions of the Supreme Court, where the Court upheld the grand jury's power to compel a witness, under subpoena, to give evidence (voice and handwriting exemplars) *outside* of the grand jury room to a "designated agent" of the grand jury who was to receive it and transmit it to the grand jury. *United States* v. *Dionisio*, 410 U.S. 1 (1973); *United States* v. *Mara*, 410 U.S. 19 (1973).

Furthermore, the fact that there is no explicit statutory authorization for defendant's deposition does not indicate that this proceeding was an "invention of the moment," as argued by the defendant, even if that characterization would be relevant. A similar course had been followed by the government in obtaining the testimony of former Speaker of the House John McCormack for use by the grand jury in the prosecution of Martin Sweig and Nathan Volshen, and was found permissible by the Second Circuit. See *United States* v. *Sweig*, 441 F.2d 114 (1971). Nor would recognition of defendant's deposition as a "proceeding before or ancillary to a grand jury" grant a "roving commission" for United States Attorneys to take depositions at their whim, for as recognized in *Sweig* and *Costello*, it is already a permitted practice to submit a witness' deposition to a grand jury in lieu of an appearance by the witness himself. The present case in no way involves the question of the power of the prosecutor to *compel* a witness to submit to a deposition rather than appear physically before the grand jury. The only effect of a finding that depositions such as the defendant's fall within the coverage of Section 1623 is to subject the witness to the same criminal sanctions for his false declarations that he would have faced had he appeared before the grand jury instead

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Footnotes at end of article.

of participating in the arrangement worked out for his convenience.

In sum, then, the deposition testimony given by defendant was clearly given in a "proceeding before or ancillary to" the grand jury within the plain terms and natural intent of Section 1623. The motion to dismiss, based on the contrary proposition, must be denied.

II. DEFENDANT IS NOT IMMUNE FROM CRIMINAL PROSECUTION FOR KNOWINGLY MAKING FALSE DECLARATIONS

Defendant next claims that he is immune from federal criminal prosecution because, at the time of his false testimony, he was employed as a federal officer and was allegedly acting within the scope of his employment. The contention is, in defendant's words:

It is well settled that a federal officer is immune from prosecution for acts done in his capacity as a federal officer within the scope of authority. (Memorandum in Support of Motion to Dismiss, pp. 9–10).

Nothing could be less "well settled", for defendant's proposition of law is simply wrong.

Defendant cites no cases directly on point although he does purport to find support in two different kinds of immunity: The limited immunity for federal officers from *state* criminal prosecution based on acts performed as part of their official duties, *e.g., In re Neagle*, 135 U.S. 1 (1890); and the immunity from *civil* damage suits afforded as a protection against vexatious suits brought by private individuals challenging discretionary acts performed by a federal officer within the "outer perimeter" of his authority, *e.g., Barr* v. *Mateo*, 360 U.S. 564, 575 (1959).

Certainly neither of these immunity doctrines lends support to his novel suggestion of immunity from federal criminal prosecution. The *Neagle* doctrine is a reflection of a longstanding legislative policy protecting federal supremacy and holds that states shall have no power to subject federal officers to criminal prosecution for the performance of duties imposed by federal law.[3] But in this case an important premise of *Neagle* and its extensive progency[4]—that protection of the interests of the federal government cannot be relegated to potentially hostile state authorities, *see Neagle*, 135 U.S. at 61—is missing since defendant is being prosecuted by federal authorities not for upholding federal law but for violating it.

Similarly, *Barr* v. *Mateo* affords no predicate for the absolute protection defendant seeks against the criminal consequences of his false testimony. The *civil* immunity attaches only "to *discretionary* acts at those levels of government where the concept of duty encompasses the *sound exercise of discretionary authority*." *Barr* v. *Mateo, supra*, 360 U.S. at 575 (emphasis supplied). As the Court put it in *Spalding* v. *Vilas*, 161 U.S. 483, 498 (1896), even civil immunity is not available when an official acts in excess of his authority:

We recognize a distinction between action taken by the head of department in reference to matters which are manifestly or palpably beyond his authority, and action having more or less connection with the general matters committed by law to his control or supervision.

In the case at bar, defendant's decision to perjure himself amounted to a determination that the evidence being sought on behalf of the grand jury should be withheld on grounds of national security—withheld in other words, as a secret of state. The courts of this circuit have only recently emphasized the traditional principle that the determination of whether evidence, even secrets of state, may lawfully be withheld from the grand jury has never been committed to the discretion of executive officials, but rests, as it always has, with the courts upon a proper and explicit claim of privilege. *Nixon* v. *Sirica*, —— F.2d —— (D.C. Cir., No. 73–1962, decided October 12, 1973) (slip op. at 20–33). See also *United States* v. *Reynolds*, 345 U.S. 1 (1953); *Committee for Nuclear Responsibility* v. *Seaborg*, 463 F.2d 788, 794 (D.C. Cir. 1971).[5]

The circumstances in which defendant found himself on August 28, 1972—called under oath to provide testimonial evidence for the grand jury's use—left no room for the exercise of any discretion. *Cf. Nixon* v. *Sirica, supra; Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Investigation*, 456 F. 2d 1339 (2d Cir. 1972) (police conduct in making an arrest). If the information defendant was asked to provide was not a secret of state or covered by some other valid governmental privilege, the defendant had no discretion but was bound to answer, and to answer truthfully. If the information was a validly privileged secret of state, as defendant claims, his duty—again leaving no room for discretion—was to assert the privilege and to decline to answer pending the court's resolution of the question of privilege. See *United States* v. *Reynolds, supra; Nixon* v. *Sirica, supra*. In the secrecy of the deposition he could have easily invoked that privilege without any real fear that the mere refusal to respond to a preliminary question, innocuous on its face, would imperil national security. But under no circumstances was defendant entitled to answer falsely and thereby simultaneously mislead the grand jury as well as determine the validity of the asserted privilege for himself.

As the Supreme Court said in *Bryson* v. *United States*, 396 U.S. 67, 72 (1969):

Our legal system provides methods for challenging the Government's right to ask questions—lying is not one of them. A citizen may decline to answer the question, or answer it honestly, but he cannot with impunity knowingly and willfully answer with a falsehood.[6]

The central difficulty with defendant's immunity claim is that it requires him to take the position that there are situations in which an intentional violation of the federal criminal laws[7] that protect the integrity of the judicial process falls within the scope of a White House staffer's duties. Defendant seems to recognize this difficulty. As he observes, somewhat diffidently:

It seems strange to suggest that perjury would be within the scope of authority of a federal officer acting in his official capacity. This notion is, of course, wholly at odds with the *Neagle* and *Barr* v. *Mateo* immunity doctrines. As we pointed out supra, the *Neagle* immunity is only against state prosecution and even there is only applied when an officer is upholding, not violating, federal law.[8] Reliance on that doctrine therefore begs the crucial question of whether lying under oath can ever be within the scope of a federal official's duties.

The doctrine of *Barr* v. *Mateo* is even further off the mark. One of the fundamental premises of providing civil immunity, designed to insulate against groundless lawsuits by disgruntled private individuals, is that it will not have the effect of encouraging official lawlessness, precisely because criminal sanctions for official misconduct remain in full force. As Judge Hand wrote in his landmark opinion in *Gregoire* v. *Biddle*, 177 F. 2d 579, 581 (2d Cir. 1949), while public policy calls for civil immunity,

There must indeed be means of punishing public officers who have been truant to their duties.

Thus, our law has never accepted the pernicious premise that official misconduct must go unpunished. Despite defendant's contrary assertions, a corrupt judge, like any other citizen, is answerable to the federal criminal law for criminal acts done in his "official" capacity. See, *e.g., United States* v. *Manton*, 107 F.2d 834 (2d Cir. 1939). Even the Speech and Debate Clause, Art. I, sec. 6, cl. 1, the only substantive privilege written into the Constitution, "does not privilege either Senator or aide to violate an otherwise valid criminal law in preparing for or implementing legislative acts." *Gravel* v. *United States*, 408 U.S. 606, 626 (1972).[9] There has never been any doubt but that high executive officials can be prosecuted for official misdeeds. *United States* v. *Fall*, 42 F.2d 506 (D.C. Cir.), cert. denied, 283 U.S. 867 (1931); *Connelly* v. *United States*, 249 F.2d 576 (8th Cir. 1957), cert. denied, 356 U.S. 921 (1958).[10]

Although we believe it is clear that there is no support in any of the cases cited by defendant for his claim to immunity or in any of the general principles he mistakenly invokes, some consideration is in order whether the incantation "national security" creates a unique immunity from criminal prosecution. In the recent past, "national security" has become a kind of talisman, invoked by officials at widely disparate levels of government service to justify a wide range of apparently illegal activities. Most frequently the claim has been made that the national security justifies warrantless wiretapping of domestic subversives, a claim that the Supreme Court has decisively rejected. *United States* v. *United States District Court*, 407 U.S. 297 (1972).[11]

Recently however the debate over what may be done in the name of "national security" has taken a more ambitious turn. It has been advanced by low level personnel to justify an illegal break-in for the installation of microphones in the offices of the Democratic National Committee.

Joint Motion of Defendants Barker, Gonzalez, Martinez and Sturgis to Vacate Judgments of Conviction and for Leave to Withdraw Pleas of Guilty, D.D.C. Crim. No. 1827–72 (denied by Order of November 7, 1973). And in fact it has been put forward as a legal umbrella for the Fielding break-in itself, where the objective was not electronic surveillance, but a simple burglary. See transcript of *Hearings before Senate Select Committee on Presidential Campaign Activities, Vol.* 28, pp. 5371–97 (testimony of John D. Ehrlichman). These claims are put forward even though it has always been clear that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States* v. *United States District Court, supra*, 407 U.S. and has never been thought lawful even when done in connection with electronic surveillance. *E.g., Irvine* v. *California*, 347 U.S. 128 (1954). One would therefore have thought it no longer open to question that the government may not break into a doctor's office to rummage through his files. *Wolf* v. *Colorado*, 338 U.S. 25 (1949). Now it seems that defendant will claim that "national security" justifies lying under oath in a judicial proceeding.

While the claim of "national security" gives these claims of legalized burglary and perjury a deceptively compelling ring, ultimately they rest on a wholesale rejection of the rule of law and espouse a doctrine that government officials may ignore the requirements of positive criminal statutes when they feel circumstances dictate. This is a notion that has no place in our "government of laws, not of men." No government office, not even the highest office in the land, carries with it the right to ignore the law's

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command, *e.g., Youngstown Sheet & Tube* v. *Sawyer*, 343 U.S. 579 (1952); *Nixon* v. *Sirica, supra*, any more than the orders of a superior can be used by government officers to justify illegal behavior, *United States* v. *Konovsky*, 202 F.2d 221 (7th Cir. 1953).[12] As Justice Brandeis wrote in his famous dissenting opinion in *Olmstead* v. *United States*, 227 U.S. 438 (1928):

Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficient. Men born free are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

We should not be understood to denigrate the difficulties and pressures faced by government officials whose responsibilities extend to the protection of our national security. Nor, in the abstract, do we necessarily reject defendant's implicit contention that perhaps, under certain extreme circumstances, a defense to criminal prosecution for action taken in good faith to protect the national security could be recognized in order that our highest government officials not be coerced into debilitating indecision in times of emergency.[13] The point is simply that such a defense cannot be fashioned by courts in the teeth of the clear commands of the criminal laws. The problem of reconciling protection of the national security with the ordinary requirements of the criminal laws is a legislative problem and one to which Congress has been sensitive. See 18 U.S.C. §§ 2511(3), 2518(7), 2520.

The factual setting of this case vividly illustrates why the claim of "national security" must not be enshrined as a talisman that encourages government officials to perceive wholesale exceptions to the requirements of the criminal laws. Compare *United States* v. *Brown*, 13 Crim. L. Rep. 2519 (5th Cir. 1973) (concurring opinion of Goldberg, J.). Our legal system provides a range of alternatives when disclosure of sensitive information is sought in criminal litigation, but "lying is not one of them." *United States* v. *Bryson, supra*. This range of alternatives was open to defendant and gives the lie to his effort to portray his freedom to decline to answer, claiming a state-secrets privilege, as a "Hobson's choice":

To have declined to answer would have been to admit awareness of [Hunt and Liddy's] travel and to have generated the distinct possibility of unauthorized disclosure. (Memorandum in Support, p. 12).

The situation faced by defendant was this. At White House request, defendant and other staff members were not called before the grand jury but rather were permitted to testify under oath at a deposition-like proceeding which, in defendant's case, was attended only by defendant, United States Attorney Donald Campbell, and a court reporter. Defendant implies that a refusal to answer would have stimulated further investigation that might have led to discovery of the California trips and eventually to the Fielding break-in. This is a gossamer. Defendant well knew that, as an official of the Executive Branch, Campbell was subject to the applicable restrictions on disclosure of classified information. Defendant could easily have called him aside, as indeed Campbell had invited him to do before beginning the examination (Memorandum in Support, p. 2) and informed him that, in his opinion, the inquiries about Hunt's travels and Liddy's travels might involve national security information and should not be pursued. If Campbell had insisted on pursuing these matters at the examination, defendant could have refused to answer. Then the question of privilege could have been put to a court[14] or, more naturally, to the prosecutor's superiors in the Executive Branch.

These alternatives presented defendant with a complete solution to his supposed "Hobson's choice". Indeed that he did not, however briefly, pursue any of them is highly probative that political and personal self-preservation, rather than the national security, may have motivated his perjury. In any event, as we have shown, defendant's motives are legally irrelevant and nothing he has shown warrants dismissal of the indictment against him.

III. DEFENDANT'S PROSECUTION IS NOT BARRED BY 18 U.S.C. §1623(D)

Defendant's final contention is that his counsel's submission of an affidavit to Assistant United States Attorney Silbert on May 4, 1973, containing paragraphs "fully describing" the travel of Messrs. Hunt and Liddy, established a bar to his prosecution for false statements concerning their travel made during his deposition on August 28, 1972. Defendant's argument is based upon Section 1623 (d) which provides:

Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially effected the proceeding, or it has not become manifest that such falsity has been or will be exposed.

This provision presents no ground for dismissing the present indictment, since the defendant's conduct falls far short of satisfying any of its conditions.

A. *Section 1623(d) is not applicable because the Defendant did not admit the falsity of the declarations for which he is being prosecuted in the same continuous proceeding in which they were made.*

Defendant's affidavit of May 4, 1973, (annexed as Exhibit A to his Motion to Dismiss) was occasioned by the government's disclosure of the "Fielding break-in" to District Judge W. Matthew Byrne, Jr., of the Central District of California, the judge conducting the trial of Dr. Ellsberg, and by Judge Byrne's subsequent order that a full inquiry be made into the affair. Although Mr. Silbert was one of the attorneys who had been involved in the grand jury's original inquiry into the Watergate wiretap and break-in, and was assisting in the conduct of its renewed investigation, the letter which accompanied delivery of defendant's affidavit to Mr. Silbert makes no reference to either grand jury inquiry. On the contrary, the letter states that the affidavit was presented to Mr. Silbert with "the specific request that it be immediately submitted to the Honorable W. Matthew Byrne [sic], Judge of the United States District Court for the Southern [sic] District of California," and notes only that "[a]n unexecuted xerox copy of this affidavit is herewith also presented to you, for your own files." (A copy of this letter is attached to this Memorandum as Exhibit D.)

Similarly, the affidavit itself begins by noting that "this affidavit . . . is presented to the Department of Justice for submission to the United States District Court, Southern [sic] District of California, the Honorable Matthew Byrne, Jr., presiding." It makes absolutely no reference to the grand jury's inquiry in the District of Columbia, or to defendant's August 28, 1972 testimony for it, or to defendant's false declarations concerning the travel of Messrs. Hunt and Liddy. Buried among its 53 paragraphs are three (numbers 28, 31, and 32) that defendant now argues "fully describe the travel of Messrs. Hunt and Liddy." (Memorandum in Support of Motion to Dismiss, p. 13). These circumstances show that defendant did not, "in the same continuous . . . grand jury proceeding . . . admit such [earlier] declaration to be false" within the meaning of Section 1623(d). While we do not contend that defendant necessarily had to "recant" his false testimony during the original session in order to try to bring himself within the bar created by Section 1623(d), defendant's conduct falls far outside any reasonable understanding of what Congress has allowed a miscreant witness to do to escape the legal consequences of giving deliberately false testimony. It was mere happenstance that his affidavit was delivered to an attorney involved in the grand jury's earlier investigation. That delivery was explicitly made for a purpose unrelated to the grand jury's inquiry. Defendant failed to take even the most preliminary or perfunctory steps to call his affidavit to the grand jury's attention; he neither sought to appear before the grand jury, nor requested that the affidavit be submitted to the grand jury.

Furthermore, it is difficult to imagine how the false testimony and the delivery of the affidavit could be considered to have been made during the "same continuous . . . grand jury proceeding." The grand jury's inquiry into the Watergate affair was not a continuous course of action from June 1972 through May 1973, but rather two separate investigations into the same matter. The defendant's allegedly false declarations were made during the course of a grand jury inquiry which culminated on September 15, 1972 with the indictment of seven individuals; in part because of defendant's concealment of his knowledge of the travels of Hunt and Liddy, the grand jury was unable to pursue the involvement of higher officials in the Watergate break-in and cover-up. In March 1973, a new investigation began as the result of allegations made by one of the seven convicted defendants and was pursued by compelling the testimony of those defendants. The mere fact that the grand jury continued to sit and hear other matters during the period between August 1972 and May 1973 hardly merges the two investigations into one "continuous proceeding" under Section 1623(d). The manifest purpose of that limitation was to provide a premium for retraction of false testimony while the grand jury's attention was still focused on the original inquiry. Here, it was purely fortuitous that the same grand jury was able, after a lengthy hiatus, to resurrect the investigation that defendant had helped forestall many months earlier.

B. *Defendant's false statements had already substantially affected the grand jury's proceeding, and it had already become manifest that the falsity of his statements would be exposed.*

Section 1623(d) does not provide that a defendant's admission of the falsity of his declarations automatically bars prosecution, but only that prosecution is barred if the admission occurs at a time when the false declarations have not substantially affected the proceeding and their falsity has not become manifest. Neither condition is satisfied here.

That the defendant's denials of any knowledge of the California trips of Messrs. Hunt and Liddy substantially affected the grand jury's proceedings cannot be doubted. At the time of his deposition, these men were prime targets in the grand jury's investigation into the Watergate affair, and its inquiry was focusing upon the possible involvement of nature of the relationship of White House officials with the prime subjects of its in-

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other government or campaign officials in directing their activities. It was particularly important that the grand jury determine the quiry, since White House personnel were among those with a motive to direct the criminal activity under investigation. The defendant's false declarations concealed evidence of White House knowledge of an earlier forcible entry engineered by Messrs. Hunt and Liddy, evidence that would have been of extreme importance in indicating that others aside from the seven men ultimately indicted by the grand jury might have been involved in the break-in and bugging at the Democratic National Committee headquarters.

Furthermore, defendant's false declarations concealed evidence of possibly criminal activity that at that time was not suspected by the grand jury, the subsequent revelation of which has itself occasioned an extensive grand jury investigation. The effect of the defendant's false declarations upon the grand jury's proceedings is evidenced by the effect of the revelation of the "Fielding break-in" some eight months after his deposition.

Nor did the defendant's alleged recantation of his false testimony occur before it had become manifest that its falsity would be exposed. It was in mid-April 1973 that federal prosecutors were first informed of the involvement of Hunt and Liddy in the Fielding break-in, and of the activities of the "Special Investigations Unit" headed by the defendant. This information was transmitted to Assistant Attorney General Petersen on April 15th; on April 26th it was made available to Judge Byrne in the *Ellsberg* trial in California and through him, to the public on April 27.[15] Although the falsity of defendant's testimony had been successfully concealed for several months, the widely publicized disclosures during the abortive *Ellsberg* trial made it apparent that the falsity of the August 1972 testimony would no longer remain shrouded.

Thus, defendant's alleged "recantation" occurred *both* after his false declarations had substantially affected the grand jury proceeding *and* after it had become manifest that their falsity would be exposed. But this indictment must be sustained if the court makes *either* of these findings. Contrary to defendant's assertion, Section 1623(d) cannot be interpreted as permitting the prosecution to go forward only if the false testimony had *both* substantially affected the proceeding and not become manifestly false. Unquestionably some uncertainty arises because of the word "or" in the clause describing the conditions that must be satisfied "at the time the admission is made" for an admission of falsity to bar prosecution. Despite the normal rule about strict construction of criminal statutes, the terms used in the subsection creating a possible bar to prosecution need not be read with any such presumption in favor of the defendant. Since what is at stake is the scope of a legal bar to prosecution that may be raised *after* the defendant has engaged in clearly defined criminal conduct, there is no danger of unfair prosecution for conduct that a reasonable man did not have notice was criminal. Here, the court is entitled to interpret the bar in accordance with what Congress must reasonably have intended to be its scope.

Defendant's proposed interpretation would allow any defendant whose testimony was so false as to be patently incredible to avoid prosecution by recanting once it had become obvious to him that his perjury had been exposed, simply by demonstrating that his statements had never been believed, and could not have "substantially affected the proceeding." Section 1623 should not be burdened with such a debilitating construction. Indeed, the effect of such a construction would be to grant a virtual license to lie, since it would allow a witness who deliberately lied to a grand jury to immunize himself by making a *pro forma* admission even after he learned that he had not fooled the grand jury for a minute. There is no reason to suspect Congress intended to indulge such trifling with the integrity of the judicial process.

The conclusion that a Section 1623 prosecution may go forward if the defendant's "recantation" occurs *either* after his false testimony has substantially affected the proceeding *or* after it has become manifest was apparently reached by the Second Circuit in *United States* v. *Kahn*, 472 F.2d 273 (1973); no contrary decisions have been found.

C. *Defendant is not excused from his failure to satisfy the limited conditions under Section 1623(d) that would bar his prosecution.*

Defendant seems to make an independent argument that as a matter of law his prosecution must be barred because he submitted his affidavit "as soon as he was permitted to do so by the President" and that any earlier disclosure would have exposed him to prosecution under 18 U.S.C. § 798. (Memorandum in Support, p. 14).[16] He claims to have been trapped in the same sort of dilemma as the Supreme Court has held violative of the Fifth Amendment privilege against self-incrimination in such cases as *Marchetti* v. *United States*, 390 U.S. 39 (1969); *Grosso* v. *United States*, 390 U.S. 62 (1968); *Haynes* v. *United States*, 390 U.S. 85 (1968); and *Leary* v. *United States*, 395 U.S. 6 (1969).

Defendant's argument is without merit for several reasons. In each of the cases which he cites, the factual situation before the Court involved a criminal prosecution for failure to comply with a statute which required the disclosure of information that would have had the direct effect of incriminating the defendant—i.e., situations in which failure to make self-incriminating disclosures was itself made a criminal offense. Even making the virtually inconceivable assumption, *arguendo*, that the defendant would have faced prosecution under Section 798 had he corrected his false declarations prior to obtaining the President's "permission" to do so, his "dilemma" was not factually analogous to that held unconstitutional in the *Marchetti* line of decisions.[17] No statute, including Section 1623(d), required the defendant to make self-incriminating disclosures; no statute rendered it a crime for him to fail to do so. Defendant's offense consists in affirmative acts of deliberately making false declarations, not in failing to make incriminating disclosures. Section 1623(d) did not require the defendant to declare anything on pain of committing a crime, rather it provides that he would not be prosecuted for a criminal act already committed if he admitted his offense prior to the occurrence of certain events. Defendant's alleged dilemma, to the extent it existed, was a situation of his own making and not the result of any impermissible statutory scheme.

Furthermore, the argument being advanced by the defendant has already been implicitly rejected by the Supreme Court's decision in *United States* v. *Knox*, 396 U.S. 77 (1969). There, the Court sustained a defendant's prosecution under 18 U.S.C. § 1001 for making false statements on a wagering tax return. At the time the false statements were made, the defendant could have been prosecuted for failing to file the return, and truthful answers would have been self-incriminatory. The Court held that he was properly subject to prosecution for making the false statements even though the only choices open to him at the time of his false statements were made seemed to lead to other difficulties, and even though the statute requiring the information which he falsified had been held unconstitutional in *Marchetti*. The Court ruled that, while there may have been a privilege to refuse to answer the incriminating questions, there was no legal justification for answering falsely. If there is no bar to a defendant's prosecution for making false statements where either truthful statements or no statements at all could have subjected him to criminal liability, there is certainly no cause to find that the present defendant's prosecution is barred because timely recantation of his false testimony might—on defendant's flimsy hypothesis—have exposed him to liability under another statute.

Finally, it should be noted that the defendant's argument rests on the two-fold assertion that his affidavit was submitted "as soon as he was permitted to do so by the President," and that earlier recantation might have incurred prosecution for disclosing classified information. Significantly, the defendant fails to allege that at any earlier time he sought permission to recant his false declarations. Nor would that recantation have necessitated disclosures as extensive as those contained in the defendant's affidavit. The defendant's false declarations consisted in denying knowledge of travel by Messrs. Hunt and Liddy: it is frivolous to suggest that truthful statements would have necessitated disclosure of the limited types of "classified national security information" whose disclosure is proscribed by Section 798.[18]

In conclusion, Section 1623(d) sets forth limited conditions under which a defendant's admission of the falsity of his earlier statements will bar prosecution. Defendant's affidavit failed to satisfy those conditions, and there is no legal principle that otherwise bars his prosecution here.

CONCLUSION

For the foregoing reasons, the motion to dismiss the indictment should be denied.

Respectfully submitted,

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FOOTNOTES

[1] Quoting Cardozo, *The Nature of Judicial Process*, 15 (1921).

[2] For example, 18 U.S.C. § 1508(a) makes it an offense to willfully record "the proceedings of any grand or petit jury in any court of the United States while such jury is deliberating or voting." Formal statutory authorization for the jury's "proceedings" is irrelevant to a construction of the activities protected; the offense seems clearly to consist in recording the material "goings on" or "course of action" of a jury during its deliberations.

Admittedly, in certain instances where "proceeding" is employed in Title 18, the reference is apparently to some form of statutorily authorized action. *See, e.g.*, 18 U.S.C. § 152 (bankruptcy proceeding); 18 U.S.C. § 1505 (proceeding pending before any department or agency of the United States). But what is normally the subject of inquiry is whether the matter was actually "pending" when no formal complaint or charges were before the agency. The inquiry is then whether the activity obstructed was

Footnotes at end of article.

one which the agency was authorized to conduct. *See, e.g., United States* v. *Batten*, 226 F. Supp. 492 (D.C. D.C. 1964) But the precise procedural posture of the matter is not controlling, and the term is flexibly construed to cover activity that is within the scope of permissible procedure. *See, e.g., Rice* v. *United States*, 356 F.2d 709 (8th Cir. 1966), where the court observed in construing an obstruction of justice statute, 18 U.S.C. § 1505:

Proceeding is a comprehensive term meaning the action of proceeding—a particular step or series of steps adopted for accomplishing something. This is the dictionary definition as well as the meaning of the term in common parlance. Proceedings before a governmental department or agency simply mean proceeding in the manner and form prescribed for conducting business before the department or agency, including all steps and stages in such an action from its inception to its conclusion. 356 F.2d at 712.

[3] Under 28 U.S.C. § 2241(c)(2), derived from the Act of March 2, 1833, c. 57, § 7, 4 Stat. 634, the federal courts have authority to grant habeas corpus relief, *inter alia*, to a federal officer if he is in custody for an act done or omitted pursuant to an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States.

Under 28 U.S.C. § 1442(a)(1), a criminal prosecution commenced in a state court may be removed to a federal court if the defendant is an "officer of the United States" who is being prosecuted "for any act under color of such office" but the officer remains subject to prosecution in the federal forum.

[4] Many of the cases are collected in *In re McShane's Petition*, 235 F. Supp. 262 (N.D. Miss. 1964), cited in defendant's Memorandum in Support.

[5] Defendant himself concedes (Memorandum in Support, p. 12) that the circumstances that led to his decision to commit perjury were "extraordinary" and not within the normal range of affairs committed to his discretion. Civil immunity simply is not available in such case because where an officer knows that he is acting out of the ordinary, he is on notice of the circumstances, and there is more reason for him to have to expect to be prepared to justify his conduct. *Kelly* v. *Dunne*, 344 F.2d 129, 132 (1st Cir., 1965)

[6] See also *Boehm* v. *United States*, 123 F.2d 791 (8th Cir.), cert. denied, 315 U.S. 800 (1941) (good faith belief that statute authorizing taking of testimony is unconstitutional is no defense to perjury, even though statute is later invalidated).

[7] Defendant concedes, for purposes of this motion, that his August 28, 1972, testimony was intentionally false.

[8] As the court said in *McShane's Petition, supra*, 235 F. Supp. at 273 (emphasis in original):

Certainly it cannot be said that any federal official is absolutely immune merely because of his official standing and his official purpose. The act which he commits in this capacity, in order to meet the requirements of the [immunity] "must be done in pursuance of his official duty." [citations omitted] . . . [The immunity created] for the benefit of federal officers was not intended to place beyond the reach of a state's criminal law federal officials *who employ means which they cannot honestly consider reasonable in discharging their duties or who otherwise act out of malice or with some criminal intent.*

[9] *Gravel's* factual setting makes it an especially instructive rejection of the concept that an official's personal view of the requirements of duty can ever justify a violation of the criminal law.

[10] This case raises no problems as to whether an impeachable public official may be indicted before he is impeached since Mr. Krogh has long since left the federal government's employ. *Compare United States* v. *Kerner*,— F. Supp. — (N.D. Ill., 1973).

[11] *The Court has left open the question "whether the President may, consistently with the Fourth Amendment, authorize through the Attorney General, a national security electronic surveillance to gather foreign intelligence information without first obtaining a judicial warrant." See United States* v. *Lemonakis*, — F.2d — (No. 71-1745, D.C. Cir., decided June 29, 1973) (slip op. at 38).

[12] *Defendant does not allege that he was ordered by his superiors to give false testimony*, only that they stressed the general need for secrecy about the activities of the Special Investigations Unit. However, it hardly needs to be stated that *defendant would not be excused even if his false testimony had been committed on direct order* of the President. It is fundamental in our law that "loyalty to a superior does not provide a license for crime." *United States* v. *Decker*, 304 F.2d 702, (6th Cir. 1962). *Compare Land* v. *Dollar*, 190 F.2d 623 (D.C. Cir. 1951), vacated as moot, 344 U.S. 806 (1952), where the Secretary of Commerce and the Acting Attorney General were adjudicated in contempt of court for violating a court order at the direction of the President.

We do not understand defendant to contend that his "good" motive for lying—protection of the national security—should, standing alone, justify his perjury. On the contrary, few principles of criminal law are clearer than that action that contravenes the literal words of a criminal statute cannot be excused by a "good" motive. *See, e.g., United States* v. *Mitchell*, 453 F.2d 187 (8th Cir. 1972); *United States* v. *Miller*, 233 F.2d 173 (1st Cir. 1956); *Kong* v. *United States*, 216 F.2d 665 (9th Cir. 1954) ("if one commits a felonious act, it is immaterial that he had the highest motive").

[13] A situation, it should be emphasized, from which the facts of the present case could hardly be further removed.

[14] It is too late in the day to contend that judges are security risks and are not to be trusted with sensitive information sufficient to enable them to determine questions of privilege. *United States* v. *United States District Court, supra; United States* v. *Reynolds, supra.*

[15] Transcript of Proceedings, April 27, 1973, *United States* v. *Russo and Ellsberg*, C. D. Calif., No. 9373-CD-WMB, annexed hereto as Exhibit E.

[16] We note that, as with many of the assertions made in defendant's memorandum, there are no affidavits to support his factual contention on this point. He also makes no attempt to explain how or why information about the travels of Hunt and Liddy constituted "classified information" within the meaning of 18 U.S.C. § 798 or why the Assistant United States Attorney would have been an "unauthorized person" to receive such information.

[17] That line of cases deals with situations in which the Supreme Court found that disclosure of the information would have created a "real and substantial" as distinguished from a "remote and imaginary" danger of incrimination—and thus the relevance of the cases to truthful admissions by defendant in the present case is illusory.

[18] The only types of classified information whose disclosure is proscribed by Section 798 are those:

(1) concerning the nature, preparation; or use of any code, cipher, or cryptographic system of the United States or any foreign government; or

(2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or

(3) concerning the communication intelligence activities of the United States or any foreign government; or

(4) obtained by the processes of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes.

JUSTICE DEPARTMENT ANNOUNCES NEW POLICY TOWARD MEDIA

Mr. ERVIN. Mr. President, I wish to call the attention of the Senate to the recent policy pronouncement of the Justice Department with respect to the subpenaing, questioning, and arrest of members of the news media. The announcement of October 16 received only scant public attention at the time and yet it has a significant bearing on the newsmen's privilege issues now before the Congress, and on freedom of the press in general.

As far as Federal subpenas to newsmen are concerned, the statement provides that such subpenas shall be issued only on the express approval of the Attorney General. Failure to obtain such approval will result in the subpena being quashed on the Department's own motion.

The Justice Department policy statement also provides that subpenas to newsmen will be sought only after evidence has been sought from other sources and only after negotiations with the newsmen have taken place. Furthermore, a request for a subpena must specify that certain conditions exist, namely, first, there is other nonmedia evidence to show that a crime has been committed; second, there is a reasonable ground to believe that the information sought by subpena is essential to a successful investigation; third, the information sought is limited to verification of already published information, except in certain exigent circumstances; and, fourth, the subpena is directed at material information regarding a limited subject matter and related to a limited amount of time. The new statement also provides that reasonable and timely notice of the demand for documents will be given.

The new policy also governs the questioning and arrest of newsmen who are engaged in the performance of their occupation. Specifically, none shall be questioned or arrested under such circumstances without the express approval of the Attorney General. This is excused only where the exigent circumstances make such prior approval impossible. And even in these cases, justification must be communicated to the Attorney General after the fact.

To my mind, the Justice Department is to be commended for this effort to restore the balance which once existed between the press and the prosecutor. Society has two great and competing in-

terests involved here—the preservation of its right to information and its interest in the enforcement of its laws. The new Justice Department policy guidelines are steps toward accommodation of those sometimes competing interests.

To be sure, they apply only to Federal prosecutions and not to the States, and they are only guidelines without binding legal force. But they do signal a change in attitude; namely, a policy of prosecutorial restraint, that is sorely needed if these two bulwarks of our democratic government are to function harmony.

I ask unanimous consent that the text of these new guidelines be printed in the body of the RECORD.

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

STATEMENTS OF POLICY

§ 50.10 Policy with regard to the issuance of subpoenas to, and the interrogation, indictment, or arrest of, members of the news media.

Because freedom of the press can be no broader than the freedom of reporters to investigate and report the news, the prosecutorial power of the government should not be used in such a way that it impairs a reporter's responsibility to cover as broadly as possible controversial public issues. In balancing the concern that the Department of Justice has for the work of the news media and the Department's obligation to the fair administration of justice, the following guidelines shall be adhered to by all members of the Department:

(a) In determining whether to request issuance of a subpoena to the news media, the approach in every case must be to strike the proper balance between the public's interest in the free dissemination of ideas and information and the public's interest in effective law enforcement and the fair administration of justice.

(b) All reasonable attempts should be made to obtain information from nonmedia sources before there is any consideration of subpoenaing a representative of the news media.

(c) Negotiations with the media shall be pursued in all cases in which a subpoena is contemplated. These negotiations should attempt to accommodate the interests of the trial or grand jury with the interests of the media. Where the nature of the investigation permits, the government should make clear what its needs are in a particular case as well as its willingness to respond to particular problems of the media.

(d) If negotiations fail, no Justice Department official shall request, or make arrangements for, a subpoena to any member of the news media without the express authorization of the Attorney General. If a subpoena is obtained without authorization, the Department will—as a matter of course—move to quash the subpoena without prejudice to its rights subsequently to request the subpoena upon the proper authorization.

(e) In requesting the Attorney General's authorization for a subpoena, the following principles will apply:

(1) There should be reasonable ground based on information obtained from nonmedia sources that a crime has occurred.

(2) There should be reasonable ground to believe that the information sought is essential to a successful investigation—particularly with reference to directly establishing guilt or innocence. The subpoena should not be used to obtain peripheral, nonessential or speculative information.

(3) The government should have unsuccessfully attempted to obtain the information from alternative nonmedia sources.

(4) The use of subpoenas to members of the news media should, except under exigent circumstances, be limited to the verification of published information and to such surrounding circumstances as relate to the accuracy of the published infromation.

(5) Even subpoena authorization requests for publicly disclosed information should be treated with care to avoid claims of harassment.

(6) Subpoenas should, wherever possible, be directed at material information regarding a limited subject matter, should cover a reasonably limited period of time, and should avoid requiring production of a large volume of unpublished material. They should give reasonable and timely notice of the demand for documents.

(f) No member of the Department shall subject a member of the news media to questioning as to any offense which he is suspected of having committed in the course of, or arising out of the coverage or investigation of a news story, or while engaged in the performance of his official duties as a member of the news media, without the express authority of the Attorney General: *Provided, however,* That where exigent circumstances preclude prior approval, the requirements of paragraph (j) of this section shall be observed.

(g) A member of the Department shall secure the express authority of the Attorney General before a warrant for an arrest is sought, and whenever possible before an arrest not requiring a warrant, of a member of the news media for any offense which he is suspected of having committed in the course of, or arising out of, the coverage or investigation of a news story, or while engaged in the performance of his official duties as a member of the news media.

(h) No member of the Department shall present information to a grand jury seeking a bill of indictment, or file an information, against a member of the news media for any offense which he is suspected of having committed in the course of, or arising out of, the coverage or investigation of a news story, or while engaged in the performance of his official duties as a member of the news media, without the express authority of the Attorney General.

(i) In requesting the Attorney General's authorization to question, to arrest or to seek an arrest warrant for, or to present information to a grand jury seeking a bill of indictment or to file an information against, a member of the news media for an offense which he is suspected of having committed during the course of, or arising out of, the coverage or investigation of a news story, or committed while engaged in the performance of his official duties as a member of the news media, a member of the Department shall state all facts necessary for determination of the issues by the Attorney General. A copy of the request will be sent to the Director of Public Information.

(j) When an arrest or questioning of a member of the news media is necessary before prior authorization of the Attorney General can be obtained, notification of the arrest or questioning, the circumstances demonstrating that an exception to the requirement of prior authorization existed, and a statement containing the information that would have been given in requesting prior authorization, shall be communicated immediately to the Attorney General and to the Director of Public Information.

(k) Failure to obtain the prior approval of the Attorney General may constitute grounds for an administrative reprimand or other appropriate disciplinary action.

Dated October 16, 1973.

ELLIOT RICHARDSON,
Attorney General.

LEONARD WOODCOCK ADDRESSES THE AMERICAN ASSEMBLY ON THE "CHANGING WORLD OF WORK"

Mr. PERCY. Mr. President, I had the pleasure of addressing a meeting of the American Assembly on November 1, 1973, in New York. The American Assembly is a nonpartisan, educational institution dedicated to providing information, and stimulating discussion on matters of vital public interest. Mr. Leonard Woodcock, president of the International Union of the United Auto Workers, also addressed the assembly on the problems of the worker in modern America.

Mr. Woodcock expressed his deep concern for the working conditions which a great part of American labor endures. Labor has been fighting to improve the lives of the individual worker, long before the present concern with job enrichment. In spite of labor's decades of struggle, the conditions of work today are far from what they should be.

At the beginning of the industrial revolution the worker lost control over the nature of his work. Technology has since made the individual too often merely a cog in the production machine, and many of the original problems of industrial impersonalization still exist today. Mr. Woodcock points out that the worker still does not have a voice in his own job. Working hours are fixed by management: the worker who attempts to take unpaid time off or refuses overtime could lose his job. Basic pay is in many cases still inadequate. A worker's security is tied to a firm in which he has no right to participate. Finally, workers have little control over their own working conditions.

Mr. Woodcock calls for an interchange between the professionals of management and the ordinary worker in order to insure that production technology takes into account the "human factor" and not merely the "labor factor" of production. Mr. Woodcock points with some optimism to the new labor-management committee on improving the work environment and job enrichment provided for in the UAW's agreement with the Chrysler Corp. This committee, he believes, will improve the climate for job enrichment efforts by assuring labor participation in their design.

I commend UAW and its talented leadership for their determination to provide for the human problems of their members. I ask unanimous consent that Mr. Woodcock's speech, "Changing World of Work: A Labor Viewpoint," be printed in the RECORD.

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

CHANGING WORLD OF WORK: A LABOR VIEWPOINT

(Remarks of Leonard Woodcock)

Having been given the job of presenting labor's appraisal of the "changing world of work," I am happy to say that I think this is certainly one area in which there is a reasonably harmonious "labor point of view." If we in the labor movement sometimes appear unmoved by the "sound and fury" created in this discussion, it is because we are

simultaneously amused and annoyed with the way in which this topic has now become fashionable. To us, changing the world of work is the very reason for our existence, and we feel that we have scarcely been given the credit due for the blood we have shed in its cause.

Real understanding of this subject requires an examination of the fundamental objections to industrial employment (and keypunch rooms and typing pools are included in this discussion). If we honestly want to evaluate what progress has been made, how it has been made, and what the prospects are for the future, we must go back to first principles.

To begin with, let us remember that the phrase "worker alienation" was not invented yesterday. It originated in the 19th century when it was first appreciated that workers had become merely employees and that in the process they had lost control over the conditions and nature of their work. Rapid changes in technique and in organization of production quickly made it apparent that the particular kind of technological progress encouraged by the new system would systematically downgrade the skill and initiative required of the individual worker; this would inevitably erode society's regard for workers as individuals, a fact that was patently obvious to workers at the time. Today most of us take employee status for granted but we must remember that when the factory system was first introduced, factory employment was taken up usually only as a last resort.

When the profit motive became the principal investment criterion, a special toll was exacted from workers subjected to the discipline of the "most productive techniques."

Adam Smith, describing the human and social costs of the division of labor, characterized the effect thus:

"The man whose whole life is spent in performing a few simple operations . . . has no occasion to exert his understanding, or to exercise his invention in finding out expedients for removing difficulties which never occur. He naturally loses, therefore, the habit of such exertion . . . The torpor of his mind renders him, not only incapable of relishing or bearing a part in any rational conversation, but of conceiving any generous, noble, or tender sentiment, and consequently of forming any just judgment concerning many even of the ordinary duties of private life. . . . The uniformity of his stationary life . . . corrupts even the activity of his body, and renders him incapable of exerting his strength with vigor and perseverance, in any other employment than that to which he has been bred. His dexterity at his own particular trade seems, in this manner, to be acquired at the expence of his intellectual, social, and marital virtues. . . ."

I do not repeat this here as an accurate picture of the average working man today, but the fact that workers today have more character, imagination and humanity than Adam Smith attributed to the workers of his day is more a testimony to the strength of the human spirit than to the progress we have made in changing the world of work.

Unfortunately, many of the fundamental relationships between a man and his work established at the beginning of the industrial revolution persist today; the world of work has regretfully changed much less than we would like. To mention just a few:

Working hours are fixed by management: the worker who attempts to take unpaid time off will lose his job.

Basic pay is in most cases still inadequate.

Income security for the worker, especially in the United States, is tied to the particular job. If management is incompetent and the firm folds or the plant runs down, the worker suffers through no fault of his own.

Finally, working people have little control over the physical conditions in which they work: it is the employer who builds and chooses plant design and technology and who makes the initial decision as to what proportion of the resources under his control to allocate to health and safety. These choices are still based on the calculus of private profitability—costs borne by workers, such as ill heath or reduced life expectancy, are irrelevant to these decisions.

Let us now look at what progress has been made toward ameliorating these fundamentally undesirable features and at how that progress has been accomplished.

Through collective bargaining, over the years the labor movement has proven its willingness to sacrifice additional pay for longer vacations, additional holidays, rest periods, etc. But we are not complacent: the element of sacrifice is still there and will be there as long as workers are not satisfied that their incomes are adequate.

Workers today are dissatisfied with their pay not merely because their wants have increased: even according to official statistics, the average nonsupervisory worker does not earn enough to provide an urban family of four with a standard of living equal to that set by the lowest of the so-called "adequate" budgets computed by the Bureau of Labor Statistics. In addition, when a worker's wife goes out to work (or vice versa) to compensate for this inadequacy, the family usually is being doubly burdened, since our society provides scarcely any facilities for child care.

Progress in changing the noneconomic conditions of work is no less difficult today than it has been in the past. For example, the UAW's recent agreements on voluntary overtime have made the headlines for introducing some choice as to the number of hours worked per week for hundreds of thousands of workers who previously had no such choice. But to us, this is just a beginning. We are not complacent. Under the Chrysler agreement for example workers may still be required to work 9 hours a day; they can have 2-day weekends only under restrictive conditions. We must continue to struggle for the right to a 40-hour week.

With respect to a worker's control over his or her "overall standard of living," we must bear in mind that the U.S. is unique in the inadequacy of public provisions for health, pensions, disability insurance, etc. Contrary to labor's preferences, these are now job-related: when we haven't been able to get legislation to provide public benefits we have bargained hard with employers to get them to provide such benefits for our members as a second-best solution. The result has been that more and more aspects of a worker's "true standard of living" are provided in fringe benefits. The worker's total well-being is more and more tied to his or her particular job and length of service. Thus the penalties for changing jobs or losing a job weigh more heavily: the "opportunity cost" of working part-time or trying to change jobs has increased enormously.

Finally, in our attempts to get improvements in physical working conditions, we have found that even elementary remedial steps such as putting safety guards on dangerous machinery, providing adequate protective clothing, scouring slippery floors, etc. are usually taken only when they can be shown to coincide with higher profits and productivity. Where there is a conflict between productivity and improvement, the struggle is long and bitter. The difficulties of this struggle have shown that collective bargaining is not always an adequate tool. Thus the labor movement has also had to fight for legislation: to rouse public opinion to impose legal sanctions on employers who might othewise view their labor force as mere grist for the industrial mills.

(We have found over the years that attitudes have changed little since the days of slavery: at that time the treatment of slaves alternated between working them to death or feeding them enough to maintain their health and strength. Which attitude prevailed depended on the supply of slaves and the relative cost of maintenance vis-a-vis buying new stock. We recognize an analogy with today's employers' attitudes to their workers.)

Legislation alone is not always adequate. In spite of our having worked hard to get the Occupational Safety and Health Act passed, the employers' lobby managed to limit funding for enforcement. Consequently, employers' lobby managed to limit funding for enforcement. Consequently, employers' observance of the law has been spotty. Therefore, in this round of negotiations we have successfully bargained for access to the information an employer is required to submit to OSHA inspectors and for the right to monitor an employer's compliance with the law. We have also got the employers to pay the workers responsible for this monitoring for the time they spend on health and safety work. Thus we are constantly moving back and forth between government action and independent collective bargaining to exert pressure for progress wherever we can.

Up to now our efforts have had to take place in conflict situations. Conflicts are bound to arise when management unilaterally decides what is its province. In addition there is often a fundamental conflict of interest between profits and workers' welfare. Part of this struggle over the allocation of company revenue arises from the double standard applied in the allocation decision. Workers are keenly sensitive to the fact that management has one approach to its own comfort and another when it considers what is "good enough for the workers." For example, when it comes to furnishing offices and boardrooms the expense is considered a fixed-cost overhead. When it comes to providing lockers or clean dining areas for workers, the effect on productivity must first be calculated. This double standard cannot be tolerated any longer.

Workers and their union representatives claim the right to a decent life on the job even if this has to be paid for out of profits. As long ago as 1966, the tripartite (labor, government, business) National Commission on Technology, Automation and Economic Progress appointed by an act of Congress, recognized that such a reallocation of resources was justified. The Commission advised that:

". . . if productivity in the past has been oriented to the increase in the amounts of goods, some of its savings in the future can be utilized to bring a greater satisfaction in work for the individual . . ." (p. 90)

(Only two of the business members of the Commission dissented from this statement.)

Unfortunately, employers by and large get interested in workers' well-being on the job only when it can be shown that this will raise profits, or in full-employment situations such as in Scandinavia when employers are forced to compete for workers. When the priorities of labor and management conflict, the struggle is inevitably bitter regardless of the intrinsic merits of the workers' case. To give just one example: in 1961 we had to go on strike just to assure that assembly line workers could in fact take advantage of the relief time to which they theoretically were entitled. Yet management fought us because complying with our demand meant increased

costs from hiring additional relief workers. What was the reaction of those responsible for influencing public opinion? The press ridiculed us. *Time* magazine contemptuously christened it "The Toilet Strike" and described it as "an outbreak of autumnal madness." Today that same press declares its commitment to the now-fashionable cause of job enrichment. This is how cynicism and alienation in the labor movement is nurtured It is not too hard to see why the labor movement thinks that too much of what has been written about "job quality" has ignored or downgraded labor's efforts.

These struggles continue—these problems are not simply part of the "bad old days": we had considerable difficulty getting Ford to accept the limited overtime agreement won from Chrysler. International Harvester, which had had voluntary overtime in its contract for years, tried very strenuously this year to get a degree of compulsion, and this was a major factor in leading to the current strike.

To take another example, we have found that labor's interest in better product quality and design is consistently ignored and instead anathema has been heaped on workers' heads: they are accused of being the first to lose that Great American Work Ethic. Let me also take this opportunity to set the record straight.

The UAW, for example, has consistently urged U.S. auto firms to compete with foreign cars on price, design and quality both on the domestic market and overseas. John DeLorean's (former GM Vice-President and Group Executive in charge of all GM car and truck divisions in North America) recent like-minded statements on the subject are the first indication of a similar viewpoint on the management side—and he spoke up publicly only after he had left GM. As we see it, such price and quality competition would hold out not only the possibility of a positive contribution by the auto industry toward easing balance-of-payments problems but also possibilities for more jobs and more satisfying jobs for auto workers. Unfortunately the American auto industry has traditionally pursued very different policies: workers on the line have on occasion been forced to install defective parts against their will. Workers have also constantly had to resist management's attempts to increase the work pace, an attempt that if successful would, among other things, guarantee shoddy workmanship; there are physical and mental limits to how many tasks a man can perform per hour, hour after hour. Workers do like to take pride in what they produce but management policies such as these make it difficult. Why should workers allow themselves to be demoralized by management's insatiable lust for profit? Yet workers are constantly being put in the position of having to defend themselves and their work from management's corrosive influence. This is one reason why we have fought hard to maintain the right to strike even while contracts are in effect over increases in work pace or in the number of tasks a worker must perform.

The lack of recognition of labor's long-standing efforts and contributions to hard-won progress in changing the world of work is keenly felt, but we persevere nonetheless. We were concerned with these issues long before the press developed the Lordstown strike into a journalistic fad. To give just one example of the breadth of our appreciation of the problem, I would like to cite part of the resolution of our 1966 Convention:

"People at work do not check their humanity at the plant door. The cold calculus of efficiency must be mitigated by consideration for the workers as human beings. The work pace must leave them enough energy at the end of the day to enjoy their time at home with their families. The environment in which they perform their labors must be as clean, as healthy, and as pleasant as it is possible to make it. The attitudes toward workers of those having managerial responsibility must conform to the democratic concept of the worth and dignity of every individual. Jobs must be adapted to the physical and mental needs of people and not vice versa. Ingenuity must be devoted to counteracting and reversing the tendency of an advancing technology to deprive work of its creative and rewarding content. Imaginative new ways must be found to enable workers to participate democratically in decisions affecting the nature of their work."

We are still committed to these principles not only for our own members but for all working people. Although many of the benefits we have won now extend to unorganized labor as well, the historical record will show that when significant progress toward these goals has been made, it has been the organized workers who have been the initiators and fighters. Our struggles in the past mean that we know from experience what it takes to progress: the amount of suffering and bitterness the labor movement has incurred in this struggle should not be underestimated.

But putting bitterness aside for the moment, what prospects do we see for changing the world of work in the future?

Any realistic approach must give due attention to an age-old employee point of view that sees work as an unpleasant necessity: the less time spent on the job, the better. There will always be some jobs from which monotony or discomfort cannot be eliminated and in these cases we may have to respect the desire to do as little of that kind of work as possible. However we in the labor movement also have positive ideas and we seek support from other groups in our efforts to improve working conditions.

We have learned that progress requires struggle: Thus the first order of business in "changing the world of work" is establishing priorities. Although on occasion our past attempts to remedy the basics have been criticized for being too narrow-minded or petty, we hope that is now behind us. Secondly, in setting priorities, both for legislative action and for influencing public opinion (as well as in collective bargaining), due respect should be paid to what rank-and-file employees see as their best interest. We also recognize the importance of an interchange between professionals and ordinary working people and we hope the former will come to understand the sources of some of the mistrust for their proposals expressed occasionally by the latter.

At the moment, we very much hope and expect that the agreement between the UAW and Chrysler providing for a joint committee on improving the work environment and job enrichment will establish a pattern for the future. In the past, we have frequently reminded management that any unilateral attempt by them to introduce so-called job enrichment programs is bound to be met with suspicion and to be resisted by workers because of management's history of putting profits first. The recent agreement gives us equal participation in program development. It will help us in our attempts to ensure that innovations do not conflict with workers' interests. We expect that this in turn will aid successful implementation of any programs the committee selects.

Although recommended by the Automation Commission back in 1966, we still think there is an urgent need for basic research into production technology that takes account of the "human" factor and not merely the "labor" factor of production.

We would like to be able to get in on the ground floor: to encourage basic research in production technology that will have built-in pollution control, more rewarding job content, and reasonable work pace. This is not a pious hope. There are examples (e.g., Borg-Beck) of management involving workers in the early design stages of the new plant they were to work in. In such cases management almost always finds that the workers can contribute useful suggestions that improve the efficiency of the operation and make a worker's life on the job easier. But again these are the cases where there is harmony of goals rather than conflict.

Finally, we hope that those in a position to influence public opinion will now support us in our efforts to build upon the noneconomic gains won in recent collective bargaining agreements.

AIR TRANSPORTATION AND THE PROPOSED EMERGENCY CONSERVATION MEASURES

Mr. CANNON. Mr. President, after having carefully reviewed the President's emergency energy message of Sunday, I am disturbed at the disastrous impact the emergency conservation measures will have on the Nation's air transportation system.

In that regard, I am at a loss to understand why air transportation was singled out to bear a disproportionate share of the burden and the cuts, while other modes of transport, both public and private, were largely left to operate on a "business as usual" basis.

In brief, the President has ordered up to a 50-percent cutback in general aviation flying and a 20-percent reduction in airline service across the Nation.

It is incomprehensible to me that our air transport system is to be cut so deeply when corresponding cutbacks have not been ordered in automobile usage, motor carrier operations, or, indeed, in any other sector of our economy.

The cutbacks ordered by the President are going to severely limit our people's ability to move by air and could have a drastic, if not fatal, impact on the U.S. general aviation industry.

If the cutbacks are carried out more than 100,000 jobs in the light aircraft manufacturing industry and related fields will be lost, the market for new aircraft, parts, and accessories will decrease by $700 million in 1974 and the support industry serving general aviation will lose $1.2 billion in sales of aircraft, fuel, maintenance, flight training, and charter flights. Already Cessna has announced its intention to terminate 2,400 jobs at Wichita.

It must be that the President and his energy advisers are totally naive and uninformed as to the results of the action announced on Sunday. In my opinion this ill-advised proposal indicates to the Nation and to the Congress that the President really does not have an equitable energy conservation policy at all—he seems to be merely applying band-aids without any thought given to the serious impact of the policy.

General aviation shipments abroad in 1973 will be $225 million. This market will be seriously affected by a decline in our domestic market.

General aviation is an important and vital industry in the American economy

and an important factor in the U.S. international trade arena. It could literally be shut down by the President's action. And yet this important industry consumes less than 1 percent of the total fuel used in the entire transportation network of the United States. What sense does it make to cut this segment of transportation up to 50 percent when the savings which would be made would be truly negligible?

General aviation is fulfilling an ever-increasing transportation role in both this country and worldwide. Thousands of communities lack adequate transportation service by any method; air, rail or road. There exists in these communities a priority need for the continual availability of the readily convenient transportation service to the rest of the Nation, which general aviation provides.

General aviation public air transportation is expanding at an unprecedented rate. Charter and air taxi flying is increasing substantially. In 1972 the number of persons using the commuter airlines increased by 12 percent, and cargo use by 18 percent. An estimated 70 million people are carried in intercity travel, and 60 percent of those carried are between airports without airline service.

The U.S. Postal Service has recognized the flexibility of general aviation in transporting the mail at convenient times and outside areas not served by the scheduled carriers. As a result, Post Office Department use of general aviation has increased 40 percent.

As part of the total air transportation network, general aviation plays an important role. Seventy percent of general aviation flying is for business and commercial purposes. This includes business flying, agricultural flying, emergency, commuter and air taxi, law enforcement and other industrial and commercial applications. A recent survey by the National Business Aircraft Association showed 20 percent of business flying connects with scheduled airlines.

Mr. President, it is grossly unfair to single out this industry for enormous sacrifice. I hope that when the President is confronted with the facts as to what his ordered-cuts will do, he will reconsider his hasty action and provide relief consistent with the sacrifices asked of other segments of transportation.

While general aviation has been singled out for the heaviest cuts, airline service in the United States has been ordered heavily cut as well. I am told that the cuts ordered by the President will approximate a 20 percent reduction in service levels of mid-1973. Again, this seems to be a disproportionate and unnecessary burden. Just this week layoffs of 1,000 personnel at United Airlines, 150 at Frontier and 200 at American Airlines have been announced. Certainly more layoffs should be anticipated unless the policy changes.

Airline travel consumes less than 4 percent of the fuel used in the national transportation system and yet the air carriers are asked to make cutbacks far exceeding those ordered on other forms of transportation.

While the airlines have been operating with excessive capacity and with wasteful operations, cuts of the magnitude of 20 percent will have a dramatic impact on the public. Load factors—that is the percentage of seats filled on each flight—will climb into the high 70's. That will mean tens of thousands of persons will not be able to get an airline reservation on short notice.

Those persons who need air transportation for emergency or mercy purposes will simply be stuck because only those who have reserved a seat several weeks in advance will be accommodated.

Cutbacks of the magnitude ordered by the President will render the air transportation network unable to provide the public the service it needs and may force the Nation into a rationing of airline seats similar to that during World War II when a priority travel system had to be established to insure that essential transportation was available.

Such a stark situation was probably not even contemplated by those in the White House or the President himself when this patchwork emergency policy was put together. But that simply indicates that little if any thought has been given to the consequences of strangling our air transport system with the level of cutbacks ordered.

Mr. President, air transportation, like every other segment of our economy, must make sacrifices in order to conserve fuel and must be forced to eliminate or curtail wasteful or unnecessary operations. But air transportation cannot be singled out to make reductions far in excess of those ordered on other forms of transportation. All forms of transportation must be treated evenly and equitably, particularly in light of the fact that all of air transportation taken as a whole only consumes about 5 percent of the total transportation energy resources.

I would now like to discuss briefly the need for flexibility in the Sunday closure of gas stations on our Interstate Highway System. As we all know, the President has signed into law S. 1570, the Emergency Petroleum Allocation Act of 1973. The bill requires the President to establish within 30 days supply management, or allocation programs for crude oil and all refinery products to make sure that the fuel shortage does not fall with unfair severity on any region or any industry.

In this regard, another bill, S. 2589, the National Energy Emergency Act of 1973, was passed by the Senate and referred to the House to which I offered an amendment which was accepted, to insure that the provisions for specific energy conservation and contingency measures are sufficiently flexible. The intent was to permit reductions in energy consumption with the minimum adverse impact on local, State and regional economies.

Sunday closures certainly are not compatible with my State's economy. As you know, the economies of many States, including my own State of Nevada, depend upon tourism. Without visitors such as the 25 million who visited last year from outside of our State, Nevada's economy would wither and eventually die.

We are a State in which our hotels and resorts are our principal industry accounting for a majority of our jobs and half of our tax base. Naturally, any special penalties directed at hotels would cause chaos in Nevada in terms of employment and necessary revenue for the operation of our cities and the State itself.

In my discussion on Friday, November 16, 1973, with Senator JACKSON, the floor manager of the national energy emergency bill, the following colloquy took place:

Mr. CANNON. If a State draws up a plan to meet the 25-percent reduction level without adopting each and every provision outlined in the bill, and the plan is accepted by the White House, would this be acceptable in terms of fulfilling the requirements of the bill?

So in other words the governor can mold the energy conservation program in accordance with the specific needs of his State as he sees them in a manner which would be in the best interest of the State.

Mr. JACKSON. Yes, if the reduction level can be achieved by the State, the Federal Government would not impose its own alternative to a State's conservation program. The legislation recognizes that what may be unnecessary usage of energy in one State's economy, may be vital to another State's economy. Therefore, if the State can achieve a 25-percent reduction I would see no reason to restrict hours of operation or demand closure of sections of an industry vital to the economy of that State, such as Nevada's tourism industry.

Mr. CANNON. In order to clarify this provision of the bill, I would like to introduce, on behalf of myself and Senator BIBLE, an amendment to S. 2589 which would affirm the flexibility feature of the energy conservation program, so that the desired reductions in energy consumption may be achieved with the minimum adverse impact on local, State, and regional economies and employment levels. I have discussed this with the distinguished floor manager of the bill and it is my understanding that he finds the amendment acceptable.

Mr. JACKSON. Mr. President, I believe that this amendment, which the Senators from Nevada offer, helps to clarify the intent of the bill and I urge its adoption.

Mr. CANNON. Mr. President, the amendment is self-explanatory. It simply writes language into the bill to make sure that the governors and the State plans have flexibility in meeting the desired reduction requirement so that it will have a minimum impact on the local industries and the local economies of a particular State and area involved.

Hence the question, why close on Sundays? Why not some other day during the week more amenable to the nature of a State's tourism industry? The methodology should be left up to the Governors of the various States who can best determine how the savings should be made. As long as the percentages of reduction are met, how it is done should not be rigid and inflexible.

I have just received the following telegram from the Governor of Nevada, calling attention to the urgency of this program:

I have sent the following telegram to President Nixon: I urgently request clarification of your emergency measure calling for all day Sunday closure of gasoline stations nationwide. Nevadans have strongly demonstrated their willingness to make sacrifices in the face of an acute energy shortage and will continue to exert every equitable effort to drastically reduce energy consump-

tion. But the burden which would be imposed on this State by all day Sunday closure of gasoline stations could effect the heartline of Nevada's economy—tourism—and constitutes a more potentially greater economic sacrifice here than in other States. Nevadans are willing and prepared to further reduce energy consumption and are encouraged by your pledge that emergency measures will be carried out with a minimum damage to the economy, as specified in the Emergency Energy Act already approved by the Senate and now before the House. All day Sunday closure has a potential of robbing thousands of our citizens of their tourism oriented jobs. In accordance with the language of the proposed Emergency Energy Act, I therefore strongly urge that you permit retail gasoline dealers in each State to decide the day on which they will shut down their pumps.

MIKE O'CALLAGHAN,
Governor of Nevada.

I call upon the President to seriously consider the flexibility written into S. 2589 and to reassess his hasty action by restructuring his policy to reflect evenhanded and proportionate cuts in all modes of transportation and in all industries.

EMBARGO ON U.S. OIL EXPORTS AND THE NETHERLANDS

Mr. PERCY. Mr. President, admittedly the United States is in the midst of an energy crisis, a crisis that is going to grow worse before it gets better.

One of the proposals often mentioned as a means of conserving energy resources here at home is to place an absolute ban on the exportation of U.S. petroleum products. That is an understandable reaction and one which I can support in general. However, we should retain some flexibility and not place an absolute mandatory ban on the export of all U.S. petroleum products.

There are friends of the United States, such as the Netherlands, who may find themselves in such desperate straits at some point this winter that we will want to be able to provide them some petroleum. Admittedly, the energy shortage here at home will be severe—a cut of 10 to 17 percent in total energy supplies. But the Netherlands, almost totally dependent on Middle East oil, may suffer an 80 percent or more cutoff in supply. While the energy crisis may mean discomfort for Americans it could mean total disaster for a country such as the Netherlands, a country facing cold and deprivation only because it refuses to condemn the right of Israel to existence.

I am sure the American people would understand and would be willing to accept a further cutback of much less than 1 percent in our total energy supplies this winter if it meant the difference between life and death in the Netherlands.

Therefore, Mr. President, I think we should retain the ability to export petroleum products if necessary to help our friends and we should reject a total ban on petroleum products.

CHILDREN AND PRODUCT SAFETY

Mr. HARTKE. Mr. President, more than a year ago, the President signed into law the Consumer Product Safety Act. This legislation established a Consumer Product Safety Commission to establish standards which would assure the public protection against hazardous products. One of the prime beneficiaries of this law would be the thousands upon thousands of children who are killed or injured each year as a direct result of hazardous toys, household products, and poisons.

Among the foremost objectives of the Commission was expected to be development of regulations which would require the use of child-resistant containers. To date, however, the Commission has not acted.

Mr. President, I ask unanimous consent that a letter on this subject from the Sunbeam Plastics Corp. of Evansville, Ind., together with an article from Food & Drug Packaging be printed in the RECORD.

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

SUNBEAM PLASTICS CORP.,
Evansville, Ind., October 31, 1973

Senator VANCE HARTKE,
Russell Office Building,
Washington, D.C.

MY DEAR SENATOR HARTKE: Our company is a manufacturer of safety closures—and, we like to think, one of the leaders in the field. With the advent of the Poison Prevention Packaging Act we mounted an extensive research and development program which has resulted in more than thirty patents in the field of child-resistant closures. We have spent several hundred thousand dollars in tools and equipment in anticipation and expectation that the law would be implemented.

We, and other manufacturers of safety packaging components, are considerably disturbed by the complete absence of implementation since the Consumer Product Safety Commission was established more than a year ago. I am enclosing copy of a letter I have written to Mr. Simpson, Chairman of the CPSC, outlining our views.

I strongly urge you to look into this situation and press for action that Congress must have believed necessary when it passed the original PPP Act, nearly three years ago.

Industry becomes greatly confused when, through lackadiasical administration, the clear intent of laws passed by the Congress are completely nullified.

Sincerely,

E. A. CARSON, *President.*

P.S.—After nearly three years since passage of PPPA, only ten product categories have been thus far regulated to require safety packaging.

Considering the hundreds of products whose toxic contents have been ingested by thousands of children with resulting fatalities, injuries and illnesses, the record of implementation is pretty sad, isn't it? We hope you will lend your efforts to get this program moving.

SUNBEAM PLASTICS CORP.,
Evansville, Ind., October 30,1973.

Mr. RICHARD SIMPSON,
Consumer Product Safety Commission,
Bethesda, Md.

DEAR MR. SIMPSON: Sunbeam Plastics Corporation is a manufacturer of child-resistant closures. More than 30 patents have been granted during a five-year research and development program. We believe our expertise is attested to by appointment of our Executive Vice President to the initial Technical Advisory Committee to the BPS, established by the Poison Prevention Packaging Act of 1970.

We have become greatly disturbed by the total absence of implementation of the PPPA since the Consumer Product Safety Commission Act was passed October 27, 1972 and since you were appointed Chairman May 14, 1973. Here's he record:

1. The last regulation, covering oral prescription drugs, was published April 16, 1973, one month prior to your appointment as chairman.

2. Not a single additional product has been proposed for regulation since your appointment nearly six months ago.

3. Three additional product categories proposed for regulation prior to your appointment have not been acted upon:

Category	Examples	Proposed regulation in Federal Register	Date comments due	Time since comments due date (months)
Economic poisons	Insecticides pesticides	Sept. 14, 1972	Nov. 13, 1972	12
Ethylene glycol	Antifreeze	Dec. 28, 1972	Feb. 27, 1973	8
Liquid paint solvents	Paint thinners	Feb. 9, 1973	Apr. 10, 1973	7

Presumably the FDA, through its BPS, believed there was a justifiable basis for these proposed regulations.

The inordinate administrative delay has created chaotic mass confusion in the industry. Anti-freeze is a specific case at point. Nine months have elapsed since its proposed regulation was published in the Federal Register. Seven months have passed since expiration of the date comments were due.

Marketers, contract fillers, plastic bottle manufacturers, metal container producers, closure manufacturers—all are completely in the dark as to when the CPSC is going to take action on issuing the final regulation. Plans for the 1974 filling season are left dangling in costly mid-air.

Hundreds of thousands of dollars have been spent by the industry in evaluating various child-resistant containers, closures, changes in filling line equipment, shipping containers, market tests, etc., in anticipation that a regulation would be issued by the Commission in time to permit efficient and orderly planning for the 1974 season. Repeated status inquiries of this regulation at the CPSC office have been met with noncommittal silence. This has given rise to numerous rumors rampant in the trade. Examples:

1. The CPSC has voted approval of a regulation but it has been "pocket vetoed" on your desk.

2. The largest anti-freeze marketer has convinced the Commission that there are no satisfactory safety closures available. (The fact is, there are a number of closures. Sunbeam itself has two styles that have passed Government-specified protocol.)

3. There is not sufficient closure capacity available. (The fact is that Sunbeam itself has in production now, or will have by January 1, nearly enough capacity to supply the entire anti-freeze industry.)

4. The regulation has been stalled at the request of a major marketer for "more time," hopefully until it is too late for the Commission to order safety packaging for the 1974 season.

5. The CPCS plans to issue no additional regulation of any kind and is considering present regulated categories as filling the entire product need for safety containers. This latter rumor was probably fostered by

your interview with "Food & Drug Packaging" as reported in the September 27 issue. Here is a direct quote from this article:

Q. "In addition to iron salt preparations, veterinary prescription drugs, pine oil, ammonia and camphor products, what other new PPPA categories might be proposed in the future?"

A. "I'm not sure now. I've discussed this in general with the staff and asked them if they felt that the existing and proposed categories covered the field. They've indicated that they thought so. I also asked them if they might recommend that no new categories be proposed and, again, they agreed. They're now working on a recommendation on categories."

Q. "So it's possible that there may not be any more new categories?"

A. "Yes, it's possible. There are certainly some under consideration already, but it is possible that the existing categories may already cover the most dangerous areas."

Your staff's conclusion that no new categories are needed is diametrically opposite the conclusion reached by the previous BPS staff and is not supported by statistics on fatalities, injuries and sickness caused by ingestion of toxic substance by children under five. The number of children who have died, been made ill, or been injured during the period of administrative delay is inestimable.

The lack of clear-cut, prompt, forthright action in implementing the PPP Act of 1970, now nearly three years old, has in effect nullified or "pocket vetoed" what presumably was the intent of Congress when it passed the law. Industry momentum for complying with PPPA regulations has been lost by failure of CPCS to implement pending proposed regulations. Inflated, exaggerated, and outright false claims by large corporations of the economic impact of safety packaging has misled the CPCS into taking a timid, halting approach to problems that demand forthright evaluation, decision and action.

If Congress and the Government expect to win and maintain industry cooperation for its programs, it is imperative that implementation of these laws be made in a manner that will encourage and not stifle and discourage industry efforts.

A great deal of research and development of child-resistant packaging has ground to a halt in the face of complete inaction by the CPCS.

Time required to "organize," "orient," "staff," "get direction" has expired for the CPCS. To rekindle and reestablish industry confidence in the credibility of the CPCS, action must replace indecisive stalling.

There are three product categories—Economic Poisons; Ethylene Glycol, and Liquid Paint Solvents—on which the "due for comment" date passed from 7 to 12 months ago. Certainly these categories were subjected to thorough study and evaluation before regulation was proposed. Surely 7 to 12 months is adequate time to evaluate comments and reach a decision. We feel industry is entitled to clear-cut answers to these three questions:

1. What is holding up issuance of the final regulations?
2. By what date will they be issued?
3. Does your statement stand that no further categories will come under regulation?

Nit-picking can go on forever. The basic questions in regard to any product category are pretty elementary and the answers readily available:

1. Is the product toxic?
2. Is there a record of significant injuries, illness and fatalities resulting from ingestion by children?
3. Will child-resistant packaging effectively reduce these fatalities and injuries?
4. Is child-resistant packaging meeting Government-specified protocol available, or will be available by the proposed effective date of a given regulation?

Enclosed is a Xerox of an editorial in the September 27 issue of "Food & Drug Packaging." The attitude of marketers whose products may be candidates for child-resistant packaging is clearly shown. A quote of the pertinent section is as follows:

"There's good news and there's bad news.

"First, the good news:

"The Consumer Product Safety Commission isn't likely to require additional product categories to comply with the Poison Prevention Packaging Act in the immediate future.

"Now, the bad news:

"The CPSC is going to crack down on the existing PPPA regulations."

It is obvious that marketers consider economic cost factors involved in safety packaging as "bad news." No reference is made to the saving of lives as being "good news."

The safety packaging industry is at the crossroads, Mr. Simpson. It is now in position to fill the requirements of product categories awaiting issuance of a regulation. Prompt, affirmative action will reestablish confidence of the industry that the CPSC intends to implement the provisions of the PPPA of 1970.

Further stalling, inaction and indecision by the CPSC will result in a quiet deflation and dismantling of industry programs originally designed to fill the projected safety packaging needs of the nation's marketers of toxic products. A call now for action can hardly be considered a demand for precipitate, ill-advised judgment in view of the fact the PPPA was signed into law nearly three years ago. We strongly believe the safety packaging industry is entitled to some straight answers from Government—now. I hope we may look forward to getting them.

Sincerely,

E. A. CARSON, *President*.

CPSC WILL EMPHASIZE ENFORCEMENT OF PPPA REGS

The purposes of the Consumer Product Safety Act are:

"(1) to protect the public against unreasonable risks of injury associated with consumer products:

"(2) to assist consumers in evaluating the comparative safety of consumer products;

"(3) to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

"(4) to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries."

WASHINGTON.—Finding that approximately 20 million people are injured by products used in and around the home (of these, 110,000 are permanently disabled and 30,000 are killed), Congress last year passed the Consumer Product Safety Act which the President signed into law on October 27, 1972.

The purposes of the Act listed above are to be fulfilled under the direction of the Consumer Product Safety Commission. Activated on May 14, 1973 when four of the five commissioners (there is still one vacancy) were sworn in, the Commission has the authority to regulate over 10,000 different products.

In addition to the Poison Prevention Packaging Act, the Commission has also been handed three other acts previously administered by other agencies—the Flammable Fabrics Act, the Federal Hazardous Substances Act and the Refrigerator Door Safety Act. Under the Consumer Product Safety Act, the Commission has powers extending beyond the range of the four individual acts.

Products exempted from the act include non-consumer products; drugs, devices or cosmetics, and food (as defined in the Federal Food, Drug and Cosmetic Act); tobacco and tobacco products; motor vehicles and equipment; economic poisons (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act), boats; and aircraft.

A CPSC spokesman points out that these products are exempt for all purposes other than poison prevention packaging. Under the Consumer Product Safety Act, the CPSC does not touch these products as consumer products except as they relate to the PPPA.

With the changeover to the CPSC, part 295 of the PPPA becomes part 1700 of Title 16, Chapter II of the Consumer Product Safety Act. The August 7 Federal Register notes this fact and lists the sections of the PPPA, giving current product categories. As one CPSC spokesman points out, the PPPA has not been changed at all, just the numbers of the sections are different.

One of the key figures in the implementation of the Consumer Product Safety Act is Chairman Richard Simpson, 43 year old Republican who was formerly Acting Assistant Secretary of Commerce for Science and Technology. He will serve a three-year term. Noted for his calm bipartisan manner, Mr. Simpson, an electrical engineer, plans "to rule with reason."

In his offices at the Commission's temporary headquarters in Bethesda, Maryland, Mr. Simpson discussed his plans for the Poison Prevention Packaging Act with FDA Managing Editor Martha Downing.

Mr. Simpson, how will things change for the PPPA under Consumer Product Safety Commission? As you know, Miss Downing, the CPSC has authority over quite a number of products and it is an agency that has its own dedicated field force.

Because of this, the enforcement of the law could probably be described as *tougher*. We intend to use and won't hesitate to use all of the authority granted to us by the Congress to enforce the PPPA as well as the other laws.

Under the Consumer Product Safety Act, which created this commission and transferred the authorities for the four laws to us, we have more authority to get the job of consumer protection done than the individual laws allowed. The Act directs us to use the existing authorities, such as those under the PPPA, first. Then, to the extent that there is not sufficient authority to get the job done, we can regulate under the authority of the Consumer Product Safety Act.

Specifically, the Act provides for civil penalties up to half a million dollars and criminal penalties up to $50,000 and one year in jail. This means we can penalize individuals, not just corporations. The severest penalties would be used for willful violations, those made as a calculated business risk with knowledge of the law.

We also have the authority to order repurchase, replacement, repair, and recall of a product. And we won't hesitate to use that if we find it necessary to do so.

Does the Commission have other powers which will help in the enforcement of the laws? Yes, there's an interesting portion of the Act known as section 15b. This states that any manufacturer, distributor or retailer who finds that his product may be such as to cause a "substantial product hazard,"—regardless of whether or not a regulation covering that specific product has been issued—has the obligation to notify the Commission or he is in violation of the law.

In other words, if there is a poisoning or a reason to believe that someone might be injured by a product in the marketplace, we should be notified—without having to find the hazardous product ourselves.

How will reports relating to the PPPA under section 15(b) be handled? We recently published proposed procedures for reporting noncomplying or defective consumer products in the Federal Register (see related box). This information, including the company name, the product and the nature of the problem, would be released on request.

Now that we have the Consumer Product Safety Commission, what happens to the Bureau of Product Safety? It no longer exists as such. The personnel and resources

in the old Bureau were transferred into the Commission upon its activation, May 14, 1973.

What size staff does the CPSC have? We presently have around 580 people—about 300 in the field and the balance in Washington. And we're authorized—if Congress approves our budget, and I think they will—to add 200 more to the staff by the end of 1974. Some of these will be in the field, some in Washington.

Our field staff is different than it was under the Bureau of Product Safety. When the BPS was part of the FDA, the work in the field was done by the FDA field force which was also working for the Bureau of Drugs, the Bureau of Foods, the Bureau of Product Safety and others. Now the field force is entirely dedicated to consumer product safety.

This field staff will be primarily checking for compliance with the four laws mentioned.

Will the CPSC report to the Department of Health, Education and Welfare? No, the CPSC is a totally independent Federal regulatory agency. We do not report to the HEW or any other Federal agency. We report, much like the Federal Trade Commission and the Federal Communications Commission, to the Congress yearly.

In fact, we're even more independent than the others because of a new wrinkle in our act that has to do with budget and legislative items. We submit our budget to Congress and to the Office of Management and Budget simultaneously. Legislative proposals and responses go to the Congress and the White House at the same time. Budgets from other agencies go to the OMB where they are incorporated into the budget process. Congress wanted to see our budget in its original form.

What happens when a product manufacturer or retailer is found not complying with the PPPA? Our first action is to find the extent of the possible injury caused by the noncompliance. And, of course, we would deal with the products, to get them off the market. If necessary, we could seize them, or else require that the products be recalled, replaced or repurchased.

We could, of course, go the full route. If it was a flagrant violation, or a second offense, we would be inclined to apply the full weight of the law.

Do you anticipate being in court quite a bit? I would say so. We've been in court already and I think that's the nature of it. Every regulatory agency is in court a lot.

In addition to iron salt preparations, veterinary prescription drugs, pine oil, ammonia and camphor products, what other new PPPA categories might be proposed in the future? I'm not sure now. I've discussed this in general with the staff and asked them if they felt that the existing and proposed categories covered the field. They've indicated that they thought so.

I also asked them if they might recommend that no new categories be proposed and, again, they agreed. They've now working on a recommendation on categories.

So it's possible that there may not be any more new categories? Yes, it's possible. There are certainly some under consideration already, but it is possible that the existing categories may already cover the most dangerous areas.

It will be interesting to see what the staff recommends. They are currently working on those recommendations and should have them soon.

Could it be that in relation to the PPPA, the Commission will be more involved in enforcement than in creating new regulations? If the staff recommendations are valid and the existing categories have essentially covered the field, then our job may well be primarily an enforcement process.

Also, our Bureau of Biomedical Sciences is working on the area of chronic hazards in addition to the hazards associated with one-time ingestion. For example, aerosols can be considered dangerous after an extended period of time, as opposed to being dangerous the first time they're used.

Some product manufactuers claim that they cannot comply with the PPPA because there are not enough safety closures or other special packaging available. Is this true? We hear that complaint also. And we investigate. I think it's very difficult to generalize (but having said so, let me generalize).

We get complaints from closure manufacturers that they have a surplus capacity and nobody is buying them. So maybe we can help mate the two.

In one case where we've investigated, it seems that part of the problem is that a particular manufacturer wants to work with a particular closure supplier. To the extent that everybody wants closures from the same source, then that supply may be limited. However, as long as closures are available from any source, we feel that there is no need to extend the standard.

Have you noted a shortage of special packaging in any particular area, such as for oven paste cleaners? No, none that I know of. We denied the request for an extension to producers of oven cleaner pastes and I understand that they did find some closures.

If someone wants a list of producers of special packaging, where can he get it? We have it available: Consumer Product Safety Commission, Washington, D.C. 20207.

Do you have plans for evaluating the effectiveness of the PPPA in preventing child poisonings? Through the National Electronic Surveillance System (NEISS), we should be in a position to determine the effectiveness of a given action. There are some difficulties with respect to the PPPA regulations, since the law allows one non-complying size and some parents may be purchasing this package.

We do intend to try to measure the effectiveness of the law and also to forecast how much it is costing the American consumers for the actions we are taking.

Is NEISS the main source of information used in connection with the PPPA? NEISS, along with the Poison Control Centers, are our two main sources of information. While NEISS is operated by the Commission (with primary responsibility in the Bureau of Epidemiology), the Poison Control Centers are directed by the Food & Drug Administration. They in turn provide the information to us.

We also look to individual consumer contacts, state and local medical examiners and others to provide information.

NEISS is a computerized information reporting system which provides data daily from 119 hospital emergency rooms across the country. You can extrapolate this information and determine with some degree of accuracy all of the product related injuries in the nation that are treated in emergency wards.

What NEISS does not tell us about, however, are the injuries reported to physician's offices or those from death certificates. We also lose track of those that go into emergency wards and then are admitted to hospitals.

The best guess is that of all injuries, about 40 percent are treated in emergency wards. If we could verify this figure and if we could verify that the same types of injuries are treated elsewhere, then we wouldn't need to gather information for physicians' offices.

The system does provide quite a bit of information—the age of the person injured and the product involved—which we use as a beginning for indepth investigations for regulatory actions.

Do you anticipate changes in the testing protocol for child-resistant packaging? There are none planned at present.

What are the possibilities, then, for mechanical tests such as the procedures the American Society for Testing Materials (ASTM) is working on? I think these should be worked on because the protocol seems like a relatively clumsy mechanism particularly from an enforcement point of view. If you find a violation, you need to confirm that it was a violation, and I suppose you would have to go back to the protocol. If you look at some of the closures, you would think that once having passed the protocol, that you could define that particular closure in terms of some fairly simple engineering skills.

So maybe mechanical testing could be used in addition to the protocol. I'm not sure now.

Do you plan more or fewer meetings of the PPPA Technical Advisory Committee? We would intend to have as frequent meetings as possible to gain advice from the committee. But I view the Technical Advisory Committees (and there are three of them under the Consumer Product Safety Act: the PPPA, the Flammable Fabrics and the general Product Safety) as advisory and not decision making.

At one meeting of the PPPA technical advisory committee you told the group to go ahead and make recommendations, even if they might fall outside the scope of their responsibility. What effect will this have? I do not want to restrict any advisory committee on any subject of legitimate interest to product safety. It's still an open question as to how the advisory committees will work among each other, and it could be that recommendations from one will affect the others.

One of the problems discussed at the last PPPA Technical Advisory Committee meeting was the problem of communicating with industry. Has anything been done about this? This is one of the problems of the CPSC—communicating with industry and the consuming public—letting them know that we exist . . . that we're alive and well and in business. I think it would be a shame, for instance, if the first time an industry found out about us was when it was subject to regulation.

It's particularly a problem with small businesses—they don't know that we exist and we don't know about them. And yet they may be subject to regulations. We do have the authority to provide funds for some of them to attend meetings and participate on standards writing committees.

What other authority over packaging, other than safety packaging, does the Commission have? Under the Product Safety Act, we also have the authority to specify not only the requirements of the product, but also of the packaging—to the extent that the package might affect the safety. It's much broader than just safety closures.

And in packaging, the material itself—such as thin films—may provide the hazard. We also have several pending regulations that concern packaging. One of them has to do with glass bottles, particularly those that are used for soft drinks and those that might explode under heat.

In summary, then, the Commission seems to plan to use the authority of the individual laws and of the Product Safety Act to provide tougher enforcement of the Poison Prevention Packaging Act, the Flammable Fabrics Act, the Federal Hazardous Substances Act, and the Refrigerator Door Safety Act. The enforcement philosophy that we're going to take under all of the acts, is one where we will use the full authority granted to us by Congress, to provide the motivation for manufacturers to comply with the laws and to find out whether or not they're complying.

For instance, we cannot inspect all the retail establishments in the U.S. But we can provide surveillance and if we find a

non-complying product, the penalty will be sufficient. If the only penalty is to seize the product or a particular batch of products, then that's not very severe. So the manufacturer may take a calculated business risk.

We don't expect to inspect the entire marketplace for compliance. We plan for the manufacturers to do that, because it will be a very severe penalty if we catch a non-complying product.

WHO TO CALL

For more information on the PPPA, industry representatives should contact:

Dr. Robert Hehir, Director
CPSC Bureau of Biomedical Science

Consumers can contact CPSC by writing directly:

Consumer Product Safety Commission
Washington, D.C. 20207

or through one of the 14 field offices (see chart).

With respect to "unsafe products," consumers should call the CPSC Bureau of Compliance at (301) 496-7631.

KEEPING ENFORCEMENT IN PERSPECTIVE

(By Ben Miyares)

There's good news and there's bad news.

First, the good news:

The Consumer Product Safety Commission isn't likely to require additional product categories to comply with the Poison Prevention Packaging Act in the immediate future.

Now, the bad news:

The CPSC is going to crack down on the existing PPPA regulations.

At least that's the impression you get from Richard Simpson, Commissioner of the fledgling Consumer Product Safety Commission which has taken over from the FDA's Bureau of Product Safety the administration and enforcement authority for the Poison Prevention Packaging Act.

Dick Simpson talks tough. In his recent conversation with FDP he makes it clear that in safety matters in general and in regard to the PPPA in particular, there's been a decided shift away from further rule making and more toward enforcement of the regulations on the books.

Congress, he points out, has armed the CPSC with some pretty impressive policing weapons not included in the FDA's PPPA arsenal, namely civil penalties up to half a million dollars, criminal penalties up to $50,000 and jail sentences of up to a year for individual offenders.

He hasn't used the saber yet, but he makes a point of rattling it when he talks about the CPSC's authority.

This shift in regulatory posture, while significant, would be far more serious if child-resistant packages were in short supply. Happily, the number of concepts that have passed the established testing protocol continues to grow.

Unfortunately, one thing the FDA's Bureau of Product Safety failed to fully comprehend during its reign—and something the new commissioner apparently does not yet fully appreciate—is the fact that a package that passes protocol won't necessarily pass a packager's quality control muster.

And packagers have felt the PPPA crunch most acutely in relation to the time (or lack of it) allowed for compliance once a regulation is finalized. In setting forth the CPSC's tough enforcement posture, Mr. Simpson hopefully will be guided not only by the letter of the law but by a packager's spirit of compliance and due consideration of the "real life" production problems faced by packagers.

POINT OF VIEW

"It has long been recognized that no amount of human or animal testing can ever demonstrate the absolute absence of harm. All that one can ever show with certainty is the existence of harm. The marketing of any product therefore carries with it an inescapable but undeterminable risk.

"With the recent association of vaginal cancer in the female offspring of mothers with the use of diethylstilbestrol during pregnancy, moreover, this point has become a matter of immediate and serious concern to the Food and Drug Administration. We presently have no way whatever to predict this of future harm for products about to be marketed, and our ability to monitor the safety of already-marketed products is limited.

"Even centuries of use of natural substances in the diet, without noticeable adverse effects, cannot be regarded as proof of safety, since it is based only upon uncontrolled observations.

"Thus, proof of complete safety appears at this moment to be an illusory goal. Both those who challenge and those who defend the safety of any particular substance can do so with the assurance that information adequate either to support or to refute their contentions is not now available, and may never be. And today's decisions on the safety of food and drugs will therefore inevitably be made on the basis of incomplete scientific information," Peter Barton Hutt, assistant general counsel for food and drugs, Dept. of Health, Education and Welfare.

THE NEED FOR AN INDEPENDENT PROSECUTOR

Mr. BAYH. Mr. President, the lead editorial in this morning's Washington Post aptly points out still another loophole which the President and the Acting Attorney General are attempting to use to prevent the present Special Prosecutor, Mr. Jaworski, from looking into areas that the White House does not want investigated. When Mr. Jaworski's appointment was announced, the Acting Attorney General said that he would not be fired as Mr. Cox was unless there was a so-called consensus that his firing was justified among a group of eight senior Members of the House and Senate. Now, Mr. Bork has amended his guidelines to provide that Mr. Jaworski's jurisdiction may be limited upon the agreement of some uncertain number of these same individuals. As the Post editorial points out:

The fact is that it is not a mere correction of a drafting error and it is not a measure which strengthens the prosecutor's hand. Flat and simple, it is the first move to legitimize Presidential intrusion into the jurisdiction of the Special Prosecutor.

Shenanigans such as this serve only to more clearly demonstrate the need for a truly independent prosecutor. I ask unanimous consent that the full text of the editorial be printed in the RECORD.

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

THE PRESIDENT AND THE SPECIAL PROSECUTOR

"The Special Prosecutor shall have full authority for investigating and prosecuting offenses against the United States arising out of the unauthorized entry into Democratic National Committee Headquarters at the Watergate, all offenses arising out of the 1972 Presidential Election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility, allegations involving the President, members of the White House staff, or Presidential appointees and any other matters which he consents to have assigned to him by the Attorney General."

Thus is the authority granted to the Special Watergate Prosecutor described in the regulation re-establishing the Office of Watergate Special Prosecution Force after it had been abolished by President Nixon in the wake of his famous "Saturday night massacre." There was, until last week, *nothing* in that document about limiting the jurisdiction of the Special Prosecutor nor was there anything on that subject in the original charter, under which Archibald Cox operated.

Now, however, there is.

Acting Attorney General Robert Bork amended the charter a week ago Monday. He added wording which provides, for the first time, the manner in which the President can limit the Special Prosecutor's jurisdiction—by first consulting with certain specified leaders of Congress. Mr. Bork explained that this new proviso was merely a correction of a "drafting error," and he added that it was really a safeguard for the Special Prosecutor because any limit on his jurisdiction will now require a consensus—a consensus, by the way of a congressional leadership group that includes a majority which, based on past performance, would generally incline toward the President's point of view on most issues.

The fact is that it is *not* a mere correction of a drafting error and it is *not* a measure which strengthens the prosecutor's hand. Flat and simple, it is the first move to *legitimize* presidential intrusion into the jurisdiction of the Special Prosecutor.

There is no question that the White House is strongly inclined to intrude on that jurisdiction. Elliot Richardson has told us that he received a number of inquiries from the White House as to whether Mr. Cox was exceeding his jurisdiction. On these occasions, Mr. Richardson always consulted with Mr. Cox, but never attempted to limit the Special Prosecutor's jurisdiction. Nobody knows what Mr. Bork's reaction will be in a similar situation or what Sen. Saxbe's reaction will be if the Senate confirms him as Attorney General.

What we do know, however, is that the new Special Prosecutor, Leon Jaworski, inherited from his predecessor five separate task forces, that these task forces have remained intact, and that they are working in areas that go far beyond the Watergate break-in and subsequent cover-up. The other four areas include the activities of the so-called plumbers unit of special presidential parapolice, campaign contributions (including the milk deal), the ITT affair, and campaign "dirty tricks." So far as we know, Mr. Jaworski has given no indication that he considers any of these subjects beyond his jurisdiction, and the five original task forces have been retained intact. All the evidence suggests, what's more, that the new prosecutor accepts Mr. Cox's belief that the nine subpoenaed Watergate tapes and supporting documents represent only a fraction of the material that is needed from the White House and that would have been sought by Mr. Cox once the separation of powers question and the related issue of executive privilege had been resolved, as they largely have been, by the courts.

We do know, moreover, what the inclination of the White House is and that is what troubles us. In his meeting with Associated Press Managing Editors, Mr. Nixon told us how he would limit the Special Prosecutor's jurisdiction. "I told Mr. Petersen," "the President said, 'that the job he had—and I would have said the same thing to Mr. Cox—was to investigate the Watergate matter, that national security matters were not matters that should be investigated, because there were some highly sensitive matters involved, not only in Ellsberg, but also another matter so sensitive that even Senator Ervin

and Senator Baker have decided that they should not delve further into them.

"I don't mean by that we are going to throw the cloak of national security over something because we are guilty of something. I am simply saying that where the national security would be disserved by having an investigation, the President has the responsibility to protect it, and I am going to do so."

So, we have from Mr. Nixon's own mouth his notion of the breadth of the Special Prosecutor's jurisdiction. He would have told Mr. Cox that his job was solely the Watergate matter—excluding, presumably, investigations of the plumbers, the milk case, campaign contributions and ITT—and, but for the insistence of Messrs. Kleindienst and Petersen, he would have kept the prosecutors out of the burglary of Dr. Ellsberg's psychiatrist's office. Yet, in California, that "national security" burglary has produced four criminal indictments and in the Federal District Court here, it has already produced another indictment with more, presumably, to come. Nevertheless, as of Nov. 17, Mr. Nixon did not seem to have tailored his national security cloak to any significant degree.

It is quite clear that the cloak Mr. Nixon is in fact using is much too broad. By his promiscuous use of such terms as national security, presidential papers and presidential confidentiality, Mr. Nixon has effectively disqualified himself as a competent judge of what the Special Prosecutor's responsibilities are appropriately to be. Fortunately, Leon Jaworski seems not to be unduly cowed by Mr. Nixon's invocation of such slippery phrases. Nevertheless, Mr. Bork's latest addition to Mr. Jaworski's charter is disconcerting in view of the White House's demonstrated desire to hem the investigations in at every turn. The least the public should require of this latest procedure is that there be full disclosure of each negotiation the White House has with the specified leaders of Congress on any matters involving the prosecutor's handling of his responsibilities and the breadth of the jurisdiction his office has in the investigations he is conducting.

EXECUTIVE BRANCH CONTROL OVER REGULATORY AGENCIES

Mr. HUMPHREY. Mr. President, on August 3, 1973, I introduced Senate Resolution 160, calling for the establishment of a Senate Select Committee to study and investigate the regulatory commissions of the U.S. Government.

In my remarks at that time I outlined two basic problems in this area.

First, the executive branch of our Government has assumed increased control over these agencies. And second, the commissions themselves appear too often to reflect the special interest they are supposed to regulate.

I would like at this time to discuss an important article by a recognized authority on the problems of executive branch control over these agencies.

In an article published in the winter 1969 issue of the Federal Bar Journal, entitled "The Status of Regulatory Independence," then-Federal Trade Commissioner Everette MacIntyre discusses the developments which have led to increased executive control over the regulatory agencies. Former Commissioner MacIntyre points out that the specific intent of Congress in creating each of the Federal regulatory agencies was to establish an "arm of the Congress" free from the influence, direction, or oversight of the executive branch.

This original intent, moreover, has not been changed; Congress has always sought to maintain the independence of the regulatory agencies from executive control. However, as an inadvertent byproduct of certain laws enacted by Congress, the fulfillment of this intent has been undermined, despite the fact that these laws were designed to promote orderly and efficient Government.

One of these laws was the Budget and Accounting Act of 1921. This act was designed to streamline and improve the budgetary policy by funneling budget requests of all governmental units through the Bureau of the Budget, subsequently designated the Office of Management and Budget.

The effect of this law on the regulatory agencies, however, went beyond merely the housekeeping function intended by Congress. With the power of reviewing and cutting regulatory agency appropriation requests, the Bureau of the Budget—OMB—gradually developed a high degree of control over the priorities of regulation.

The Judges Act of 1925, also designed to promote governmental efficiency, required the agencies to channel their Supreme Court cases through the Attorney General's office. However, this has given the executive branch discretion over which cases would be pressed.

The Federal Reports Act of 1942 was enacted to protect the Nation's businessmen from deluges of Federal forms and reports by requiring in most cases such forms be approved by the Bureau of the Budget.

In practice, this act has made it possible for the OMB to exercise a good deal of control over the investigative functions of the regulatory agencies.

The power of the OMB over regulatory agencies is further extended through the practice whereby regulatory agencies submit their legislative proposals to the Congress through the OMB. This central clearance of agency legislative proposals enables the executive branch, through the OMB, to determine, in effect, the priorities and policies of regulatory agencies.

The historical development of executive control over the regulatory agencies through those means I have mentioned and others is well documented by Commissioner MacIntyre in his excellent article. Those of us in the Senate who have dealt with the various agencies, and there are few of us who have not, are well aware of the significance of the problems brought out in this article. Numerous witnesses have testified before various committees and subcommittees of this body on the subject.

In my remarks in the Senate on August 3, 1973, I quoted from the testimony of then-FCC Commissioner Nicholas Johnson before the Subcommittee on Communications of the Senate Commerce Committee. Commissioner Johnson cited many of the ways in which the executive branch exercises control over the FCC and concluded:

> The facade of "independence" and Congressional scrutiny is maintained, while the Executive can exercise control without assuming responsibility for the agencies' action.

Regulatory independence was the subject of 7 days of hearings held during the 92d Congress by the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations. The findings of these hearings have been incorporated into S. 704, introduced during this Congress by my distinguished colleague and cosponsor on Senate Resolution 160, the Senator from Montana (Mr. METCALF).

A major step toward the goal of S. 704, to restore the independence of certain regulatory agencies of the Federal Government, was taken in November with the passage and signing of the Alaska pipeline bill. Upon the initiative of the distinguished Senator from Washington (Mr. JACKSON), the Alaska pipeline bill contained two sections which take an essential first step toward freeing the regulatory agencies from executive control.

The important provisions give to the FTC the right to represent itself in court actions, to seek preliminary injunctions against deceptive anticompetitive actions, and to increase civil penalties. They also give to seven agencies the right to send out questionnaires and gather information from banks and common carriers.

Hopefully, these new powers will give the FTC and other agencies affected a chance to increase their effectiveness and decrease their dependence on the executive branch.

However, further reforms are clearly required. The OMB retains its control over the FTC budget, and the executive branch retains virtually all of the rest of its powers over the remaining regulatory agencies. If the problem of Executive control over the agencies is to be dealt with effectively, it will have to be on a much broader scale than this small, but nevertheless significant start.

There is evidence that the development of Executive control over regulatory agencies during a 50-year period has accelerated in the past 5 years. As Commissioner MacIntyre points out in his article, one of the most important congressionally imposed curbs on Executive control of the agencies—the long, staggered terms of the Commissioners—breaks down when a President serves two terms. The New York Times reported on May 6 of this year that of 38 positions on the six major regulatory bodies, the present administration appointees numbered 28. Furthermore, the new appointees represent less of an ideological mix than those during the terms of previous Presidents.

Many observers feel that the executive branch is currently moving ever rapidly toward increased control over the regulatory processes. Specific areas where this movement has been most obvious include cable television policy, and broadcasting license renewal. These are two areas of great importance to the American people.

If Congress is to reverse the movement toward more and more Executive control over the regulatory agencies, the time to act is now. The creation of a Select Senate Committee, as I have proposed in Senate Resolution 160, would give the Senate a chance to evaluate for

itself just how closely the congressional intent in establishing the independent "arms of Congress" is being followed. By a careful, comprehensive study, the Senate can look closely at the problem and prescribe the remedies. It is essential that this action be taken to build upon recently enacted reforms.

I ask unanimous consent that the article entitled "The Status of Regulatory Independence," be printed in the RECORD.

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

THE STATUS OF REGULATORY INDEPENDENCE*

(By A. Everette MacIntyre)

INTRODUCTION

The advent and growth of the railroads, improved and expanding methods of communication, developing an ever-increasing technology after the Civil War, caused a mushrooming of commercial intercourse between the States. The regulation of this commerce the Constitution entrusted to the Congress of the United States.[1] By 1885, Congress had come to realize, however, that it would not be able to deal with all the minutiae of regulation by way of direct legislation from one detail to the next. Even assuming that Congress had the knowledge and desire to do so, such a task would be a physical impossibility; at least a part of this task would have to be delegated. Congress also realized, however, that under the theory of separation of powers it would be inappropriate to delegate, to the extent Congress desired to do so, the function of filling in legislative details to either the Judiciary or the Executive Branch. At the same time Congress was to delegate a certain amount of quasi-judicial authority, which Congress felt the Judiciary was not sufficiently expert to handle and which would have been improper to delegate to the Executive Branch of the Government.

Congress, therefore, determined upon a course of creating, as arms of the Congress, independent regulatory agents to whom would be delegated a limited amount of legislative and judicial authority. The legislative authority was designed to fill in the legislative detail within a broad framework of congressional standards and policy declarations; the judicial authority as a necessary adjunct to successful regulation. An example of such a delegation is Section 5 of the Federal Trade Commission Act,[2] which provides that "unfair methods of competition" are unlawful.[3] In such situations there was left to the independent regulatory agent, as an arm of the Congress—in this instance the Federal Trade Commission—the delegated authority to fill in and implement the various legislative details in order to establish the precise meaning of the phrase "unfair methods of competition." This task was to be accomplished by quasi-judicial action through the process of judicial inclusion and exclusion and by a quasi-legislative process, including rule making proceedings. This is not to say, of course, that Congress could not have quite properly, and within the framework of accepted constitutional theories, delegated some regulatory authority to the Executive. Under constitutional concepts of separation of powers, however, such delegation would have required a great deal more specificity than is required for "an arm of Congress." An attempt to delegate quasi-legislative and quasi-judicial authority to the Executive to the same extent as was conferred upon "an arm of Congress" would have been unconstitutional.

This was demonstrated by the Supreme Courts 1935 decision[4] dealing with the National Industrial Recovery Act of 1933. In that case the Supreme Court unanimously held the Act to be unconstitutional because it attempted to delegate to the Executive legislative powers which the Constitution granted exclusively to the Congress. Among others, the Court stated:

"The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. [Article I of the Constitution.] We have repeatedly recognized the necessity of adapting legislation to complex conditions involving a host of details with which the national legislature cannot deal directly. We pointed out in the *Panama Company* case [293 U.S. 388] that the Constitution has never been regarded as denying Congress the necessary resources of flexibility and practicality, which will enable it to perform its functions in laying down policies and establishing standards, while leaving to *selected instrumentalities* the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. But we said that the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained.' [Emphasis supplied.][5]

The National Industrial Recovery Act attempted to authorize the establishment of "codes of fair competition" by the Executive, and the Court particularly concerned about the absence of a specific definition for the concept "fair competition."[6] The specificity required to permit the delegation of regulatory authority to the Executive was missing, causing the Act to be held unconstitutional. On the other hand, the congressional action of delegating such broad regulatory authority as determining "unfair methods of competition," a term no more specific than "fair competition," to "an arm of Congress" has not been overturned. Although initially the courts were more than skeptical about the *manner* of regulation by these congressional creatures, the authority to do so was upheld. With this approach Congress chanced upon a method of regulation unique and untried at that time but upon which it was to place increasing reliance in the fulfillment of its constitutional mandate.

At this point the concept of an independent board, Commission, or agency should be briefly outlined. Basically, there are two types of independent agencies: those which are a part of the Executive Branch of the Government and under the control of the Chief Executive but not a part of any cabinet department, and those which, at least in theory, are outside of the control of any Executive department.[7] This paper is concerned with the latter type of agency, which, as an arm of Congress, is responsible to Congress and subject to the oversight of Congress. Regulatory independence thus refers to independence from Executive control, but not absolute independence.

Since the creation of the first major Federal independent regulatory agency in 1887—the Interstate Commerce Commission—and the last of the original seven[8] independent regulatory agencies—the Civil Aeronautics Board—there has been an almost endless stream of legislative and judicial expression affecting every phase of these agencies' operations. The purpose of this paper is to review and analyze some of these legislative and judicial developments which relate to the concept of the "independence" of these agencies, with particular reference to the Federal Trade Commission. At the outset it should be noted that the Federal Trade Commission differs from other independent agencies with respect to the subject matter of regulation; whereas other independent agencies have a particular industry assigned to them, the Federal Trade Commission is charged with regulating that vast array of American business not otherwise the subject of special Federal regulation. This gives additional meaning and importanec to the theory of independence as applicable to the Federal Trade Commission.[9]

HISTORY AND THEORY OF INDEPENDENCE

The legislative history of the Federal Trade Commission Act, as well as that of any of the other commissions, leaves little doubt of Congress intent insofar as it pertains to the Commission's independence from control by the Executive. More specifically, Congress expressed the desire to create a commission which in the performance of its functions would be independent from the Executive Branch of the Government. For instance, prior to the creation of the Commission, its powers of investigation resided with its predecessor—the Bureau of Corporations of the Department of Commerce. This investigatory power was taken from a department under the control of the Executive and given to an independent agency.[10] Expressions of congressional intent on this point are extremely explicit. As a matter of fact, no other single topic concerning the new commission received such extensive comment. It was, perhaps, most succinctly stated by Senator Newlands, Chairman of the Senate's Committee on Interstate Commerce, who introduced the original bill, when he explained the need for independence from the Executive Branch in the following way:

The need has long been felt for an administrative board which would act in these matters in aid of the enforcement of the Sherman antitrust law, which would have precedents and traditions and a continuous policy and would be free from the effect of such changing incumbency as has in the nature of things characterized the administration of the Attorney General's office.[11]

The desire for impartial regulation not dictated by political considerations and the recognized, as well as demonstrated, need for a continuous policy of regulation prompted the care which Congress bestowed upon this particular part of the Act. This is also demonstrated by the organic acts establishing the various agencies. Though the President has the power to appoint members of agencies, these appointments must be confirmed by the Senate. The terms of office are staggered and are scheduled on an overlapping basis in addition to extending beyond the President's own term.[12] In theory this would prevent the Chief Executive from appointing a majority of members of any Commission. This theory breaks down, of course, if the President serves for more than one term. Another requirement is the bipartisan nature of most commissions whereby each must be composed of no more than a majority from one political party. And, finally, the President may not remove a member of a commission except for the fairly customary grounds of "inefficiency, neglect of duty, or malfeasance in office."

Aside from specific congressional intent the theory of independence as it concerns the Federal Trade Commission has proven merit over and beyond that of other regulatory agencies. For example, the Commission and the Department of Justice's Antitrust Division have concurrent jurisdiction over a variety of practices. The benefits of such concurrent jurisdiction can be readily observed. The Department, as a general matter, has traditionally concerned itself almost exclusively with hard-core and clear-cut cases. The Commission, on the other hand, has been more willing to pioneer into the gray areas, as indeed was one of the purposes of its creation, *i.e.*, to fill the interstices of the Clayton Act. Thus, enforcement of Section 7 of the Clayton Act in the area of conglomerate mergers[13] by the Commission has been more innovative and imaginative. Therein the Commission is able to rely to a considerable

Footnotes at end of article.

extent on the economic expertise available to it. Similarly, the brunt of enforcement activity under the Robinson-Patman Act has been borne by the Commission. There can be little doubt that concurrent jurisdiction by an independent regulatory agency and a department of the Executive has resulted in more effective and successful law enforcement than exclusive jurisdiction by one governmental body could have provided.[14]

DEVELOPMENTS BEARING ON INDEPENDENCE

An analysis of a number of congressional actions ultimately affecting regulatory independence shows that not infrequently there was only a very general congressional intent, with no clear recognition of the effect such legislative endeavors would have upon regulatory independence. Of the plethora of statutes enacted for various purposes, many of them subsequently proved to have considerable impact upon the substantive work of an agency. *E.g.*, what Congress may have intended to be an administrative statute, where it was deemed necessary to give the Chief Executive certain authority in the interest of economy, efficiency and the orderly conduct of government, developed into a means of Executive control over substantive programs of an agency unforeseen and inconsistent with congressional intent.

A. THE BUDGET AND ACCOUNTING ACT OF 1921

The first Act passed by Congress which adversely affected the independence of regulatory agencies was the Budget and Accounting Act of 1921.[15] The Act specified that henceforth the budgets and requests for appropriations of all government units, with the exception of the Legislative and Executive units, shall be submitted to the Bureau of the Budget, created by the Act.[16] These budgets and requests for appropriations would be included in the nation's budget the President submits to Congress each year.

Congressional debate indicates that passage of the Act reflected increasing concern over governmental economy, occasioned by the fact that 1918 was the first year since the end of the Civil War in whch the United States experienced a budgetary deficit. To remedy this situation it would ". . . be necessary to wipe out duplications in the Government service, to eliminate inefficiency, and to stop unnecessary work." [17] Congressional concern was also expressed over the lack of objectivity in annual appropriations requests. Each governmental unit presented its request in the most glowing terms, oftentimes with little or no objectivity as to intrinsic worth of the activities sought to be financed. Under these circumstances, something like the Budget and Accounting Act was needed and motives behind its passage can hardly be faulted. The question which remains is whether Congress intended to affect regulatory independence to the degree the Act subsequently would, and, if not, how this could have been avoided.

In practice, the Act resulted in a degree of control over substantive programs of the agency which were certainly not envisioned by the Congress when it passed what it considered to be a statute dealing with administrative detail. When an agency submits its budget to the Bureau of the Budget each item contained therein must be extensively justified, and agency members and personnel may be asked for further elaborations during the course of personal interviews. An agency's proposed appropriations request is reviewed by the Bureau of the Budget, which follows policies and priorities established by the President and not necessarily by Congress. To the extent they coincide congressional intent will be fulfilled; to the extent they differ congressional intent will, of necessity, take a back seat.

This review, however, is not limited to broad policy considerations but includes the actual establishment of priorities of regulation. For example, the Bureau of the Budget has the authority to tell the Federal Trade Commission how much it is to spend on merger enforcement activities and how much to spend on enforcing the Wool Products Labeling Act. Perhaps this method of administration relieves Congress of the burdensome duty of detailed oversight over independent agencies. On the other hand, it leaves the door wide open for administrative repeal of congressional action through the funding process without the benefit of legislation. In addition, the Bureau is empowered to enforce its mandate by freezing an agency's funds should the agency spend its appropriations contrary to the manner spelled out by the Bureau.

In this context it should also be mentioned that the Federal Trade Commission appropriations requests are customarily reduced by no less than 15 to 20 percent by the Bureau. What was intended as a purely housekeeping measure not infrequently has become an instrument of control over policy. Perhaps a better solution would have been to have budgets and requests for appropriations submitted to the Bureau of the Budget for review but at the same time permit independent agencies to submit copies of such requests directly to the Congress. This, however, the Act expressly prohibits.[18] Such a practice would at least enable Congress to obtain a greater knowledge of the agencies' positions.[19]

Recently some congressional concern has been expressed over the Bureau's control over substantive programs of independent agencies and three bills [20] have been introduced which would require the Bureau to include the Federal Trade Commission's appropriations request in the President's budget, without revision, and would permit the Commission to submit its budgets directly to Congress.

B. THE JUDGES ACT OF 1925

The next development affecting the independence of regulatory agencies was the passage of the Judges Act of 1925.[21] The purpose of this Act was to collect in one statute the provisions of the law relating to appellate jurisdiction of the Supreme Court and, due to the backlog of cases before the Court, the Act sought to reduce this jurisdiction.[22] This was accomplished by the simple expedient of broadening the Court's jurisdiction to issue writs of certiorari, i.e., increasing the Court's discretion as to the cases it will hear.[23]

At the same time, however, Congress (it is suspected through inadvertence rather than design) altered the practice whereunder the Federal Trade Commission prepared its own requests for writs of certiorari and argued its own cases before the Supreme Court. The practice had developed that by leave of the Attorney General (who neither had the staff nor the inclination to do otherwise), the two then-existing agencies—the ICC and the FTC—argued their own cases before the Supreme Court.[24] With respect to the Interstate Commerce Commission, the practice was codified in 1913,[25] and reaffirmed by the Judges Act of 1925. By implication, however, because of the absence of any specific reference, it was denied to the Federal Trade Commission. Now all independent agencies, with the exception of the Interstate Commerce Commission, do not ask the Supreme Court to grant a writ of certiorari directly but channel their requests through the Attorney General.

To the extent the Solicitor General substitutes his judgment, either as to the law or the facts, for that of an agency, the theory of agency expertise, one of the reasons for its establishment, is bypassed. It is equally clear, on the other hand, that with respect to Government-originated cases in which Supreme Court review is sought, there must be some sort of traffic policeman between the various governmental units and the Supreme Court. The question is, can this function be fulfilled by that office? In many instances the Solicitor General must seek the advice of the Department's operational divisions, which may have their own interests to pursue. To the extent he defers to this advice the objectivity of the impartial traffic policeman may be compromised. For example, in complex antitrust questions it would be surprising to learn that the Solicitor General does not heavily rely on the views of the Antitrust Division in the Department, as of necessity he must. In many instances the advice he receives serves to highlight one of the reasons for the creation of the Federal Trade Commission—congressional disenchantment with enforcement of the antitrust laws. In any event, it frustrates the regulatory scheme considerably if an agency's endeavors are stymied by departmental actions. It also frustrates congressional intent. Theories of priorities and enforcement of necessity differ and in some situations philosophical differences have, for all intents and purposes, administratively repealed various legislative purposes. Under these circumstances it would be more desirable to permit the independent agencies to seek certiorari before the Supreme Court directly. Control over litigation is the most important aspect of independence, which must be considered severely handicapped if it is in the hands of someone other than the agency.

The Solicitor General's control over certiorari petitions rests upon the following language:

Except when the Attorney General in a particular case directs otherwise, the Attorney General and the Solicitor General shall conduct and argue suits and appeals in the Supreme Court and suits in the Court of Claims in which the United States is interested.[26]

Actually, the provision is silent as to who may *file* petitions for Supreme Court review but merely refers to the conduct and argument of cases for which Supreme Court review has been granted. It could be argued, therefore, that this is purely an administrative provision which does not give the Solicitor General the veto power over which cases can be appealed to the Supreme Court and that each governmental unit is at liberty to file its own petitions for writs of certiorari. Certainly, the theory of independence as applied to regulatory agencies and the history of their creation would lend considerable support for this argument. To the author's knowledge, however, no independent agency has ever filed a petition for certiorari outside the heretofore adhered to procedure.

The Federal Trade Commission's experience during the period of July 1, 1961, through March 1, 1969 has been mixed. Of the 34 requests by the Commission to the Solicitor General for petitions of certiorari, only 19 were actually filed. Of these 19 petitions 14 were granted and 5 were denied. The 14 cases in which the Court granted certiorari were decided in favor of the Commission. In one instance [27] the Solicitor General refused to file a petition for certiorari but authorized the Commission to file in its own name. In another instance [28] the Solicitor General filed the requested petition but with a notation that he would not support the Commission's position if certiorari were granted. In both instances the petition was denied. In another case the Solicitor General represented the issue to be a factual one and the petition was denied.[29]

Most important, however, is the Solicitor General's preference as to subject matter. From a review of the Commission's requests for petitions of certiorari, it becomes clear that differences of opinion most frequently occur in the area of price discrimination and other Robinson-Patman Act cases. Only in

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about one-third of the Commission's requests in this area were petitions filed[30] whereas slightly better than one-half of the Commission's total requests were filed.[31] Furthermore, in two price discrimination cases[32] in which the Commission's position had been sustained by the 7th Circuit, but wherein petitioners had filed petitions for writs of certiorari, the Solicitor General, although authorizing the Commission to file briefs in opposition to the petitions, filed a separate memorandum *opposing* the Commission's position. Under such circumstances the traffic policeman role is hardly fulfilled. It also accentuates the dichotomy of views on Robinson-Patman Act enforcement. Similarly, the Solicitor General refused to file a petition in the two cases involving the Wool Products Labeling Act.[33] On the other hand, in the three merger cases in which the Commission requested the Solicitor General to file for certiorari during this time, all three were successfully appealed.[34]

C. CENTRAL CLEARANCE OF LEGISLATIVE PROPOSALS

Sometime during the mid-1930's the practice originated of submitting legislative proposals to the Congress via the Bureau of the Budget. This policy was originated by Franklin D. Roosevelt and has been continued to this day, although there does not appear to be any statutory authority for it. As a matter of fact, with respect to the Federal Trade Commission, it appears to be directly contrary to the mandate contained in Section 6(f) of the Federal Trade Commission Act—that the Commission, together with annual and special reports, shall submit recommendations for additional legislation to Congress. Moreover, when the Commission is requested to report on specific legislative proposals, such reports must be cleared by the Bureau of the Budget before being submitted to the appropriate congressional committee. At the Bureau of the Budget such reports and legislative recommendations must receive clearance in terms of substance, i.e., they are reviewed in light of the President's policy objectives.[35] This practice could result in precisely the situation Congress desired to avoid by the establishment of independent agencies if it deprives Congress of their views.

The procedure by which comments on proposals for legislation are coordinated and cleared by the Bureau has evolved as a matter of tradition, without the benefit of specific legislation. The Bureau takes the position that all legislative proposals and comments concerning legislation, whether agency-initiated or in response to a congressional request or pursuant to statutory mandate, must go through the Bureau. Not infrequently the Bureau will effect various revisions. In addition, the practice at times places an agency in an awkward position with members of Congress. For example, congressional requests for agency comments on legislation to be proposed are transmitted to the agency directly. The reply, however, is channelled through the Bureau. Should a time lag develop, as it sometimes does, members of Congress place the responsibility with the agency and not the Bureau. As a matter of deference, the agencies have acceded to the Bureau's position on this question, although from time to time one or the other agency may have been inclined to challenge the Bureau's position. For obvious reasons, however, no agency has been too eager to pursue such a course.

D. THE FEDERAL REPORTS ACT OF 1942

Passage of the Federal Reports Act of 1942[36] accorded to the Bureau of the Budget another important right of review and control over the activities of regulatory agencies, although the Act was passed under circumstances and for reasons considerably different from those in which it would be used.

As early as 1938 concern mounted over increasing governmental activity in the collection of information. Particularly the small businessman found it more and more difficult to cope with the avalanche of Federal and State forms and reports he was required to complete, often at considerable expense. This insatiable appetite for information was the result of the staggering growth the Government experienced during the 30 years between 1912 and 1942. This period witnessed the greatest form-producing decades in the history of the United States. Six of the original 7 independent agencies were established during that time. The sixteenth Amendment to the Constitution, establishing an income tax, was passed. Social Security began, etc. In addition, many States initiated duplicative services to those of the Federal Government. The inevitable result was Federal and State forms and reports about taxes, employees, business and other aspects of daily life. Some of the information collected by different agencies overlapped and caused duplication. It was principally such duplication which led to original drives for some coordination of the Government's collection of information.[37]

The final impetus for passage of the Federal Reports Act came with the creation of the Office of Price Administration. The nation was literally engulfed in a blizzard of paperwork concerning rationing, output, prices, and any other conceivable type of information, both private and public. For the successful prosecution of the war this proved not only unnecessary but was bitterly resented by the many citizens who were required to wait their places in long lines at various post offices throughout the country for a determination whether their questionnaires were properly filled out and their requests indeed necessary.[38]

The Act provides that requests for information originating with any governmental agency[39] and directed to more than nine respondents must receive clearance by the Bureau of the Budget. Requests for such clearance must be accompanied by a detailed explanation of the questionnaire, such as technicalities of implementation, manner of selecting the respondents, whether the information is to be collected by mail or personal interview. In addition, the request must be justified in depth. This would include a statement why the information is sought and how it will be used; why the particular number of respondents and not less have been selected; how much time it will take a respondent to answer the questionnaire, etc. In ruling upon such requests the Bureau of the Budget must also be satisfied that this is the only practical method of getting the necessary information and that it is not available through some other governmental or more readily accessible private source.[40]

The power of review within the Bureau of the Budget extends so far as to permit forbidding collection of all or a part of the information sought. In case of the traditionally used questionnaire, for example, the Bureau of the Budegt may withhold clearance for its issuance altogether, or it may strike certain questions—a matter entirely within its discretion.

Congress, in its haste to pass this bill, however, did not heed the warning of those questioning its extent, although this point was the subject of considerable debate.[41] Specifically, some members of Congress felt that while the bill was ostensibly aimed at the elimination of unnecessary and presumably duplicate reports, the way it was phrased gave the Director of the Bureau of the Budget a good deal more control over the collection of information than was necessary under the circumstances and perhaps even intended by Congress had it considered all the ramifications of the bill.[42]

As it turned out, the Act permits the Bureau of the Budget to exercise a good deal of control over the investigative functions of the independent agencies. With respect to the Federal Trade Commission this represents a drastic departure from the theory of its creation. One of the Commission's most important functions arises out of the mandate to investigate and publicize business conditions harmful to the continued good health of the economy and to do so independently and otuside of the control of the Executive. Any control over its ability to investigate or a substantive review of the information it seeks will naturally adversely affect the independence of the Commission.

There is no doubt that the purpose for which the Act was conceived—to cut costs to the Government and to avoid unnecessary harassment of citizens and businesses—has considerable merit. If, however, it becomes an instrument of control over some types of investigations, specifically those of independent regulatory agencies—and this in fact has occurred—it would appear that the authority the Act vests in the Bureau of the Budget needs to be reexamined.

E. THE HOOVER COMMISSION AND THE LANDIS REPORT

In 1947 the Hoover Commission[43] was organized to study and make its report on, along with recommendations, governmental operations, with particular emphasis on efficiency in the operation of government. One recommendation included in the Hoover Commission report,[44] which was adopted later[45] and which was to have a far-reaching impact upon the independence of regulatory agencies, concerned the position of chairmen for these agencies. In the interest of efficiency and to "enable the President to obtain a sympathetic hearing of broader consideration of national policy which he feels the Commission should take into account,"[46] the Hoover Commission recommended that the chairman of an agency should be appointed by the President and should be given more administrative authority over his agency. Up to that time, with the exception of the Federal Communications Commission, whose organic statute provides for the appointment of its chairman by the President, the agencies selected their chairmen from among their members. Generally the chairman of an agency would be selected by the members of such an agency on an annual basis and he constituted little more than a *primus inter pares*. In addition, the agencies themselves would decide how to handle intra-agency administrative detail. Under the reorganization of 1950, however, the chairman had the authority (1) to appoint and supervise personnel,[47] (2) to distribute the workload among such personnel and (3) to determine the use and expenditure of funds. The reason assigned to this drastic departure from previous practice was that it would relieve the commissioners from burdensome administrative chores such as ruling upon the salaries of the char force and thereby free them to devote their energies to the substantive aspects of the commission's work.

The impact of these plans, once they were implemented, was profound.[48] Inasmuch as the chairman holds his post as chairman at the pleasure of the President, it becomes unlikely for him to pursue a policy alien or contrary to that of the Chief Executive if he is to retain his post. Since the chairman is responsible for the selection of personnel, the assignment of the workload and the use of the agency's funds, it is difficult to see how an agency, even if a majority of its members wish to do so, may pursue a course independent from the wishes and desires of the then current administration. As a practical matter there would be no conflict if the policies of the Executive are the same as those of the Congress; should those be different, however, it will become readily ap-

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parent that independence from Executive control has been materially weakened.

Those members of Congress who had the opportunity to study the proposal recognized, of course, that any gains in efficiency which might result would be at a sacrifice in independence. As a result, Senator Edwin C. Johnson from Colorado introduced a resolution for disapproval[49] of the proposals on the ground that they were contrary to the "long established congressional policy that regulatory agencies must be independent and directly responsible to Congress."[50] The resolution carried only with respect to the Interstate Commerce Commission and the Federal Communications Commission, and in those instances only because it was vigorously supported by the industries regulated by these commissions and their bars.[51]

The Landis Report of 1960[52] covered similar ground and also voiced its concern about efficiency in government. The recommended cure for whatever bureaucratic blunders or loss of efficiency might have occurred was again greater control by the Executive. With respect to the Federal Trade Commission the report states:

Here, as in the case of the Interstate Commerce Commission, the Civil Aeronautics Board and the Securities Exchange Commission, the powers of the Chairman should be increased and the Commission's authority to delegate decision-making implemented by Presidential action under the Reorganization Act.[53]

Quite revealing is the reason given for the necessity of these changes. As the report states, the Federal Trade Commission must, due to its limited resources, exercise a great deal of discretion as to the trade practices it will investigate and must concentrate on specific areas. This, according to Landis, "involves an issue of policy of which the Executive should not only be aware but which should be keyed to whatever overall program is then the Administration's prime concern. The responsibility for concentration on a particular area should be the responsibility of the Executive and not the Federal Trade Commission."[54] Under this theory, the Executive, alternatively, would be able *not* to concentrate on a particular area, a fact which has always been of greater congressional concern, particularly in the area of antitrust enforcement. Acceptance of this theory would inevitably lead to precisely the circumstances the establishment of the independent agencies was supposed to preclude—*Executive control* over the regulatory scheme. By the same token, however, the report, in a curiously candid comment, states that "[t]here has also been too much of the morale-shattering practice of permitting executive interference in the disposition of causes and controversies delegates to the agencies for decision."[55] No doubt there is a direct relationship between the extent of "morale-shattering executive interference" and the degree to which, over the years, we have veered from the original congressional intent concerning regulatory independence. As a matter of fact, such interference is invited for the very reasons assigned to the need for greater Executive control.

The recommendation with respect to the Federal Trade Commission, contained in the report, became the Reorganization Plan No. 4 of 1961.[56] The plan substantially broadened the Chairman's authority, particularly with respect to the assignment of workload among the Commission personnel as well as among the individual commissioners. The importance of this authority in the Chairman's office cannot be overestimated.[57]

F. FEDERAL TRADE COMMISSION V. GUIGNON

The most recent development affecting the Federal Trade Commission's independence is the Eighth Circuit's 1968 decision in *Federal Trade Commission* v. *Guignon*,[58] In that case the court, in a two-to-one decision, upheld a district court decision,[59] to the effect that the Commission does not have the authority to institute court proceedings for the purpose of enforcing its own subpoenas.[60] The issue, as phrased by the court, was "whether the Federal Trade Commission, acting under § 9 of the Federal Trade Commission Act . . . may, without the aid or consent of the Attorney General of the United States, seek enforcement of its own subpoenas in the Federal District Courts."[61] In reaching the conclusion that the Commission did not have this authority, the majority considered not only the briefs and arguments of the parties but also a brief *amicus curiae* submitted by the Department of Justice at the invitation of the court. In its *amicus* brief the Department took the position that only the Department is authorized to represent the agency in court. To the author's knowledge, this is the first time[62] in the 54-year history of the Commission that the Department has taken this position. Up to this point it had been generally accepted, both by the courts[63] and commentators,[64] that the Commission had this authority. A number of factors must be considered for a correct evaluation of the Department's and the court's position. First, there is the express language of the Federal Trade Commission Act. Section 9 states, with respect to the enforcement of subpoenas, that "the *commission* may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of witnesses." (Emphasis supplied.) With respect to compelling compliance with *substantive* F.T.C. orders to cease and desist, Section 9 states that "[u]pon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof." Thus, the Act contains two separate provisions applicable in two distinct sets of circumstances: a provision with respect to subpoena enforcement, to be undertaken by the Commission itself, and applications of writs of mandamus to compel obedience with the Commission's substantive cease and desist orders, to be undertaken by the Attorney General.

Any contradictions which could subsequently be read into the Act as the result of the difference in methodology of enforcement was the subject of extensive comment prior to its enactment.[65] That comment makes it clear that inclusion of the mandamus provision in the Act was not intended to and does not have any relation to the provisions concerning Commission subpoenas and court proceedings for their enforcement. The mandamus paragraph was intended to apply to nothing other than the substantive provisions of the Act and the Commission's orders commanding obedience to them.[66]

In addition, the legislative intent concerning independence, and particularly independence from control of the Executive for investigative purposes, buttresses this conclusion.[67]

The second aspect concerns the statutory language upon which the court and the Department rely—Sections 516 and 519 of Title 28, United States Code.

Section 516 provides that:

Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice, under the direction of the Attorney General.

Section 519 provides that:

Except as otherwise authorized by law, the Attorney General shall supervise all litigation to which the United States, an agency, or officer thereof is a party, and shall direct all United States attorneys, assistant United States attorneys, and special attorneys appointed under section 543 of this title in the discharge of their respective duties.

The crucial terms are "except as otherwise authorized by law" and "an agency," which were inserted when this section was codified.

This insertion, however, was to effect a profound change in preexisting law and resulted in the interpretation that now specific legislation is required for an exemption from the application of this section; general legislation, such as contained in Section 9 of the Federal Trade Commission Act was previously considered sufficient.[68] A review of the history of this codification and the previous statutory provisions makes it clear, however, that such a result was not intended. While the insertion of these terms cannot be called inadvertent, they were nevertheless not intended to change preexisting laws.[69] The legislative history of these provisions conclusively shows that none of the predecessor statutes applied to such proceedings as the Commission's subpena enforcement cases, and that by adopting the codifications the Congress did not intend to effect any changes in preexisting law. As a matter of fact, Congress expressly disavowed such a purpose.[70] It is clear, therefore, that the legislative history of Section 9 of the Federal Trade Commission Act, long-established practice, the legislative history of the codifications of Title 28, and applicable legal precedent[71] did not intend the result achieved by the court. Now, however, the Commission must apply to the Attorney General for enforcement of subpenas, which is inconsistent with congressional intent on regulatory independence. One of the most important aspects of the Commission's functions and duties is its ability to investigate independently, and the subpena power, along with enforcement authority, is a very necessary part of its investigatory tools. Frequently its existence alone will obviate the need for its use. Under present conditions, however, the Commission's ability to investigate has been seriously curtailed. The *Guignon* decision also brings into sharp focus the problems presented by the inability of the Commission to request the Supreme Court to grant writs of certiorari. In order to seek certiorari it must obtain the support of the Solicitor General, which in this case was not achieved.

G. HUMPHREY'S EXECUTOR

The precise limits of regulatory independence have not been crystallized and judicial expressions on the point have been scant. Some guidelines, however, have been established. When Franklin Delano Roosevelt assumed the duties of his office in 1933, he desired to establish his own economic policy. Roosevelt felt that in the execution of this policy he needed control of the Federal Trade Commission. This he intended to accomplish by removing one commissioner openly opposed to Roosevelt's economic policy—Commissioner Humphrey. Roosevelt at first asked Humphrey to resign, on the ground "that the aims and purposes of the Administration with respect to the work of the Commission can be carried out most effectively with personnel of my own selection."[72] When this request was ignored, Roosevelt, on August 31, 1933, and after some intervening correspondence, wrote to Humphrey the following:

"You will, I know, realize that I do not feel that your mind and my mind go along together on either the policies or the administering of the Federal Trade Commission and, frankly, I think it is best for the people of this country that I should have a full confidence."

When Humphrey again refused to resign, Roosevelt, on October 7, 1933, wrote him that "effective as of this date you are hereby removed from the office of Commissioner of the Federal Trade Commission." In this attempt to remove a commissioner of an independ-

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ent agency solely on the basis of incompatibility of views rather than for the reasons spelled out in the statute, Roosevelt relied on the Supreme Court decision in *Myers* v. *United States*.[73] There the Court held that Congress could not constitutionally restrict the President's power to remove an executive official who had been appointed by the President either alone or with the advice and consent of the Senate. In a dictum the Court further indicated that the President had the unlimited right to remove members of quasi-legislative and quasi-judicial bodies.

After reviewing the legislative history of the Federal Trade Commission Act and the debates in both Houses, the Court stated that

"[T]he language of the act, the legislative reports, and the general purposes of the legislation as reflected by the debates, all combine to demonstrate the Congressional intent to create a body of experts who shall gain experience by length of service—a body which shall be independent of executive authority, *except in its selection*, and free to exercise its judgment without the leave or hindrance of any other official or any department of Government."[74]

The Court recognized that tenure of office at the will of the President would stultify the intent of Congress, an intent evidenced by the fact that Congress fixed commissioners' terms of office. The Court also pointed out that removal power in the President would nullify the independence of the Commission and stated that "it is quite evident that one who holds his office during the pleasure of another, cannot be depended upon to maintain an attitude of independence against the latter's will."[75] A more succinct explanation of the necessity for the Commission's independence cannot be found.

In addition, the Court was influenced considerably by the traditional concepts of separation of powers and therefore gave particular consideration to the relationship between regulatory independence and the quasi-judicial functions of the agency:

"We are thus confronted with the serious question whether not only the members of these quasi-legislative and quasi-judicial bodies . . . continue in office only at the pleasure of the President.

"We think it plain under the Constitution that illimitable power of removal is not possessed by the President in respect of officers of the character of those just named."[76]

In a previous case,[77] the Court dealt at considerable length with the impact of the separation of powers doctrine upon actions by the Exectuive affecting the independence of officials acting in a judicial capacity. A reading of both cases suggests that the Court, after having determined the function involved, applied the separation of powers doctrine to the issue of independence from control by the Executive. In theory such a test would be ideal for its simplicity. Unfortunately, in modern practice such a separation would be extremely difficult, if not impossible, as these functions, to varying degrees, coalesce in different governmental endeavors.[78]

CONCLUSION

These are some of the outstanding developments which demonstrate that regulatory independence is rapidly becoming more fanciful than factual. Congressional intent was clear from the outset that the quasi-legislative and quasi-judicial regulatory agencies were to be independent and free from the influence, direction or oversight of the Executive Department. Moreover, the above-noted reasons for this—the quasi-legislative service as an arm of the Congress and continuity in effectuation of public policy as declared in the broad outlines of the law—are as valid today as in 1887, more than 80 years ago. I tend to believe that many of the congressional actions undertaken in the interest of orderly and efficient operation of government, which subsequently adversely affected regulatory independence, were accidental rather than a conscious and deliberate effort to limit such regulatory independence. Academic considerations aside, however, the fact remains that when Congress assigned these regulatory tasks to independent agencies it did so because it expected its mandate as evidenced by the organic acts, to be carried out by a vigorous and effective enforcement policy. This policy was intended to be continuous and irrespective of the changing political fortunes dictating White House occupancy. To the extent we have deviated from this intent the resulting diffusion of control has taken its inevitable toll in regulatory efficiency. For example, this situation has undoubtedly had a deleterious impact on antitrust enforcement activities by the Federal Trade Commission as well as the activities of other agencies. To varying degrees, therefore, erosion of independence has at the same time undermined the agencies' effectiveness. It is ironic that this loss of efficiency should be, at least in part, the result of precisely those statutes designed to foster the orderly and efficient conduct of government. Perhaps, then, the public interest has and may continue to suffer loss of efficiency instead of capturing that illusive objective if there should be continuing erosion of effective congressional oversight instead of oversight by others.

FOOTNOTES

*Reprinted from the Winter 1969 issue of the Federal Bar Journal with permission of the Federal Bar Association, Washington, D.C.

Commissioner, Federal Trade Commission. The author wishes to acknowledge the assistance of Joachim J. Volhard in the preparation of this article.

[1] Article 1, Section 8 of the Constitution empowers Congress "to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes."

[2] 38 Stat. 719 (1914); 15 U.S.C. 45.

[3] The Act was amended in 1938 to include "unfair or deceptive acts or practices" within its proscription, 52 Stat. 111.

[4] Schechter Poultry Corp. v. United States, 295 U.S. 495.

[5] Id. at 529.

[6] What is meant by "fair competition" as the term is used in the Act? Does it refer to a category established in the law, and is the authority to make codes limited accordingly? Or is it used as a convenient designation for whatever set of laws the formulators of a code for a particular trade or industry may propose and the President may himself prescribe, as being wise and beneficent provision for the government of the trade or industry in order to accomplish the broad purposes of rehabilitation, correction, and expansion which are stated in the first section of Title 1? [Id. at 531.]

[7] In the Federal government the term "independent establishments" frequently refers to all agencies neither in the legislative nor the judicial branch that are outside the ten so-called executive departments. [ELEMENTS OF PUBLIC ADMINISTRATION, Fritz M. Marx ed., New York, 1946, p. 208, n. 1.]

[8] ICC in 1887; FTC in 1914; FPC in 1920; SEC in 1933; FCC in 1934 NLRB in 1935; and CAB in 1938.

[9] For example, the argument advanced—that executive control of an agency at the same time protects it from unwanted control by the industry it regulates—is not particularly relevant with respect to the Federal Trade Commission.

[10] 51 Cong. Rec. 8842. The opinion was also expressed that if the Bureau of Corporations could be converted into an independent commission, more complete knowledge about corporations engaged in commerce could be gathered.

[11] Senator Newlands, 51 Con. Rec. 10,376. In the House of Representatives Mr. Morgan expressed these views:

"And instead of giving additional power to the Attorney General we should, as the gentleman from Maryland [Mr. Covington] said this afternoon, create a great, independent, non-partisan commission, independent of the President, independent of Cabinet officers, removed so far as possible from partisan politics, that would command the respect and confidence of all parties and of all the people of the Nation. . . . What I say is not particularly applicable to the present Attorney General or the administration in power. Whatever we do in regulating business should be removed as far as possible from political influence.

"It will be far safer to place this power in the hands of a great independent commission that will go on while administrations may change. That is one reason why I believe in having all these matters placed, so far as they can be, in the hands of a commission, taking these business matters out of politics." [51 Cong. Rec. 88857].

In an article entitled "Constitutionality of Investigations by the Federal Trade Commission," 28 Col. L. Rev. 708, 728 n. 56 (1928), Milton Handler pointed out that:

"The opposition to the Covington bill came not from those who thought the bill went too far but that it did not go far enough. . . . There was singular agreement as to the wisdom of establishing an independent, non-partisan fact-finding body, and no attempt was made to reduce the broad inquisitional powers discussed in the text" [of Handler's article].

[12] The Federal Trade Commission Act provides that the "first Commissioners shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years. . . ." 38 Stat. 717; 15 USC 41.

[13] See, for example, F.T.C. v. Procter & Gamble, 386 U.S. 568 (1967); and General Foods v. F.T.C., 386 F.2d 936 (3d Cir. 1967), cert. den., 391 U.S. 919 (1968).

[14] On the other hand, it could conceivably deteriorate in the kind of buckpassing so detrimental to effective law enforcement.

[15] 42 Stat. 20; 31 USC 1. Passage of the Act failed the previous year, interestingly enough, due to a dispute over the presidential removal power of the proposed Budget Bureau's director. 61 Cong. Rec. 980.

[16] 31 USC 16.

[17] 61 Cong. Rec. 980.

[18] Budget and appropriations requests may only be transmitted to Congress upon the specific request of either House thereof. 31 USC 15.

[19] It is interesting to note that after passage of the Act some of the independent agencies apparently took the position that it did not apply to them. This, however, was made clear in a 1939 amendment restating applicability of the Act to include "any independent regulatory commission or board." 53 Stat. 565. See also "Government Organization," H. Rept. 2033, 75th Cong., 3d Sess., p. 15 (1938).

[20] H.R. 9811, 91st Cong., 1st Sess.; H.R. 1068, 91st Cong., 1st Sess.; and S. 789, 91st Cong., 1st Sess.

[21] 43 Stat. 936.

[22] Henry Pringle, The Life and Time of William Howard Taft, New York, 1939 (two vols.), p. 992, et seq.

[23] Cong. Rec. 2752.

[24] The authority to argue cases in which the United States is interested before the Supreme Court rests with the Attorney General. 28 USC 518. For example, the first Federal Trade Commission case to reach the Supreme Court—F.T.C. v. Gratz, 253 U.S. 421 (1920)—was argued by the Commissioner whose term I am succeeding—Huston Thompson. As a

matter of fact, there was widespread belief at the time that the fact that a Commissioner argued the case may have cost the Commission the decision.

[25] Urgent Deficiencies and Appropriations Act of 1913, 38 Stat. 208.

[26] 28 USC 518. Section 516 of the same Title provide that "Except as otherwise provided by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Departmentof Justice, under the direction of the Attorney General." While the phrase "conduct of litigation" is broad enough to encompass attempts to secure Supreme Court review, the origin and history of this section make it abundantly clear that it does not refer to Supreme Court review. R.S. 359, 360, 361, and 362. This question is dealt with in further detail in subparagraph F, infra. Suffice it to say here that the present-day result is attributable to revisions prior to recodification, which were not intended to effect a substantive change in the law.

[27] Exquisite Form Brassiere, Inc. v. F.T.C., 301 F. 2d 499 (D.C. Cir. 1961), cert. den., 369 U.S. 888 (1962).

[28] American Oil Co. v. F.T.C., 325 F. 2d 101 (7th Cir. 1963), cert. den., 377 U.S. 954 (1964).

[29] Timken Roller Bearing Co. v. F.T.C., 299 F. 2d 839 (6th Cir. 1962), cert. den., 371 U.S. 861 (1962).

[30] Seven of 17. The 7 were:

Sun Oil Co. v. F.T.C. 294 F. 2d 465 (5 Cir. 1961), rev'd, 371 U.S. 505 (1963); Borden Co. v. F.T.C. 339 F. 2d 133 (5th Cir. 1964), rev'd and remanded. — U.S. 637 (1966); Universal-Rundle Corp. v. F.T.C., 352 F. 2d 831 (7th Cir. 1965), rev'd, 387 U.S. 244; F.T.C. v. Jantzen, Inc., 356 F. 2d 253 (9th Cir. 1966), rev'd, 386 U.S. 228 (1967); Flotill Products, Inc. v. F.T.C., 358 F. 2d 224 (9th Cir. 1966) rev'd, 389 U.S. 179 (1967); Fred Meyer v. F.T.C. 359 F. 2d 351 (1966) rev'd 390 U.S. 341 (1968) American Motors Corp. v. F.T.C., 384 F. 2d 247 (7th Cir. 1967), cert. den., 390 U.S. 1012 (1968).

The 10 were:

Exquisite Form Brassiere, Inc. v. F.T.C., 301 F. 2d 499 (D.C. Cir. 1961), cert. den., 369 U.S. 888 (1962). (Solicitor General refused to file petition but authorized Federal Trade Commission to file in its own name and petition was denied.) Sunshine Biscuits, Inc. v. F.T.C., 306 F. 2d 48 (7th Cir. 1962). (The Commission at first requested but subsequently withdrew its request for the filing of a petition for certiorari.) Thomasville Chair Co. v. F.T.C., 306 F. 2d 541 (5th Cir. 1962); Central Retailer-Owned Grocers, Inc. v. F.T.C., 319 F. 2d 410 (7th Cir. 1963); American Oil Co. v. F.T.C., 325 F. 2d 101 (7th Cir. 1963), cert. den., 377 U.S. 954 (1964). (The Solicitor General filed but with notation he would not support the Commission's position if certiorari were granted. The Supreme Court denied certiorari, with Justice Douglas of the view that certiorari should be granted.) Borden Co. v. F.T.C., 339 F. 2d 953 (7th Cir. 1964); Callaway Mills Co. v. F.T.C., 362 F. 2d 435 (5th Cir. 1966); F.T.C. v. Standard Motor Products, Inc., 371 F. 2d 613 (2d Cir. 1967); Borden Co. v. F.T.C., 381 F. 2d 175 (5th Cir. 1967); Knoll Associates, Inc. v. F.T.C., 397 F. 2d 530 (7th Cir. 1968).

[31] Nineteen of 34.

[32] Monroe Auto Equipment Co. v. F.T.C., 347 F. 2d 401 (7th Cir. 1965), cert. den., 382 U.S. 1009 (1966); Purolator Products, Inc. v. F.T.C., 352 F. 2d 874 (7th Cir. 1965), cert. den., 389 U.S. 1045 (1966).

[33] Harry Carr v. F.T.C., 302 F. 2d 688 (1st Cir. 1962); Marcus v. F.T.C., 354 F. 2d 85 (2d Cir. 1965).

[34] Consolidated Foods Corp. v. F.T.C., 329 F. 2d 623 (7th Cir. 1963), rev'd, 380 U.S. 592 (1965); F.T.C. v. Dean Foods, unreported 7th Cir. 1966, rev'd, 384 U.S. 597. (In this case, the Commission sought a prelitigation injunction and the Supreme Court's decision held in favor of the Commission.) Procter & Gamble Co. v. F.T.C., 358 F. 2d 74, rev'd, 386 U.S. 568 (1967).

[35] The Organization and Procedures of the Federal Regulatory Commissions and Agencies and Their Effect on Small Business, H. Rept. 2967, 84th Cong., 2d Sess., p. 91 (1956).

[36] 56 Stat. 1078; 44 U.S.C. 421.

[37] Some of this duplication existed, and still exists, due to overdrastic restrictions upon the release of information already collected, depending upon the agency, the purpose for which it was collected and the manner in which it was collected.

[38] Speaking about OPA reports and questionnaires, Congressman Patman stated:

"If the gentleman had heard the testimony that has been presented before the Committee on Small Business of the House, he would be very anxious to have this bill passed without 1 hour's delay. The people are up in arms about these useless reports and unnecessary questionnaires. They are irritated by them and they are irritated at the Congress because the Congress will not do something about it." [88 Cong. Rec. 9121.]

[39] Some of the supervisory agencies and the Bureau of Internal Revenue are exempted. See Bowman, Results Achieved by the Federal Reports Act, 7 Bus. and Gov't. Rev. 5 (U. of Missouri, 1966).

[40] Bowman, supra note 39.

[41] 88 Cong. Rec. 9159–9166.

[42] The following is an excerpt of one of the comments during the debate of the bill:

"Mr. SMITH of Ohio. Mr. Speaker, reserving the right to object, there is a good deal more to this bill than merely the elimination of unnecessary reports. Under section 2(d) it seems to me you are vesting a lot of authority and power in the Director of the Budget.

"Upon the request of any party having a substantial interest or upon his own motion, the Director is authorized within his discretion to make a determination as to whether or not the collection of any information by any Federal agency is necessary for the proper performance of the functions of such agency or any other proper purpose.

"Certainly a considerable amount of information being collected by various governmental agencies is being so collected by direction of the Congress in response to specific legislation. Are we to infer that the Director of the Budget is to have final authority and power to set aside any legislation which the Congress has passed directing the collection of information?" [88 Cong. Rec. 9159.]

[43] The Commission on Organizaton of the Executive Branch of the Government received its name "Hoover Commission" because it was chaired by ex-President Hoover.

[44] REPORT ON THE ORGANIZATION OF THE INDEPENDENT REGULATORY COMMISSIONS, March 3, 1949.

[45] It is significant to note that the Senate Committee on Government Operations rejected recommendations made by the first Hoover Commission that certain "executive" functions of regulatory agencies be transferred to Executive Departments, with the following comment:

. . . To the extent such recommendations were consistent with established legislative policies and in conformity with the separation of regulatory functions from administrative controls of policy-determining departments or agencies, they received favorable action. These regulatory commissions were established primarily by the Congress to act on an independent basis in the public interest, and free from direct control by the President over either their activities or their decisions. The basic statutes provided that they be primarily responsible to the Congress of the United States as the elected representatives of the people in order that they might be responsive to the general public interest and in a position to carry on their activities without improper influences from other governmental agencies. This committee, and the Senate, determined that favorable action on these proposals would seriously impair the operations of these commissions and would tend to undermine their independence of action. [Senate Committee on Government Operations, Senate Action on Hoover Commission Reports, S. Rept. 4, 83d Cong. 1st Sess. 67 (1953).]

[46] Task Force on Regulatory Commissions, Appendix N, p. 32, Jan. 1949.

Prepared for the Commission on Organization of the Executive Branch of the Government.

[47] With the exception of appointments to the major administrative units within an agency, which would require approval of a majority of commissioners.

[48] These plans were labeled in the following manner: Reorganization Plan No. 8, FTC; Reorganization Plan No. 9, FPC; Reorganization Plan No. 10, SEC; and Reorganization Plan No. 13, CAB. 5 USC 133Z–15 (1964). See also 5 USC 901–913 (1964 Supp. III).

[49] S. Res. 254, 81st Cong., 2d Sess. Under the Reorganization Act of 1945 (59 Stat. 613), the President was given the authority for a specific time period to submit reorganization plans to the Congress. To prevent such a plan from going into effect, a concurrent resolution was necessary by the two Houses, stating that the Congress does not favor the reorganization plan. This time period has since been periodically extended, and again on March 27, 1969 (P.L. 91–5), 83 Stat. 6.

[50] Hearings Before the Senate Committee on Expenditures in the Executive Departments, 81st Cong. 2d Sess. (1950), S. Res. 254, pp. 13–17.

[51] It is questionable whether it is desirable that a regulated industry become the champion and protector of the independence of its regulatory agency.

[52] Landis, Report on Regulatory Agencies to the President-Elect, Dec. 1960.

[53] Id. at 48.

[54] Id. at 52.

[55] Id. at 36.

[56] Reorganization Plans 1 (SEC), 2 (FCC), and 5 (NLRB) were disapproved by the House of Representatives. 5 U.S.C. 133z–15 (1964).

[57] The reaction of members of Congress who recognized the importance of the Landis Report on regulatory independence is best summed up by the statement of Representative Avery from Kansas:

"Mr. Speaker, I do not want to longer impose upon the time of the House, but I would just like to make the record clear that this is the boldest trespass upon the independence of the regulatory agencies that has become a matter of record since the Interstate Commerce Commission was authorized in 1887." [107 Cong. 1927.]

[58] 390 F.2d 323 (8th Cir. 1968).

[59] F.T.C. v. Guignon, 261 F. Supp. 215 (E.D. Mo. 1966).

[60] In reaching this decision the court placed heavy reliance on F.T.C. v. Claire Furnace Co., 274 U.S. 160 (1927), thereby repeating the previously committed error of confusing those provisions of the F.T.C. Act relating to mandamus, i.e., the enforcement of orders with the provision relating to the enforcement of subpoenas.

[61] 390 F.2d 324.

[62] In F.T.C. v. Smith, 34 F.2d 323 (S.D.N.Y. 1929), the Commission's first subpoena enforcement case, the United States Attorney, as well as the Commission attorneys, was shown in the official reports as having appeared for the Commission. But the first sentence of the Smith case (34 F.2d 324) states that the action was initiated by "application of the Federal Trade Commission," not by application of the Attorney General.

[63] E.g., F.T.C. v. Green, 252 F. Supp. 153 (S.D.N.Y. 1966); Adams v. F.T.C. 296 F.2d 861 (8th Cir. 1961), cert. den. 369 U.S. 864 (1962); F.T.C. v. Cooper, 1962 CCH Trade Cases ¶70,353 (SD.N.Y. 1962); F.T.C. v. Tuttle, 244 F.2d 605 (2d Cir. 1957), cert. den, 354 U.S. 925; F.T.C. v. Harrell, 313 F.2d 854, 855 (7th Cir. 1963); F.T.C. v. Reed, 243 F.2d 308 (7th Cir. 1957), cert. den., 355 U.S. 823; F.T.C. v. Hallmark, Inc., 265 F.2d 433 (7th Cir. 1959); Flotill Products, Inc. v. F.T.C., 278 F.2d 850 (9th Cir. 1960), cert. den. 364 U.S. 920; Moore Business Forms, Inc. v. F.T.C., 307 F.2d 188 (D.C. Cir. 1962); F.T.C. v. Rubin, 245 F.2d 60 (2d Cir. 1957); F.T.C. v. Hunt Foods & Industries, Inc., 178 F. Supp. 448 (S.D. Cal. 1959), aff'd, 286 F.2d 803 (9th Cir. 1960), cert. den., 365 U.S. 877 (1961); F.T.C. v. Waltham Watch Co., 169 F. Supp. 614 (S.D.N.Y. 1959); F.T.C. v. Bowman, 149 F. Supp. 624 (N.D. Ill. 1957), aff'd, 248 F.2d 456 (7th Cir. 1957); F.T.C. v. Menzies, 145 F. Supp. 164 (D. Md. 1956), aff'd, 242 F.2d 81 (4th Cir. 1957); F.T.C. v. Scientific Living, Inc., 150 F. Supp. 495, 498 (M.D. Pa. 1957), appeal dism. (3d Cir., order dated Aug. 12, 1957), cert. den., 355 U.S. 940 (1958); F.T.C. v. Clarke, 33 F.T.C. 1812 (S.D. Cal. 1941), held not subject to collateral attack, 128 F.2d 542 (9th Cir. 1942). See also cases cited in the dissenting opinion in Guignon, 390 F.2d at 336 n. 8.

[64] Withrow, Investigatory Powers of the FTC-Constitutional and Statutory Limitations, 24 Fed. Bar J. 456 (1964):

In case of disobedience to a subpoena, the Commission may itself seek the aid of the courts but where enforcement of a demand for access or a Section 6(b) report is sought, the Commission is required to request the Attorney General to make application to the courts. [p. 485.]

[65] Mr. COVINGTON. I think the conflict is more apparent than real, and, frankly, it was an oversight in the final draft. It is a fact that there is a slight conflict there. It is one, however, the court would have no difficulty in determining, because in the section which embodies the method of dealing with processes of the commission, process for subpoena, process of enforcing ordinary orders respecting reports, process for production of documents, process for the punishment of contumacious witnesses, and all other ordinary machinery for the actual operation of the commission investigations and hearings, there is found that provision. It might very well be held to relate entirely to the proceedings under the section to which the gentlemen refer. And the exclusive jurisdiction conferred upon the circuit court of appeals is expressly related to and found in the section which deals with unfair methods of competition in business. In addition thereto, as indicated—that section 9, to which the gentleman refers, was dealing entirely with methods and processes—it provides that the jurisdiction of the district courts of the United States shall be invoked only upon the application of the Attorney General of the United States, and only at the request of the commission. Assuming all the gentleman says, it would not become a conflict of jurisdiction until the application of the Attorney General to the district court after the request of the commission had been made. The commission would never use that method to enforce its unfair competition orders. [51 Cong. Rec. 14,927]

[66] For reasons not spelled out in the decision, this was not dealt with by the majority, even though the dissenting opinion by Judge Heaney makes specific reference to the legislative history of Section 9 of the Federal Trade Commission Act, as well as the distinction between mandamus proceedings and subpoena enforcement. 390 F.2d 330, et seq.

[67] But the great value to the American people of the Interstate Commerce Commission has been largely because of its independent power and authority. The dignity of the proposed commission and the respect in which its performance of its duties will be held by the people will also be largely because of its independent power and authority. Therefore the bill removes entirely from the control of the President and the Secretary of Commerce the investigations conducted and the information acquired by the commission under the authority heretofore exercised by the Bureau of Corporation or the Commissioner of Corporations. All such investigations may hereafter be made upon the initiative of the commission, within constitutional limitations, and the information obtained may be made public entirely at the discretion of the commission. [H. Rept. 533, 63d Cong., 2d sess. 3 (on H.R. 15613, a predecessor of the Commission's organic statute).]

[68] Supra note 59.

[69] According to the historical notes, Section 516 is based on former 28 USC Judicial Code 507, which, in turn, is based in R.S. 361, which provided that:

The officers of the Department of Justice, under the direction of the Attorney General, shall give all opinions and render all services requiring the skill of persons learned in the law necessary to enable other officers in the Departments, to discharge their respective duties; and shall, on behalf of the United States, procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the Supreme Court and in the Court of Claims, in which the United States, or any officer thereof, as such officer, is a party or may be interested. . . .

The phrase "except as otherwise authorized by law" was not contained in R.S. 361. Nor did it contain "or agency" because it was enacted prior to the establishment of a major permanent independent agency. Furthermore, it did not apply to litigation in the district courts and referred to Executive Departments exclusively. If the revisers of former 28 USC Judicial Code 507 had intended to make so great a change in preexisting law as to repeal the Commission's authority to go to court without the aid or consent of the Attorney General, it would seem that their notes would have so advised the enacting Congress. No hint of such intention appears either in those notes or in the committee reports, and, accordingly, an intention to amend Section 9 of the Federal Trade Commission Act in this respect cannot be inferred.

An equal lack of any such indication is shown by the history of the enactment of present 28 USC 516 and 519. As to the provisions in Section 519, the committee reports not only show no intention that the recodification should amend the Commission's authority under Section 9, but also affirmatively show a determination to make no change in the existing law. H. Rept. 901, 89th Cong., 1st Sess. on H.R. 10104, which codified and revised Title 5 and enacted it into positive law.

Like any other recent codifications undertaken as part of the program of the Committee on the Judiciary of the House of Representatives to enact into law all 50 titles of United States Code, there are no substantive changes made by this bill enacting Title 5 into law. It is sometimes feared that mere changes in terminology and style will result in changes in substance or impair the precedent value of earlier judicial decisions and other interpretations. This fear might have some weight if this were the usual kind of amendatory legislation where it can be inferred that a change of language is intended to change substance. In a codification statute, however, the courts uphold the contrary presumption: the statute is intended to remain substantively unchanged. [p. 3.]

With respect to present 28 USC 519, the report states that it was derived from former 28 USC 507(b) and that "The words 'Except as otherwise authorized by law' are added to provide for existing and future exceptions . . ." (p. 187.)

[70] Supra note 69.

[71] Cf. F.T.C. v. Dean Foods Co., 384 U.S. 597 (1966). In that case, with respect to the issue whether the Commission had authority to seek a pendente lite injunction, the Supreme Court stated:

There is no explicit statutory authority for the Commission to appear in judicial review proceedings, but no one has contended it cannot appear in the courts of appeals to defend its orders. Nor has it ever been asserted that the Commission could not bring contempt actions in the appropriate court of appeals when the courts enforcement orders were violated, though it has no statutory authority in this respect. Such ancillary powers have always been treated as essential to the effective discharge of the Commission's responsibilities. [p. 607.]

In a recent subpoena enforcement suit before the United States District Court for the Northern District of Georgia, Civil Actions 12,430, 12,431, 12,432, in a decision dated April 2, 1969, the court, although the issue had not been raised, went out of its way to state:

Unlike other orders a subpoena issued by the Commission need not be enforced by first applying to the Attorney General. F.T.C. v. Continental Can Co., 267 F. Supp. 713 (S.D.N.Y. 1967). Contra, F.T.C. v. Guignon, 261 F. Supp. 215 (E.D.Mo. 1966), aff'd, 390 F.2d 323 (8th Cir. 1968).

[72] Letter by Roosevelt to Humphrey, July 25, 1933.

[73] 272 U.S. 52 (1926).

[74] Humphrey's Executor v. United States, 295 U.S. 602, 625–26 (1935).

[75] Id. at 629.

[76] Id. at 607.

[77] Williams v. United States, 289 U.S. 553 (1933). See also, Lusk v. United States, 173 Ct. Cl. 291 and cases cited therein; Wiener v. United States, 357 U.S. 349 (1958).

[78] For example, the quasi-judicial authority conferred upon the Secretary of Agriculture by the Packers and Stockyards Act.

ANNIVERSARY OF THE INDEPENDENCE OF THE ISLAMIC REPUBLIC OF MAURITANIA

Mr. HARTKE. Mr. President, on November 28, the Islamic Republic of Mauritania celebrates the 13th anniversary of its independence. I think it would be proper for us to offer our congratulations to the Mauritanian people on this day and send them the best wishes of this body and the American people.

Situated at the Atlantic Ocean edge of the drought-stricken Sahelian region of Africa, Mauritania has struggled mightily to overcome the devastating effect of the dryness that has denied it the ability to feed its population. Mauritania has coordinated very effectively the international drought-relief effort in which the United States has played a significant role. Our country has contributed over 40 percent of the grain donated to Mauritania by friendly countries and international organizations this year. The U.S. Air Force also lent a hand by air-lifting food to remote parts of the country. The Mauritanians have many times expressed their gratitude for this American assistance. We will have to be prepared to carry on this important role since the rains have failed again this fall, and the Mauritanian Government expects that it will have to provide food to a large majority of its population in the months to come.

Despite the extraordinary burden of the drought in Mauritania, the country, led by President Moktar Ould Daddah,

is working hard to develop its economy and it is actively seeking U.S. private investment to help in this task. The Mauritanian Ambassador to the United States, Ahmedou Abdallah, is meeting regularly with American businessmen to tell them about the opportunities in his country.

Beyond its efforts at economic development, Mauritania is playing an active international political role which it sees natural for itself—that of link and mediator between the Arab-Berber north of Africa and black Africa south of the Sahara. President Ould Daddah's leadership in Africa was recognized when he was elected President of the Organization of African Unity in 1971. In further recognition of its active role, Mauritania was elected to membership in the United Nations Security Council starting in January 1974.

To sum up, Mr. President, Mauritania is a hard-working country, beset by tremendous problems, but determined to success. It is grateful for U.S. help in the past and looks forward to further cooperation with this country in the future. I think Americans can admire the serious-minded and dedicated attitude of Mauritania and, while congratulating it on its national day, we should sincerely extend our best wishes for the future.

NOISE POLLUTION RULE FOR THE SST

Mr. TUNNEY. Mr. President, one of the saddest stories in the long fight to reduce aircraft noise is the years of delay by the Federal Aviation Administration in promulgating a noise rule for the SST. It now appears that FAA inaction may be abetted by a "project report" prepared by some staff of the Environmental Protection Agency—but not cleared or approved by the Office of Noise Abatement and Control—which describes an aircraft noise certification rule for supersonic civil aircraft.

Today, the Environmental Defense Fund has notified the FAA of its intention to file suit unless the requirements of section 611 of the Federal Aviation Act, as amended by the Noise Control Act of 1972, are met within 60 days. That letter spells out, in detail, why such a suit may now be the only alternative.

More than 3 years ago, EDF asked the FAA to set a noise standard for SST's equal to the noise criteria of FAR part 36 for subsonic aircraft.

Nearly everyone who commented on this proposal, including the Airport Operators Council International, strongly endorsed the EDF position.

In October 1972, my distinguished colleague, Senator CRANSTON, introduced an amendment to the Noise Control Act of 1972 which would have made the FAR part 36 standard for subsonic aircraft applicable to SST's. Mr. President, that amendment carried the Senate by an overwhelming vote of 62–17.

And yet the FAA has continued to do nothing on this issue. The EDF letter of intention to file suit contends that the effect of this delay is to undermine the FAA's very ability to protect the public health and welfare from excessive noise, because of continuing investment in a design for the Anglo-French Concorde SST which is evidently incapable of meeting the standard which the FAA has determined is necessary to protect the public from excessive noise from new subsonic jets. EDF argues that unless the FAA acts now, further investment in the SST will only increase the likelihood of sacrificing the public health and welfare to economic expediency.

Mr. President, I also received this afternoon, a second document which leads me to believe that EDF is correct on this. This second document is an unofficial draft of an SST noise certification rule which has been prepared and circulated by certain personnel within the Environmental Protection Agency, but which does not carry the approval of the Director of EPA's Office of Noise Abatement and Control. This draft was sent out to about 200 persons today, including the manufacturers of the Concorde.

Mr. President, this unofficial draft is a disaster. It would allow the Concorde and the Russian TU–144 to make noise on takeoff of up to 117 EPNdB. This will be heard by airport neighbors as roughly twice as loud as the level the Concorde would be allowed to produce under its weight class were it to meet FAA part 36. This is manifestly defiant of the will of this body as expressed last year in the vote on Senator CRANSTON's amendment. This is squarely contrary to the recommendations of nearly everyone who commented on the EDF petition in 1970. It will come as a shock to all of the people who live around our major international airports, who are being asked to sacrifice their health and welfare to the unwillingness of the Concorde manufacturer to make necessary design changes.

The unlimited U.S. certification of the Concorde—perhaps the most fuel-gulping and uneconomic aircraft yet developed—in this time of energy crisis is unthinkable. Moreover, from the point of view of the protection of the environment, such certification would provide no possible benefit to the people of this country. It would merely further add to the noise pollution.

Mr. President, I ask unanimous consent to print the two documents to which I have referred in the RECORD.

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

RECOMMENDATIONS FROM "PROJECT REPORT: AIRCRAFT NOISE CERTIFICATION RULE FOR SUPERSONIC CIVIL AIRCRAFT"

(By William C. Sperry)

The recommended supersonic aircraft noise certification rule should contain the following elements:

1. All supersonic aircraft (except the Concorde and TU–144) applying for type certification after the publication date of the proposed rule should meet the noise criteria of FAR Part 36 for subsonic aircraft (effective date of 1 December 1969).

2. Future developments in source noise control and operational procedures should be reflected in modifications to the rule as soon as technology permits. Current indications are that the design goals for the 1980–85 time period could be as low as 5 EPNdB below the current FAR 36 limitation.

3. Aircraft having applied for type certification, or having made their first flight (Concorde and TU–144) prior to the publication date of the rule should be exempted from meeting the FAR 36 criteria noise levels for subsonic aircraft. The allowable noise levels for these aircraft should reflect the maximum use of available technology to produce as low a noise level as feasible. (Noise reduction devices and operating procedures are expected to be included with production aircraft.)

4. Concorde and TU–144 certification should be contingent upon meeting the noise levels at the FAR 36 measuring points listed in Table II.

TABLE II

FAR 36 measurement points	Concorde and TU–144 criteria levels in EPNdB	Subsonic aircraft comparison levels in EPNdB	
		707	DC–8
Sideline	115	107.5	103
Takeoff	117	114.0	117
Approach	115	119.5	117

5. The criteria levels of Table II may be exceeded at either the sideline or takeoff measuring points if the exceedance is completely offset at the other (sideline or takeoff) measuring point.

6. Appendixes A and B of FAR Part 36 should be applicable to all SST aircraft. Appendix C should be applicable for new type designs and be applicable to the Concorde and TU–144 except for the noise level criteria.

Comparing the criteria levels of Table II with Figure 10, it is seen that there is an allowance for reasonable growth. Any growth beyond the initial allowance must be accomplished on the basis of a one to one EPNdB tradeoff reduction. Also, comparing the criteria levels with the typical subsonic aircraft levels listed in Table II (from Reference 5), it is seen that the values for the SST aircraft are comparable except for the sideline point. However, for most airports, the sideline levels are not as important as those for takeoff and approach.

ENVIRONMENTAL DEFENSE FUND,
Washington, D.C.

Re SST Aircraft Noise Regulation.

Hon. ALEXANDER P. BUTTERFIELD,
Administrator, Federal Aviation Administration, Washington, D.C.

DEAR MR. BUTTERFIELD: As you know, Sec. 611 of the Federal Aviation Act, 49 U.S.C. Sec. 1431, as amended by Sec. 7(b) of the Noise Control Act of 1972 (hereinafter "Sec. 611"), provides, *inter alia*, that:

"(b)(1) In order to afford present and future relief and protection to the public health and welfare from aircraft noise and sonic boom, the FAA, after consultation with the Secretary of Transportation and with EPA . . . shall prescribe and amend such regulations as the FAA may find necessary to provide for the control and abatement of aircraft noise and sonic boom, including the application of such standards and regulations in the issuance, amendment, modification, suspension or revocation of any certificate authorized by this title. . . .

(2) The FAA shall not issue an original type certificate under section 603(a) of this Act for any aircraft for which substantial noise abatement can be achieved by prescribing standards and regulations in accordance with this section, unless he shall have prescribed standards and regulations in accordance with this section which apply to such aircraft and which protect the public from aircraft noise and sonic boom. . . ."

The mandatory language of Sec. 611 ("the FAA . . . shall prescribe," etc.) is carried over, with various modifications, from the

original version of Sec. 611 enacted in 1968, P.L. 90–411, 82 Stat. 395. Before the enactment of Sec. 611 in its original form, the House Committee on Interstate and Foreign Commerce explained that:

". . . the introduced bill merely *authorized* the establishment of standards, rules and regulations and their application in the certification process. The bill reported by the committee [and enacted] *requires* their establishment and application." H. Rep. No. 1463, 90th Congress, 2d Sess. p. 5. (Emphases in original.)

Likewise, the debates on this bill make abundantly clear that Sec. 611 was meant to impose affirmative duties on the FAA, and was not intended to give the FAA discretion to abdicate those duties through the device of a protracted failure to "find" that regulation of aircraft noise is "necessary." See 114 Cong. Rec. 16384–99 (House), 20915–31 (Senate), 90th Cong. 2d Sess. (1968).

Moreover, Sec. 611 plainly states that in fulfilling these affirmative duties, the FAA is to act in such a way as "to afford present and future relief and protection to the public health and welfare from aircraft noise and sonic boom."

Since enactment of Sec. 611 more than five years ago, the FAA has been less than diligent, to put it charitably, in carrying out this mandate. Nowhere is this more obvious than with respect to a noise regulation governing civilian supersonic transports ("SSTs").

On May 25, 1970, three and one-half years ago, the Environmental Defense Fund ("EDF") petitioned the FAA to propose and promulgate such a regulation. In this petition, EDF requested that the regulation be no less protective of the public health and welfare than Federal Air Regulation ("FAR") Part 36, 14 C.F.R. Part 36 (1969) which applies to new subsonic jets.

The FAA responded by issuing an Advance Notice of Proposed Rulemaking ("ANPRM"), which did not propose an SST noise regulation, but invited public comment on EDF's petition. 35 Fed Reg. 12555–56 (Aug. 4, 1970).

The comments received almost unanimously supported EDF's position that the noise regulation for SSTs should be no less stringent than that applicable to new subsonic jets under FAR Part 36. Comments to this effect were received from, among others, the American Transport Association, the Aviation Development Council, the Department of Marine and Aviation Transportation Administration of the City of New York, and the Airport Operators Council International. This last organization, which represents most of the airport operators in this country and abroad, commented that:

"Early establishment of SST certification noise levels along the lines stated before are necessary to insure that the public interest and the intent of Congress are preserved. Any delay in the rejection of a dual standard for subsonic and supersonic transport aircraft will, in our view, only exacerbate an already highly critical situation to the extent that the prototype construction is only acceptable if it is made clear that one of its primary functions is to insure acceptable noise levels for the production airplane. Equivocation on this subject, we believe, will be disastrous to the entire program."

Since the expiration of the comment period under this ANPRM, though, the FAA has done nothing. And the circumstances suggest that the reason that the FAA has done nothing is that it has made a conscious decision to delay indefinitely in proposing an airport noise regulation for SSTs. These circumstances further suggest that the FAA's purpose in so deciding may have been to minimize Congressional and public debate on the appropriate content of such a regulation, until events impair the FAA's capacity to exercise its authority, as Sec. 611 requires, "in order to afford present and future relief and protection to the public health and welfare from aircraft noise."

Specifically we are informed that on October 10, 1972, at a federal interagency meeting convened to discuss the Anglo-French Concorde SST, the FAA representative, Mr. R. P. Skully, announced that the FAA was in the final stages of preparing an SST noise regulation, and would propose it within a period of weeks. We understand that Mr. Skully noted at this meeting that there was a plain Congressional and public consensus against setting a standard any less protective of public health and welfare than FAR Part 36, but that there was also some doubt as to whether the Concorde, as currently designed, could meet that standard.

Three days later, on October 13, the Senate confirmed Mr. Skully's estimate of Congressional sentiment by voting 62–17 in favor of an amendment offered by Senator Alan Cranston of California that would have made FAR Part 36 applicable to SSTs. Debate on this amendment focused particularly on the Concorde. 118 Cong. Rec. S. 18000–02 (daily ed). The House never had an opportunity to vote on this amendment.

On November 9, 1972, your predecessor as Administrator, Mr. Shaffer, assured Senator Clifford P. Case of New Jersey that proposal of an SST noise regulation was "imminent." (See Exhibit "A," hereto.)

This "imminent" proposed regulation, however, has not been heard of since. Meanwhile, massive investment in the Concorde is taking place, which will create corresponding pressure to tailor the regulation to the present capabilities of the Concorde—instead of tailoring the Concorde to the demands of public health and welfare, as Sec. 611 requires. The result is likely to be substantial and lasting damage to the public health and welfare, and to the quality of the human environment.

Moreover, we are informed that the FAA is now in the process of type certifying the Concorde under Sec. 603(c) of the Federal Aviation Act, 49 U.S.C. Sec. 1423(a), thus encouraging the very investment which will impede meaningful exercise of the FAA's mandate under Sec. 611.

But under Sec. 611(b)(2), the FAA may not lawfully type certify the Concorde unless it has *first* promulgated an SST airport noise regulation, or made a negative determination under the same section that this class of aircraft is not one "for which substantial noise abatement can be achieved." The FAA's previous announcements that a rule would be "imminent[ly]" proposed, clearly establish that this class of aircraft does not fit the negative determination exception.

We hereby call your attention, under Sec. 12(b)(2) of the Noise Control Act of 1972, 42 U.S.C. Sec. 4911(b)(2), to the following violations of law in the course of action just described:

1. The FAA's decision to delay indefinitely in proposing an airport noise rule for SSTs, despite its previously announced readiness to do so, violates the command of Sec. 611 that the FAA "shall prescribe" regulations for the control and abatement of aircraft noise.

2. This decision, taken in the context of continuing investment in the Concorde which creates pressure for an ultimate relaxation of FAR Part 36 standards, violates the command Sec. 611 that regulations be prescribed that will "afford present and future relief and protection to the public health and welfare from aircraft noise."

3. This decision violates Sec. 102 of the National Environmental Policy Act, 42 U.S.C. Sec. 4332, which provides, *inter alia*, that:

"To the fullest extent possible . . . the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies of this chapter,"

which policies are stated, *inter alia*, in Secs. 101 and 102 of NEPA, 42 U.S.C. Secs. 4321 and 4332, and include "prevent[ion] or eliminat[ion of] damage to the environment"; fulfill[ment of] the responsibilities of each generation as trustee of the environment for succeeding generations"; "assur-[ance] for all Americans [of] safe, healthful, productive and esthetically and culturally pleasing surroundings"; and "attain[ment of] the widest range of beneficial uses of the environment without degradation. . ."

4. The FAA is violating Sec. 611 in proceeding with type certification of the Concorde until an applicable noise regulation has been promulgated.

5. Notwithstanding that the FAA's decision to delay indefinitely in proposing an aircraft noise rule for SSTs is *in itself* "major federal action significantly affecting the quality of the human environment" within the meaning of Sec. 102(2)(C) of NEPA, 42 U.S.C. Sec. 4332(2)(C), so as to require the FAA to prepare and circulate an environmental impact statement under that Section, and to "study, develop and describe appropriate alternatives" under Sec. 102(2)(D) of NEPA, 42 U.S.C. Sec. 4332(2)(D), the FAA has never prepared and circulated an impact statement on this decision under Sec. 102(2)(C) or studied, developed and described appropriate alternatives thereto within the meaning of Sec. 102(2)(D).

6. This decision to delay is a violation of the President's Executive Order No. 11514 (March 5, 1970), which requires, *inter alia*, (Sec. 1) that:

"Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals . . . ,"

And (Sec. 2(b)) that:

"The heads of Federal agencies shall . . . develop procedures to ensure the fullest practicable provision of *timely* public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall . . . provide the public with relevant information, including information on alternative courses of action. . . ." (Emphasis added.)

7. This decision constitutes "agency action unlawfully withheld or unreasonably delayed" within the meaning of the Administrative Procedure Act, 5 U.S.C. Sec. 706(1).

We trust that upon receipt of this notice under Sec. 12(b)(2) of the Noise Control Act, you will take prompt steps to bring the FAA into full compliance with its statutory mandate.

We look forward to hearing from you on this matter at your earliest convenience.

Sincerely yours,

JOHN F. HELLEGERS,
Washington Councel, Environmental Defense Fund, Washington, D.C.

H. MEADE ALCORN, Jr.,
Attorney for the National Organization to Insure a Sound-controlled Environment ("N.O.I.S.E.")

U.S. SENATE,
Washington, D.C., November 14, 1972.

Mr. JOHN F. HELLEGERS,
Washington Counsel, Environmental Defense Fund, Washington, D.C.

DEAR MR. HELLEGERS: As promised, I did get in touch with the Federal Aviation Administration with regard to its proposed noise standard for supersonic aircraft. Administrator Shaffer replied to me in a brief letter dated November 9. He stated as follows:

"In response to your request of 2 November 1972 please find enclosed a copy of our reply to the Environmental Defense Fund's letter of 19 October 1972. Further elabora-

tion on our proposed noise standard for supersonic aircraft is not considered necessary at this time since its publication is imminent."

Sincerely,

CLIFFORD P. CASE, *U.S. Senator.*

LET'S GIVE BUREAUCRATS CREDIT

Mr. PROXMIRE. Mr. President, those persons who man the Government agencies are an "easy target," as Elizabeth Drew recently pointed out in a WTOP editorial. I have aimed my barbs from time to time, also. But her major point—one I believe needs emphasis—is that Federal workers are dedicated. They are honest. They are, indeed, "a force for stability."

We owe Government workers—the professionals, the managers, and the clerical workers, as well—gratitude for doing their jobs under trying circumstances.

Mr. President, I ask unanimous consent that Elizabeth Drew's commentary be printed in the RECORD.

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

BUREAUCRACY

We have heard so much that is disturbing about the political uses to which our government has been put, that we might overlook a very important, and more hopeful, fact. The bureaucracy, that much maligned group, serves us very well. Despite the pressures, and temptations, that are put upon it, we have a remarkably, impressively, honest government. It is time to speak up for the federal government civil servants, to honor them, for we owe them a great deal. Right now, despite great strains, they are holding our government together.

The government bureaucracy is an easy target. It is too large, too slow, too saddled with rulebooks and regulations that keep things from happening, too protective of the status quo. But so is almost every other bureaucracy—in corporations, universities, news organizations. There is something in human nature that has an instinct for bureaucratization—for over-complication of what is to be done. Washington bureaucrats are not exceptional in this respect.

But they may be exceptional in another one. The idea of a professional government service is that it is to be protected from partisan pressures. The Nixon administration appears to have misunderstood this, as it misunderstood the roles of many institutions in a free, democratic society. Many of those who tried hard to protect the independence of the civil service have left the government. Many government workers are demoralized. Many of them fear that their reputations have been tarnished by recent events. But this should not be the case. Most government workers are there for idealistic reasons—they believe in what they do. And most of them resisted great pressures. They are a force for stability. They may be as honest a government bureaucracy as there is in the world.

We should honor them.

FRANCHISES—THE WAY TO FLY—OR WALK

Mr. HARTKE. Mr. President, I would like to bring to the attention of my colleagues another area of concern under my franchise bill. My bill, S. 2467, provides for the fair disclosure of information between participants to a franchise agreement.

The train of abuses in the area of franchises has barely begun to surface. Not only are the abuses felt among the participants, but the consumers of goods are equally subjected to the risk of show or no show. The risk, generally without exact measurement, can, I submit to my colleagues, be here measured by its outside boundaries. Therein will be seen the loss of services, investments, and savings to consumers, investors, stockholders, and businessmen.

Mr. President, I ask unanimous consent that a letter and its enclosures received by me be printed in the RECORD.

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

AMERICAN SOCIETY
OF TRAVEL AGENTS, INC.,
October 17, 1973.

Hon. VANCE HARTKE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HARTKE: A copy of your bill, S. 2467, recently introduced in the Senate, has come to our attention and we are anxious to let you know of our interest in the subject of franchising.

Enclosed for your information is a copy of a letter to Attorney General Louis Lefkowitz of New York State describing one instance of inaccurate claims by a travel industry franchiser, International Travel Masters of Philadelphia.

Please keep us informed of the progress of your legislation and how we may be of assistance to you in this effort.

Sincerely,

ARTHUR SCHIFF,
Staff Council.

AMERICAN SOCIETY
OF TRAVEL AGENTS, INC.,
June 18, 1973.

LOUIS J. LEFKOWITZ,
Attorney General, State of New York, New York, N.Y.

DEAR GENERAL LEFKOWITZ: As champion of the consumer and as a public official concerned with misleading advertising, I would like to call to your attention the enclosed article from the newspaper, Travel Weekly, dated June 8, 1973. The article reports on a recent meeting in New York in which the President of a Philadelphia travel company spoke to a group of prospective franchise purchasers about the prospect of success in the travel agent industry.

Included in the article are a series of claims regarding the industry which, if accurately reported, are extremely misleading, if not downright untrue. Among other statements the speaker is reported to have made are:

"Almost every travel agent in New York and Northern New Jersey is making $35,000 to $60,000 a year".

"The travel agency industry is a $38 billion industry".

These claims are simply not true.

Perhaps your office would deem it appropriate to investigate the circumstances of the meeting with a view toward disciplinary legal action if false and misleading claims were, in fact, made.

The American Society of Travel Agents is anxious to cooperate with your office in any and all efforts to insure that misleading and inaccurate claims about the industry do not result in business and personal disappointment and financial loss to the detriment of the individual, the travel agent industry and the general public.

Very truly yours,

ARTHUR SCHIFF, *Staff Counsel.*

FRANCHISOR PAINTS ROSY IMAGE FOR PROSPECTS: GOLDEN LIFE AS RETAILER PRICED AT $1,700

(By Bob Davis)

NEW YORK.—A rosy picture of one-man travel agencies selling large numbers of travel group charter tickets and an average of 15 cruises a month to walk-in customers is being painted for prospective franchisees by a Philadelphia firm, International Travelmasters.

At a recent New York meeting, William A. Nash, president of the new company, told an audience of 75 prospective purchasers that "almost every travel agent in New York and Northern New Jersey is making $35,000 to $60,000 a year."

Travelmasters offers to provide a training course to investors for $1,700 and grants exclusive rights to the name in a specified zip code area for $600. The investor can buy the rights to several zip codes at the same date.

Nash told his audience last week that the road to success as a travel agent could be found by concentrating on TGC and affinity charter sales as well as the walk-in cruise business, and by avoiding the whole matter of getting airline appointments and selling point-to-point tickets.

For those who insisted on providing such services, Nash offered a novel approach: "You can qualify for ASTA and get your travel benefits."

Another plum awaiting the Travelmasters franchisee, according to Nash, is free travel. For every 100 TGC sales including land packages, the investor gets a free TGC trip, and for every 20 passengers booked on the same sailing, a free cruise. He made no mention of who would operate the one-man agencies while the owners were traveling.

CLAIMS AFFILIATES

Travelmasters claims to have sold several franchises in the greater New York area. Nine franchisees are already said to be attending training sessions, which are under the direction of Paul Henze, a former American Airlines ticket agent and employe of O'Keefe Travel in Philadelphia and Leonhardt Travel in Jenkintown, Pa.

Henze and Loretta Lorenzon, described as a former American Airlines Flagship desk reservations agent in Washington, D.C., apparently represent the bulk of the "over 45 years combined experience in the travel industry" which Travelmasters boasts.

Nash identified himself last week as a professional salesman. He is listed in Travelmasters' promotional literature as president of the North American Land Development Corp., a firm which he described as selling "most of the land in the Poconos;" head of a company which produces banding machines for use in packaging, and chief executive of a holding company called Group 7.

Nash said that Travelmasters' entry into the travel franchise field was prompted by the creation of travel group charters last fall. He did not reveal whether he had any previous experience in the travel business.

International Travelmasters has its headquarters in Elkins Park, Pa., but was to have opened an office in New York City last weekend. The name of the firm is similar to that of other travel firms, including a Philadelphia wholesaler, but it apparently has no connection with any other company in the travel business.

In its presentation to the New York audience, Travelmasters described a potential travel agency operation which differed significantly from profiles developed in industry

research, such as the recent Louis Harris study conducted for Travel Weekly.

For example, the promotional material given to the audience indicated that the Travelmasters agent would do 30% of his business in cruising. The Harris survey showed that cruises accounted for 12% of overall agency sales.

* * * * *

Travelmasters franchisees are also projected to obtain 60% of their income from either TGC or affinity charter sales together with related ground arrangements, whereas respondents to the Harris survey indicated that only 18% of their volume came from group sales.

Nash said that Travelmasters offices initially would be selling TGC programs operated by others, but that the firm intended eventually to operate its own TGC programs. He emphasized that "we have no intention of permitting travel agents to sell Travelmasters packages now or at any time in the future."

He admitted that TGCs had been a failure to date but insisted that this only "has made obvious the need for a network of people to answer questions about them."

He said that appointed travel agents were not interested in selling TGCs. "If they can get commission on a $400 trip, they don't want commission on a $179 TGC.

"Travel agents are not marketing people," he said. "They've had it good for a long time."

When asked by an audience member why appointments should not be sought, Nash responded that if anyone was interested he could direct them to a New York agency with appointments which could be purchased for $40,000, but pointed out he was offering an entry into the travel business for only $1,700.

At the end of a two-and-one-half hour presentation, about 40 of the original group of 75 were left in the room, filling out application.

He said that applicants would be investigated and a selection board would advise those who had been found acceptable to Travelmasters.

The following descriptions of the travel business are only a few of the optimistic statements made by Travelmasters spokesmen to convince prospective franchisees:

"Almost every travel agent in New York and northern New Jersey is making $35,000 to $60,000 a year."

"The travel agency industry is a $38 billion industry."

"Travel group charters for the first time have turned air travel into mass transportation."

"A CAB official said recently there would not be enough travel agents by 1980 to handle the business."

LET US BE HONEST WITH THE AMERICAN CONSUMER

Mr. HUMPHREY. Mr. President, the October statistics on consumer price increases and changes in real earnings were released just a few days ago. I want to make some comments to put these numbers in perspective so they can be understood by the average American worker and his family.

I have spoken on the subject many times this year, arguing that Nixon's economic policies are seriously injuring consumers, and pleading with the President and his advisers to alter their economic policies so as to protect consumers and to avoid a recession. But, the President and his people have not put their energies into solving the Nation's economic problems. Instead they have chosen to go about the country preaching the Nixon economic gospel to the American consumers, their message being that the average American consumer "never had it so good." Well let us take a closer look and then come to our own conclusions.

Dr. Herbert Stein, for example, has been before my Consumer Economic Subcommittee several times this year to proselytize. On August 1 he said:

> Probably the key thing to say is that the real per capita incomes of the American people, after allowing for inflation, rose substantially from the 4th quarter of 1972 to the second quarter of 1973 and were much higher than ever before. This is the fundamental measure of the performance of the economic system. We are interested in the inflation problem almost entirely in relation to the behavior of real incomes. . . . We are interested in whether the inflation threatens to bring the growth of real incomes to an end.

I fully agree, the essential question is what is happening to the real purchasing power of the average American family. Have increases in income kept up with soaring prices? The answer, Mr. President, is that they have not.

The October statistics indicate that inflation has brought the growth of real income to an end. Consumers have known this for some time—they are often ahead of the statistics and economists—and I think it is misleading to try to convince them that the current inflation has not destroyed income gains. It does no good for the President and his advisors to try to deceive the American people with the claim that the rate of inflation is slowing down.

Let me now review what the October statistics show is actually happening to our consumers.

The consumer price index rose 0.8 percent in the month of October. This added inflation boosts consumer prices about 8 percent above their level at this time last year. And there are no signs that the current inflation is easing up. Looking at the quarterly increases in the consumer price index for 1973, we see that the first quarter increased about 9 percent, the second quarter about 6 percent, and the most recent quarter ending in October about 13 percent. On a monthly basis, the CPI has increased from an annual rate of about 4 percent in January of 1973 to an annual rate of about 8 percent in October. There is no truth to the administration's claims that the rate of inflation is slowing down. The statistics clearly support what every housewife already knows, prices on necessities have risen more rapidly this year than they have in well over a decade.

As we would expect, this increasing over-all rate of inflation is based on price increases among many of the items in the consumers market basket. Looking at the food component of the CPI. for example, we see that food purchased in grocery stores declined slightly in October, but that food purchased away from home rose about 2 percent, and food overall increased about one-half a percent in October. These statistics do not mean much to the consumer, however, because they have seen food prices rise 19 percent in the last year, and 29 percent during the last 3 months. In the recent past, the average family with a $10,000 a year income spent about $2,200 on food each year. This year, however, this family food spending has jumped to $2,640 an increase of $440.

The October statistics also reveal major price increases for most other items in the consumer's market basket. The service index rose over 1 percent last month, and had risen at a seasonally adjusted annual rate of about 11 percent over the last 3 months. The index for nonfood commodities rose 9 percent, about twice the usual increase for October.

As we might expect, price increases for gasoline and fuel oil accounted for much of the nonfood price increase, with gasoline prices up 3 percent in October and fuel oil and coal jumping about 6 percent last month. In the last year, gasoline and motor oil prices have increased 10 percent and fuel oil and coal have increased about 20 percent. And unless steps are taken to hold prices down, these increases are just the tip of the fuel price iceberg. The price trend is definitely up.

Housing is still another area where the recent inflation has had a severe impact on the consumer. Housing prices jumped over 1 percent in October alone. This was largely due to the higher mortgage costs that result from excessively high interest rates. Housing costs have increased about 6 percent in the last year. For our average family with a $10,000 a year annual income, these price increases mean that it must now pay at least $200 a year more for housing.

These price increases are by themselves sources of considerable concern. But as Dr. Stein has said, the real question is, What is happening to the real purchasing power of consumers as both prices and money incomes have increased?

The latest Bureau of Labor Statistics, data on real earnings in October 1973, unfortunately, show that the real purchasing power of the American worker and his family is actually declining.

Over the last year, real average weekly earnings have declined from $110 to $108. Real gross average weekly earnings decreased six-tenths of 1 percent from September to October. A rise in average hourly earnings was offset by a decrease in the work and increases in the consumer price index.

Other measures of the real purchasing power of consumers also show that inflation has taken its toll on the consumer pocketbook. Take-home pay, for example, showed a six-tenths drop in October, as well as a significant drop since October of 1972. Real spendable earnings declined 3.3 percent during the last year.

As one can readily see, even from this brief analysis of the October statistics, the real standard of living of most Americans was eroded in 1973. It does no good to try to deceive the American people. They never swallowed the administration's line that, "they never had it so good." They knew better.

They are a lot smarter about their own welfare than Government economists realize. And it may be that pretending the consumer is well off when he is not

will lead to additional economic problems. It certainly undermines the people's confidence in Government spokesmen and is no help in reducing the President's credibility problem.

It is time for the President and his spokesmen to level with the American consumer about the seriousness of the current inflation, its impact on consumer well-being, and the serious likelihood that present policies could lead to a recession in 1974.

FOREIGN RELATIONS COMMITTEE'S DRAFT RULES FOR CONSIDERATION OF AMBASSADORIAL NOMINATIONS

Mr. FULBRIGHT. Mr. President, earlier this year the attempt by the Committee on Foreign Relations to write a set of draft rules for its own guidance in the consideration of ambassadorial nominations was publicized. Immediately at issue was the question of political contributions by nominees but also involved was a growing concern over the years about the responsiveness of nominees, once confirmed, to requests by the committee for information or personal appearances, as well as their general qualifications to represent the United States abroad.

Before proceeding further with the draft rules, the committee decided to obtain the views of the Department of State and of the American Foreign Service Association on its efforts. I believe that their replies will be of interest to the Senate and ask unanimous consent that this correspondence be printed in the RECORD.

While the committee, for the moment, has laid aside further consideration of the draft rules, I believe that the attempt has already been fruitful and has clarified the committee's and the State Department's search for the qualities to be expected of ambassadorial nominees.

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

JUNE 29, 1973.

Hon. WILLIAM P. ROGERS,
Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: When you appeared before the Committee on Foreign Relations on April 30, 1973, you commented on the interest Committee Members have shown "in the question of campaign contributions and (ambassadorial) appointments." You said you thought this concern was "excellent" and that you had "talked with the President about it and he agrees . . . that this is a good time to be thinking" about this subject. This "is not just an evil that affects any particular Administration," you said. "It is a fact of life of our system," you continued, "and we ought to see what we can do to provide some proper safeguards." Your remarks were directed primarily to the problem of the relationship between political contributions and the nomination of noncareer ambassadors.

In recent weeks, the committee has discussed several ground rules which is believes might provide guidance to the Committee in acting on future nominations and be suggestive to the President as to the qualities the Committee will hereafter seek in ambassadorial nominees.

Because of your expressed interest, the Committee, which has not yet acted on these Draft Rules, invites your comment thereon and the comments of the White House if that seems appropriate to you. In addition, the Committee requests that you convey a copy of this letter to the Chairman of the Board of Directors of the American Foreign Service Association for the purpose of obtaining comments of the Association.

The Draft Rules are as follows:

Rule one: The Committee, in the absence of clearly demonstrated foreign policy competence or experience, will oppose confirmation of ambassadorial nominees whose *prima facie* qualification for appointment rests on monetary political contributions (direct or indirect) in excess of [$5,000–$10,000] in the last campaign year.

Furthermore, the Committee will, after January, 1975, oppose confirmation of noncareer ambassadorial nominees when the number of such nominees exceeds 15 percent of the total number of U.S. ambassadors accredited to foreign nations, or if the percentage of non-career to career ambassadors [exceeds 20 percent] in any geographic area such as Europe, Latin America, etc., is unbalanced.

Rule two: The Committee will scrutinize hereafter with special care all ambassadorial nominations, career and non-career, to ascertain the nominees'

1. commitment to respond to requests to appear and testify before duly constituted committees of the Senate;

2. recognition that in his dealings with a foreign country "a national commitment by the United States results only from affirmative action taken by the Executive and Legislative Branches of the United States Government by means of a treaty, statute, or concurrent resolution of both Houses of Congress specifically providing for such commitment";

3. understanding that "upon . . . request . . . (he) may express (personal) views and opinions, and make recommendations he considers appropriate, if the request of the committee or a member of the committee relates to a subject which is within the jurisdiction of that committee";

4. agreement to give the Committee a confidential statement of his or her financial holdings and to make suitable disposition of such holdings as the Committee or the Legal Adviser of the Department of State may believe necessary to avoid a potential conflict of interest;

5. knowledge of the history and current economic and political problems of the country to which the nominee is to be accredited;

6. familiarity with, or ability [quickly to acquire, a workable use of the language in general diplomatic use] [and willingness to acquire a workable use of the dominant language] in the country to which the nominee is to be accredited.

Rule three: The Committee will, after January, 1974, oppose conferring the rank of Ambassador upon any individual nominated to represent the United States at any international organ, agency, or conference, unless by law the position of the U.S. representative to such organ, agency, or conference, is designated as carrying the rank of Ambassador [or unless representatives from a majority of the Permanent Members of the Security Council having similar responsibilities are accorded the title of Ambassador].

If you have any questions regarding the rationale behind these draft rules, I suggest you have your offices speak with Mr. Carl Marcy, who has discussed these rules in a most unofficial way with various officers in the Department of State.

I look forward to having your early comments.

Sincerely yours,

J. W. FULBRIGHT,
Chairman.

DEPARTMENT OF STATE,
Washington, D.C., July 20, 1973.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of June 29, 1973 to Secretary Rogers. We are glad to have the opportunity to comment on the Committee's Draft Rules regarding the nomination of ambassadors.

Some of the points raised in the Draft Rules have extensive legal and policy implications which we will want to discuss with Secretary Rogers. Hence, I am writing to let you know that a substantive reply will be delayed until we can talk to him after he returns from East Asia.

Sincerely,

KENNETH RUSH,
Acting Secretary.

DEPARTMENT OF STATE,
Washington, D.C., September 21, 1973.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am responding to your letter of June 29, 1973, asking for comments on the question of campaign contributions and ambassadorial appointments.

The key factor in the choice of any ambassador is to find the appropriate person for the particular country at a given time. That person could be career or non-career. I believe that ambassadorial nominees normally should have knowledge of foreign affairs, and some experience in that field, whether in international business or banking in the teaching of foreign affairs, in international service, in other similar fields, or in the Foreign Service. If this experience has been limited, I believe it should be counterbalanced by marked achievement in the academic world, industry, the arts, or some other profession. Each nominee should be judged on three important points: ability, distinction, and experience. Campaign contributions should not be a positive factor in choosing a nominee. It is equally important that the fact of a campaign contribution and the size of such a contribution not be disqualifying in the case of an otherwise qualified individual.

I feel that formal percentage limitations on noncareer ambassadors are not needed, but as a matter of background information, over a period of at least the last 25 years, the percentage of non-career ambassadors has remained rather consistently near the level of 30 percent. I agree that it is preferable, if possible, to keep the ratio of career to noncareer ambassadors in the various regions from becoming "unbalanced," and we will endeavor to distribute the non-career ambassadors more than has been the case in the past. However, I think we should anticipate that there will continue to be a concentration of non-career ambassadors at certain posts.

I agree that ambassadors should respond to requests to appear and testify before duly constituted committees of the Congress when asked. Sometimes they may feel it necessary to request to be heard in Executive Session. This has been our consistent policy.

This Administration firmly believes that close cooperation between the Executive and Legislative Branches is essential and desirable in the field of foreign affairs. However, as we have stated on other occasions we do feel that there are at least some kinds of actions within the scope of the definition of national commitments contained in S. Res. 85 of June 25, 1969 that the President alone has constitutional authority to enter into. Therefore, in that sense we have not accepted and cannot now accept the assertion that the President alone has no authority to undertake any national commitments. We would, of course, see no difficulty in the Committee's ascertaining the views of nomi-

nees on the question of close cooperation between the Congress and the Executive Branch in undertaking commitments for this nation.

I trust that the Committee recognizes that a request for an ambassador to express personal views and opinions, and to make recommendations which in some instances might differ from the official policy he is called on to administer, could place that individual in a very difficult position. I trust you will continue to allow each individual the right to determine the extent to which he wishes to discuss his personal views on a given subject.

I agree that ambassadors should provide confidential statements of financial holdings, and they have been doing so for some time in accordance with State Department regulations and other applicable provisions of law. I suggest that the purpose of these statements is not to avoid a "potential conflict of interest" but rather to avoid a "substantial conflict of interest or the appearance of such a conflict."

I agree that ambassadors should become acquainted with the history and current economic and political problems of countries to which they are appointed. Familiarity with the language in general diplomatic use in the country to which the ambassador is accredited is also highly desirable. The need for a workable knowledge of the dominant language, however, is questionable and may even be unnecessarily time-consuming in countries where a non-local language is widely spoken or where there may be several local languages. I think it is important to keep in mind that lack of familiarity with the local language has not hindered many ambassadors, both career and non-career, from doing exemplary jobs for their country.

As to the final point suggested by your Committee, I believe a distinction should be made between nominations to positions as representative to an international organization and as chief delegate to an international conference. As far as international organizations are concerned, it would appear unnecessary to require that each position carrying the rank of ambassador be so designated by law, since the Senate under existing arrangements has the power to give or to withhold its advice and consent to each nomination in the light of the rank to be conferred on the officer concerned.

As an example, as regards the United Nations, I believe the Congress was wise not to specify in the UN Participation Act how many persons in addition to our Permanent Representative should have the rank of ambassador. In varying situations, a greater or a lesser number may be required. Writing into law what the specific title, rank, and status of each position is to be would entail a degree of rigidity disadvantageous both to the Executive Branch and to the Congress.

Linking our ambassadorial representation to that of other governments would place foreign nations in a position to determine something that should be determined by the interests of the United States itself. In some cases, the United States may find it advantageous to follow the practice of a majority of the Permanent Members of the Security Council; in others, our interests may dictate otherwise. I believe the present system, which requires each case to be considered on its merits, is preferable to a rule that would tend to prejudge future cases.

In respect to conferences, I believe it would not be practical to rely either on legislation or on the practice of four other governments. Legislation could be impractical or unduly restrictive because participation in international conferences often has to be decided in a time frame that would not permit the passage of relevant legislation by Congress even where the justification for the use of the ambassadorial title is evident. Here, too, I would prefer that our decisions about the rank of our chief delegate not depend upon what other Security Council members may decide—particularly since we may want to make our decision before they have made theirs—but rather be dependent upon our own specific needs at the time.

I also call your attention to the fact that the President has authority under 22 USC 901 (c), as amended by Section 107 of Public Law 92-352, to confer the rank of ambassador "in connection with special missions for the President of an essentially limited and temporary nature of not exceeding six months."

We have sent a copy of your letter to the American Foreign Service Association as you requested and understand that the Association's comments will be sent directly to you.

Kindest regards.

Sincerely,

KENNETH RUSH,
Acting Secretary.

AMERICAN FOREIGN SERVICE ASSOCIATION,
Washington, D.C., August 28, 1973.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: For half a century, the American Foreign Service Association has been dedicated to increasing the professional caliber of American diplomacy. As the official representative of the 12,000 men and women of the Foreign Service, we appreciate the opportunity to comment on your letter of June 29 to Secretary Rogers regarding ambassadorial appointments.

AFSA strongly concurs, Mr. Chairman, in the desirability of establishing ground rules for use by the Senate Foreign Relations Committee in evaluating ambassadorial nominations. We are in full agreement with the objectives and standards set forth in your letter.

The Association is particularly pleased with efforts by the Committee to preclude a long-standing abuse which has been perpetrated by both political parties—the auctioning of ambassadorships. AFSA has always maintained the principle that the United States deserves to be represented abroad by the best qualified ambassadors. The selection of any ambassador, career or noncareer, should be based primarily on competence and experience in foreign affairs. We believe the application of exacting standards to all appointments would help to ensure that both career and noncareer ambassadors are of the highest caliber.

The application of such standards would result in career officers from AID, USIA and State being found the best qualified individuals in the vast majority of cases. We recognize, however, based on our past experience, that the appointment of distinguished individuals from outside the career service in some cases would be entirely justified. Many of these individuals have made extraordinary contributions to American diplomacy. However, the experience of our membership has been that, with a very few exceptions, this country has not been well served by those ambassadors whose sole or primary qualification for that office has been their level of contributions to the party in power. This Association, therefore, strongly supports efforts by the Senate Foreign Relations Committee to preclude ambassadorial appointments based upon political contributions and contacts, personal fortunes, or other questionable criteria.

We have the following comments on the specific guidelines proposed by the Committee:

Rule one, first paragraph: As noted above, we support entirely efforts to preclude ambassadorial appointments based largely on monetary contributions, irrespective of the amount. We recognize, however, that some concrete maximum sum may be necessary and, if so, the amount should be as low as possible. We would suggest a minor modification in the proposed language along the following lines:

The Committee will approve for confirmation only those ambassadorial nominees who possess demonstrated competence or experience in foreign affairs. The Committee will oppose confirmation of any nominee whose *prima facie* qualifications for appointment rests on monetary political contributions, and shall subject to special scrutiny any nominee whose contributions (direct or indirect) to the most recent presidential campaign exceed $5,000.

Rule one, second paragraph: AFSA strongly supports the intent of this paragraph, though we note the difficulties inherent in hard and fast percentages. To our knowledge, in no other professional foreign service does the percentage of noncareer ambassadors approach even ten percent. Certainly, fifteen percent should be sufficient to permit the Executive to nominate, from time to time, distinguished noncareer officers as ambassadors. Similarly, we concur with the Committee that there is no valid reason why, in any geographic area, the percentage of noncareer ambassadors should be substantially higher than in other geographic areas. The past practice of assigning a highly disproportionate number of noncareer officers as ambassadors to Western Europe has not only distorted career opportunities in the Service, but has not been helpful to our relations with our European allies. In this regard, we wish to point out that lack of personal fortune should not be considered a factor. The United States should have the professionally best qualified ambassadors in London, Paris, Tokyo, etc., even if they do not happen to be personally wealthy.

Rule two: AFSA supports the purposes of the six points under Rule two. We recognize that the Senate has constitutional prerogatives which imply obligations to the Senate on the part of any officer of the government, including ambassadors, in addition to his or her obligations to the President. Nonetheless, ambassadors abroad are the representatives of the President. Their duty is to execute foreign policy in keeping with the decisions of duly elected officials. Any requirements which forced an ambassador to choose between his loyalty to the President and his loyalty to the will of Congress would place the individual in an untenable position. In our view, ambassadors and career officials should not be drawn into the inevitable constitutional struggles between the Executive branch and the Congress concerning their respective foreign policy roles, and, as officers of the Executive branch, they should carry out instructions in keeping with whatever decisions result from the interactions between the two (or three) branches of the government.

We have the following comments on the specific points in rule two:

Paragraph one: AFSA is confident that all career officers understand the need to appear and testify before the Committee upon request. The obligation to testify on certain sensitive security matters, however, raises constitutional issues which go beyond AFSA's competence to address.

Paragraph two: This paragraph raises similarly difficult constitutional issues.

Paragraph three: We understand that this paragraph incorporates language which is already the law of the land.

Paragraph four: We strongly concur with the provisions of this paragraph. We would suggest, however, in keeping with the purpose of rule one that the following be added: and to provide the Committee with a list of all political contributions made by the nominee and his or her immediate family during the five years previous to his or her nomination;

Paragraph five: AFSA supports the purpose of this paragraph. While we believe relevant experience and proven aptitude in foreign affairs should be the predominant considerations, a full knowledge of the country to which an ambassador is being assigned is essential. We would suggest, however, several modifications to broaden the topics about which a nominee should be knowledgeable, and to make clear that a superficial knowledge—which could be acquired quickly—is not sufficient:

5. thorough understanding of the history, culture, international relations and current political, economic and social problems of the country to which the nominee is to be accredited;

Paragraph six: We strongly agree with the Committee on the desirability of emphasizing foreign languages in assessing the qualifications of any ambassadorial nominee, whether a career or noncareer officer. However, the issue is a bit more complex than the Committee's proposal would indicate. In the first place, the so-called "hard languages" (such as Japanese, Chinese and Arabic) are extraordinarily difficult to learn, particularly at the age of most ambassadorial nominees. The current exacting language requirements imposed on junior and middle-level officers in the Foreign Services of State and USIA, and the ambitious training programs in all three Agencies should, over time, insure that there is a sufficient pool of officers trained in these languages from which the President can make his nominations. At present, however, this is not the case, and the rule proposed by the Committee might thus preclude otherwise justifiable nominations. Moreover, in a few countries, for the ambassador to learn one of the dominant local languages, but not others, would give the impression of taking sides in ethnic conflicts within the host country. To avoid these problems, and place even greater emphasis on foreign languages as a qualification to hold the position of Ambassador, we would suggest the following modification:

6. Either:

(1) A proven working knowledge of the language of the country to which the nominee is to be accredited, *or*

(2) A proven working knowledge of the language in general diplomatic use in the country of accreditation, and the willingness and ability to acquire a workable use of the dominant language of the country to which the nominee is to be accredited, provided that the acquisition of such knowledge is practicable and desirable.

We recognize that even this modification may not cover every contingency (e.g., Mongolia, where not only the indigenous language but also the languages in diplomatic use are "hard" languages), but, as a guideline, we believe that the wording we have proposed would suffice for almost all circumstances.

Rule three: We agree with the purpose of this rule. However, the wording of the final bracketed clause appears to be unduly restrictive. We would suggest the following alternative language: or unless a majority of the principal representatives of member or participating governments bearing similar responsibilities are accorded the title of Ambassador.

In closing, let me repeat how much we, as a professional association, appreciate this effort on the Committee's part to improve the professional caliber of American ambassadors abroad and to preclude the selling of ambassadorships. I have enclosed for your information a letter which the Association has sent to Secretary Rogers on this subject.

Sincerely yours,

THOMAS D. BOYATT,
Chairman, Board of Directors.

AMERICAN FOREIGN SERVICE ASSOCIATION,
Washington, D.C., October 24, 1973.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to you on behalf of the American Foreign Service Association to express our deep concern about the testimony presented to the Committee during the confirmation hearing of Mr. Kingdon Gould to be U.S. Ambassador to The Netherlands. Your statement in the Congressional Record of October 1, 1973, that Mr. Gould appears to have been less than candid in failing to disclose to the Committee the full mount of his family's political contributions and reports of the subsequent meeting between Senator Pell and Mr. Gould are most disturbing.

This situation underlines the urgent need for the Senate Foreign Relations Committee promptly to establish and apply guidelines to be used in evaluating ambassadorial nominations. As I indicated in my response to your letter of June 29, the Association is in full agreement with the objectives and standards proposed by the Committee. We share the Committee's concern that ambassadorial appointments be made only to the most highly qualified individuals with demonstrated excellence, and not on the basis of political contribution or personal wealth. We further believe that the firm and consistent application of guidelines, such as those we have discussed, would prevent incidents of the kind you noted in your October 1 insertion into the record.

I would appreciate, Mr. Chairman, the opportunity to call upon you to discuss this important matter which is so vital to the Association's commitment to protect the career principle.

Thank you for your consideration in the above.

Sincerely yours,

THOMAS D. BOYATT,
Chairman, Board of Directors.

AMERICAN FOREIGN SERVICE ASSOCIATION,
Washington, D.C., August 28, 1973.

Hon. WILLIAM P. ROGERS,
Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: Senator Fulbright, in his letter to you of June 29, 1973, requested that you provide the American Foreign Service Association with a copy of his letter in order to obtain the views of AFSA on the Committee's proposed ground rules for assessing ambassadorial nominees. We have replied directly to the Chairman and I am enclosing for your information a copy of our comments to the Committee.

As you will see from our reply, AFSA strongly supports the general objectives which the Committee seeks to achieve through its proposed guidelines. We believe application of the Committee's guidelines, appropriately modified, will improve the caliber of American representation abroad. Since the Committee's role is limited to approving or disapproving the nominees submitted by the President, however, the primary responsibility for assuring that the United States is represented abroad only by the best qualified ambassadors will still rest largely with the Executive Branch. We urge you, therefore, Mr. Secretary, to take the lead in a parallel effort to the Committee to upgrade the caliber of American ambassadors.

In that context, we suggest that the following considerations be taken into account:

(1) This country has benefited greatly from the service of distinguished Americans such as David Bruce, Henry Cabot Lodge, Averell W. Harriman, and many others as American ambassadors. But in selecting potential nominees from outside the career service, great care should be taken to assure that only those best qualified for the position are given consideration. Political connections and personal fortune are poor substitutes for professional competence.

(2) In nominating career officers, the same principle should apply. Ambassadorships should not be granted as a reward for diligent service to a particular position or function, but should be based solely on an assessment that the officer selected is the best individual available to serve in a particular post. In this regard, few officers who enter the Service laterally into the senior ranks because of political or personal connections qualify as bona fide career professionals.

(3) If the Senate's proposed guidelines are adopted, the percentage of all ambassadorships held by career officials will increase substantially. The Administration should use this opportunity to give greater consideration to the selection of ambassadors from among senior career officials of AID and USIA. The senior ranks of these two agencies contain a number of highly qualified, dedicated career professionals who would make outstanding ambassadors. Implementation of the new guidelines should provide an excellent opportunity to utilize their expertise.

(4) Finally, we urge the Administration to give careful consideration to those senior officers qualified to serve as ambassadors who are members of minority groups, or women so that our representation abroad will reflect the diversity of America's pluralistic society. We also suggest that in filling ambassadorial positions with individuals from outside the career service, special attention be given to seeking out and nominating qualified members of minority groups and women.

Sincerely,

THOMAS D. BOYATT,
Chairman.

NOVEMBER 19, 1973.

Mr. THOMAS D. BOYATT,
Chairman, Board of Directors, American Foreign Service Association, Washington, D.C.

DEAR MR. BOYATT: Thank you for your letter of October 24, 1973, written on behalf of the American Foreign Service Association concerning issues arising out of the confirmation hearing with Ambassador Kingdon Gould, and the draft guidelines on the Committee procedure for handling nominations.

The Committee has not formally adopted these guidelines, as you no doubt know. The Committee, however, as a matter of fairly consistent practice raises the questions set forth in the guidelines with each nominee at the confirmation hearings, so that a record is made of political contributions and of the nominee's commitment to the statements set forth in the proposed Rule 2.

In addition, I call your attention to Section 6 of the enclosed copy of the Department of State Appropriations Authorization Act of 1973 which I believe goes far in meeting the objectives of the American Foreign Service Association.

Regrettable as the Gould affair was, I believe that this is as far as the Committee is prepared to move at this time.

The Committee appreciates your interest in this matter.

Sincerely yours,

J. W. FULBRIGHT,
Chairman.

RETIREMENT OF CARL M. MARCY

Mr. MUSKIE. Mr. President, Carl M. Marcy, who has been chief of staff of the

Foreign Relations Committee for 18 years, has announced his retirement from that position effective December 30.

I have been a member of the committee since 1971, and I have observed over the past 3 years the qualities of effective management, leadership on policy matters, hard work, fairness, and good judgment which have characterized Carl Marcy's long tenure with the committee. His outstanding reputation in the Congress is well deserved, and it is a great disappointment to us all that we should lose him at this time. I can only wish him the best of luck as he pursues his new career as a private consultant in Washington, and express the hope of those of us who have worked with him in the Senate that we will see him again and often.

Carl will be succeeded by Pat M. Holt, who brings to this position over 20 years of experience on the committee staff as a specialist on Latin American affairs. I have worked also with Pat, and I know he will do an excellent job for the committee. I wish him the very best in his work.

REMEDIES TO THE ENERGY CRISIS

Mr. GRAVEL. Mr. President, the United States, the greatest industrial Nation in history, is facing the most serious challenge to its economic and productive stability since the depression years of the early 1930's. The energy crisis facing this country today, and which projections indicate will become more severe, will undoubtedly cause much personal discomfort and economic dislocation to the American people. And my State, Alaska, perhaps more than others, will feel the effects of the crisis because of its harsher climate.

But Alaska and the other 49 States can meet the challenge and minimize the impact of the crisis if we recognize the problem for what it is—a long-term shortage of energy resources. In the short term we must deal with the crisis by constraining demand. But this is obviously not a long-term solution. We must develop a plan now to provide for our long-term energy requirements.

Let me say that I fully support most of the administration's programs for curtailing demand as a short-term solution. The lowering of temperatures and driving speeds, the lessening of air service and display lighting, and the banning of Sunday gasoline sales can all contribute toward eliminating the shortfall in energy products we would otherwise experience. While these may not be easy steps for all to accept because they will cause some inconvenience and perhaps increase the number of unemployed, they are necessary steps to insure that home heating and other fuels are available to meet priority needs.

However, two other steps have been discussed frequently, neither of which I could support—a ban on Sunday driving and heavy taxes to reduce consumption. I believe that pleasure driving on weekends must be limited, but a total ban on driving is unthinkable in Alaska. The distances people must travel to attend church and for other necessary travel forecloses a total ban being a viable alternative. Last year the real income of wage earners declined 2 percent because of inflation. The Government should not further aggravate this problem by imposing a hefty price increase in energy products through taxation, the proceeds of which would in no way be used to increase energy supplies.

There are two other possibilities of which I am not fond, but which may become necessary—rationing and relaxing environmental restrictions. Even under a well-developed plan, rationing is inequitable to some and cumbersome to all. I sincerely hope that we do not have to resort to rationing. Relaxing environmental restrictions would be a serious setback in our efforts to improve our quality of life. But again, some of our policies may have to be reevaluated in light of our current energy dilemma.

The greatest potential for an increase in energy supplies in the short run lies in the deregulation of natural gas. Production has been severely constrained by abnormally low prices. Government interference has made it impossible for individuals to earn a profit on new investments in gas exploration and development; and as a result, expenditures in this area have been minimal and inadequate. Deregulation of prices could have an almost immediate impact on our supplies of natural gas.

But citizen sacrifices are not long-term answers. We must increase supplies so we can return to our normal level of energy consumption. If we continue at today's rates, our energy demand will grow about three times as fast as our ability to produce energy domestically. If we are to maintain our independence and self sufficiency, we must increase energy production significantly.

The President has announced a policy of self sufficiency by 1980. This is certainly a desirable goal, and one that I believe we can attain. But the President's policy stops with the announcement of the objective—he has not explained how we would get to a point of energy independence.

This is like announcing a desire to send a man to the Moon and then not funding any program to get him there. A resolve is not enough. We must also have a plan and a funded program.

I propose that we establish an independent research and development administration funded by a trust fund to finance an extensive program of investigating and developing the potential of alternative fuels, studying more efficient methods of energy collection and conversion, and financing demonstration projects to test the commercial feasibility of new technologies.

To attain self-sufficiency, we must commit much more than the $10 billion suggested by the President and the $20 billion suggested by others. Overcoming the energy gap should be worth at least as much as putting a man in space, and we should be willing to spend that much and more. While we are talking about large sums of money that must come from taxes, the rather large expenditures must be viewed within the context of the size of the problem they are combating. Even a 10-year, projected funding level of an average of $10 billion a year, for a total of $100 billion, may turn out to be less than the loss in production capacity of GNP in 1 year alone as a result of the energy shortage.

This money would then be used to finance research and demonstration projects directed toward increasing our domestic energy supply. The funds could be raised by a minimum tax on energy supplies at the source. The funds would go into a trust fund, to be used for energy research and development only. This earmarking of funds for energy research would insure that the moneys are used only to develop the technology to insure adequate domestic supplies and to insure there are adequate funds to carry out the long-term projects necessary to prove technology to the stage of commercial feasibility.

Research subjects would include both conventional and unconventional fuels. Conventional fuel technology to be studied could include coal gasification and liquification, tar sands and oil shale production, and offshore oil development. Unconventional fuel research should include solar, geothermal, tidal, and wind energy. These virtually unlimited sources of energy are particularly attractive sources of power, and their development would diminish our dependence on our nonrenewable sources whose production capacity is decreasing.

As chairman of the Finance Committee's Subcommittee on Energy, which has jurisdiction over establishing trust funds, I convened hearings to discuss this and other matters. The hearings began the day before yesterday with Governor Love testifying and continued yesterday and today. I am in the process of drafting a bill to establish a trust fund and will introduce it in December.

Thus we have both long and shortrun problems with the energy crisis. The President has responded to the shortrun problem by constraining demand, which is about all that can be done immediately. But we cannot live forever with 50 mile-per-hour speed limits, inadequate supplies of home heating oil, and high unemployment. In the long run, we must increase supplies. And unless specific action is taken, our domestic energy supplies will decrease rather than increase, and we will still be dependent on foreign suppliers.

The longrun solution is the trust fund. We can have Project Independence by 1980; we can have a stable supply of the energy required to heat our homes, run our cars, and power our factories.

NIXON ENERGY PROGRAM INADEQUATE

Mr. HUMPHREY. Mr. President, the continued "soft soaping" of the American people on the seriousness of the energy crisis by President Nixon is a real disservice to all of us.

Apparently he is not listening to his advisers who are calling for much tougher measures than the President appears willing to take. If he is listening, he is rejecting their advice.

As Hobart Rowan pointed out in his

column this morning in the Washington Post—

The nation is being ill-served by half-baked measures which not only will not solve the problem, but doubtless will make it worse.

The administration's program to deal with the energy crisis is obviously inadequate. The President, himself, admitted in his address to the Nation on Sunday evening that the measures he proposed will, at best, reduce fuel consumption by only 10 percent, while the shortage will be about 17 percent.

Failing to immediately take the steps that are required to deal with the energy crisis will only aggravate an already serious problem. The President's energy program is characterized by one word "delay." By putting off urgently needed action, the President is playing "Russian roulette" with the American economy. This is a very dangerous game to be playing with the jobs, income, and production of America. I urge the President to begin now to provide the Nation with the aggressive leadership we need to minimize the impact of the energy crisis on our people.

I ask unanimous consent that Hobart Rowan's excellent article from today's Washington Post, entitled "Crisis of Leadership" be printed in its entirety in the RECORD.

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

[From the Washington Post, Nov. 28, 1973]

CRISIS OF LEADERSHIP

(By Hobart Rowan)

A strong President would have taken strong steps to cope with the energy crisis. But Mr. Nixon is a weak President, desperately clinging to his office. As a result, the nation is being ill-served by half-baked measures which not only will not solve the problem, but doubtless will make it worse.

At the same time, American industry has shown that it, too, has been wearing blinders. In Detroit, where the chief executives haul down anywhere from $440,000 a year (Chrysler's Lynn Townsend) to $875,000 (Henry Ford II) for their efforts, the auto companies have been caught flat footed, with huge inventories of gas-guzzling monsters.

As a result, auto stocks are plunging and thousands of workers are facing layoffs that needn't have come if the top men had really earned their plush salaries.

Michael Evans of Chase Econometric Associates, Inc. puts this latter point as well and as bluntly as anyone:

"The market share of standard-size cars fell 7 per cent last year, which is as much as it had fallen during the previous seven years. These facts simply could not have been a secret from executives in an industry which has more daily and weekly data than any other.

"I personally know of several instances where middle management argued strenuously last year that production lines should be reoriented toward smaller cars. Yet this argument fell mostly on deaf ears at the top executive level. John deLorean's abrupt departure from GM was based on more than long boring staff meetings."

To come back to Mr. Nixon's poor performance: The President is doing his best to make it appear the energy crisis is temporary, one that can be handled with relatively soft measures.

He told the Seafarers' Union that the crisis would not last much more than a year, the direct opposite of what his own chief energy experts have been telling him and telling reporters.

The blunt truth is that even if the Arab oil embargo were to be lifted in a matter of months, this country will face both a shortage and shockingly high prices for what supplies are available until new resources are developed.

By his own count, the President's new program—a 50-mile speed limit, Sunday gas station closing, etc.—will reduce fuel consumption this winter by only 10 per cent, while the shortfall will be 17 per cent.

It is obvious that gasoline supplies must be reduced so that more home heating and industrial oils can be produced. And a formal rationing system is the only logical way to distribute whatever gasoline remains available. As cumbersome as it is, rationing would be better than throwing short supplies on the market and letting everyone hustle for what he can get.

But an even more serious consideration is the President's bland insistence that give it a year or so, and it will be business as usual. Lurking behind such a statement must be the desperate hope that the Arab nations can be pushed into shipping oil once again.

American policy should be based, as Treasury Secretary Shultz said the other day, on the assumption that Arab oil sales will never be resumed.

"If we don't take a lesson from this, and pay the price it takes to become self-sufficient, we're just crazy," says Shultz. He's right, but his boss hasn't got the message.

Mideast oil, it must be remembered costs less than 15 cents per barrel to produce. But ever since 1971, the cartel of oil-producing nations has been hiking the price to astronomical levels by raising the tax on oil exports. Thus, even if a real Arab-Israeli peace were somehow achieved, the oil producers' monopoly could still maintain an artificial scarcity and drive the prices up at will.

Thus, the U.S. needs a crash program to develop oil from shale and coal, to explore off-shore, to stimulate energy production from solar and nuclear sources, and to strengthen ties with the non-Arab oil-exporting nations. It needs the kind of government management that will direct the domestic oil industry, rather than let it call the shots—as it did five years ago when it successfully lobbied Nixon away from Shultz' recommendation that oil import quotas be lifted in favor of a tariff system.

The nation also needs to re-develop strong ties with the rest of the Western World and Japan so that together they can blunt the heady new economic power of the Persian Gulf nations.

But all of this takes the leadership of a respected, courageous President—which suggests that we won't cope with the major dimensions of the energy crisis until Mr. Nixon is persuaded to leave, or is pushed out of his high office.

SUPPORT FOR S. 1868

Mr. TUNNEY. Mr. President, the Senate has begun debate on one of the important pieces of foreign policy legislation this year, S. 1868. This bill will bring the United States back into conformity with its international obligations, voluntarily undertaken, to participate with the rest of the world in economic sanctions against the Government of Rhodesia.

These sanctions are our proper, moral duty. The present regime in Rhodesia is one of two in southern Africa in which majority populations of native, black people are controlled and brutalized by a minority of whites. In all the rest of the world, racial discrimination and colonialism have been eradicated; the only vestige of this horrible disease is left in southern Africa.

I have long felt that it is improper, in most cases, for nations to involve themselves in the domestic affairs of other nations, and this principle is embodied very prominently in the United Nations Charter. But there are certain issues of such transcendent importance to all the people and all the nations of the world—regardless of their political views or coloration—that the world's eyes cannot remain closed. One of these issues is racial discrimination and subjugation. We in America have made it a fundamental cornerstone of our own national life that all men have equal rights under the laws. In this point in world history, that concept is so universally accepted and understood that violation of that principle is properly a matter of world concern.

In the case of Rhodesia, specifically, the regime of white supremacy was recently imposed by the whites in that country, in direct defiance of the wishes and plans of the British Government, of which Rhodesia was at that time a colony. The world properly reacted with dismay at this usurpation of power, and its racial aftermath. The conditions in Rhodesia became a matter of concern not only to other African nations, but to every nation which cared for morality and human dignity. As a great, multiracial nation, the United States had and still has an enormous interest in the outcome of this situation.

After the British Government failed to change the white supremacy regime in Rhodesia, the matter was taken up by the United Nations. The overwhelming majority of nations decided to impose an economic embargo on Rhodesia. The United States joined fully in this decision, as it should have done.

Under the United Nations Charter, only the Security Council can make resolutions which are legally binding on all member states. The United States, and the other great powers, have the veto in the Security Council precisely to have a political check against having binding resolutions which are contrary to their vital interests. But the United States did not exercise its veto; quite to the contrary, it supported the economic sanctions against Rhodesia.

Therefore, under article 25 of the charter, we bound ourselves to obey this resolution. We now find ourselves in violation of our treaty obligations—and completely out of step with the rest of the world—and in step only with South Africa and Portugal. As a result, our relations with all the other African nations, and our stature in the United Nations, are deteriorating. There is no greater single irritant in our relations with African nations than our failure to enforce the U.N. sanctions against Rhodesia.

Our Nation should not renege on its internatonal treaty obligations, to which it has already agreed. Our Nation should not be giving aid and comfort to a government which is based upon the most hateful, abhorrent social practice known to the human race. Therefore, Mr. Presi-

dent, I am in full agreement with this legislation.

Now the main arguments which have been raised against this bill are economic ones. It is claimed that the present exemption from the embargo which was enacted in 1971 allows the import of needed chrome ore, and avoids making the United States dependent on the only other source, the Soviet Union. Too great reliance on one source, it is argued, will force up the price, and imperil our national security.

The facts, as I understand them, are entirely the opposite. Prices for Russian and other non-Rhodesian chrome ore will fluctuate in any event because of overall world demand. The prices of almost all raw materials have been rising in recent years; surely the Rhodesian embargo was not alone responsible. Moreover, the domestic steel industry, which uses the chrome in the manufacture of so-called specialty steels, has since 1971 been protected against foreign competition anyway by the voluntary restraint agreement made with European and Japanese steel producers.

In fact, in terms of jobs, it is alleged that the lifting of the embargo actually harmed American industry, since what has been imported since 1971 has not been very much Rhodesian chrome ore, but already-processed ferrochrome. This ferrochrome has taken up 25 percent of the domestic market already, and forced the closing of some American plants.

Indeed, as I have mentioned, the lifting of the embargo has not had anything like its intended effect on chrome ore imports. Imports from Rhodesia are now lower than they were before the embargo was begun. Rhodesia was the source of only 3 percent of our chrome ore imports in the first half of 1973, compared with 51 percent for the Soviet Union. In 1967 the figures were 22 percent and 45 percent, respectively. Clearly, we are still depending on Russia for about the same proportion of our chrome ore imports as we did during the embargo period, when Russia supplied close to 60 percent—but not higher—of our imports. The reason this was true is that there are, in fact, alternate sources to Rhodesia, primarily Turkey, which is anxious to export chrome ore. There is no reason why we should be subsidizing the economy of a racist regime when we can be helping the economy of an ally.

All these figures and facts have been set forth at other times by my colleagues, Mr. HUMPHREY and Mr. MCGEE. And they are not the only source. The United Steelworkers of America, whose jobs are directly involved, has lobbied very strongly for this bill, and I am very impressed by their position.

Lastly, the national security arguments have absolutely no weight. This is demonstrated by the figures on the relative stability of import levels from Russia. Even more importantly, for me, we have the flat assertion by the highest officials of our Government that there is no national security reason to prevent a return to the embargo. Indeed, the administration strongly supports this legislation. I can think of no better refutation of any argument that this legislation would have adverse economic or security consequences.

Therefore, Mr. President, I will vote for this bill and I will vote to cut off unlimited debate. I sincerely hope that there will be a limit on debate. This is not an issue on which there is such a lot of dispute or economic wisdom on one side that it should detain us, at this late date in the session, when we have a great many important measures which are calling for our attention and our action.

CONFERENCE REPORT ON THE FOREIGN ASSISTANCE AUTHORIZATION BILL, S. 1443

Mr. FULBRIGHT. Mr. President, in a few days the conference report on the foreign aid authorization bill will be coming before the Senate for action, if it is approved by the House.

This report is an improvident and wasteful measure for the Senate and for the American people. It should be rejected. Never have I sat in a conference where the Senate's position fared so badly. In order to familiarize the Senate with major provisions and individual member's amendments that were either dropped or seriously weakened in the conference, I ask unanimous consent that certain material be printed in the RECORD.

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

COMPARATIVE DATA ON FISCAL YEAR 1974 FOREIGN AID AUTHORIZATION LEGISLATION

[In millions of dollars]

	Executive branch authorization request	Continuing resolution	House bill	Senate bill	Conference agreement	Difference from Senate amounts
I. ECONOMIC ASSISTANCE						
Indochina postwar reconstruction for South Vietnam, Laos, and Cambodia	$632.0	$431.0	$632.0	$376.0	$504.0	+$28.0
International organizations	124.8	94.1	127.8	127.822	127.8	−.022
Indus Basin grants	15.0	9.0	15.0	14.0	14.5	+.5
Old development loan/grant categories:						
Loans (including Alliance for Progress)	351.4	310.2				
Grants (including Alliance for Progress)	251.8	210.5				
Population	(116.0)	89.8	(125.0)	(125.0)	(125.0)	
New development assistance categories:						
Food and nutrition			300 0	282.0	291.0	+9.0
Population planning and health			150.0	141.0	145.0	+4.0
Education and human resources			90.0	94.0	9.0	−4.0
Selected development problems			60.0	47.0	53.0	+6.0
Selected countries and organizations			50.0	28.0	39.0	+11.0
Miscellaneous categories:						
American schools and hospitals	10.0	9.0	20.6	19.0	19.0	
International narcotics control program	42.5		50.0	40.0	42.5	+2.5
Contingency	30.0	22.4	30.0	23.5	30.0	+6.5
Partners of the Alliance			.968	.9	.934	+.034
Administrative expenses (AID)	5.31	45.9	53.1	24.0	45.0	+21.0
Refugee relief assistance (Bangladesh)						
Arab refugees			2.0		2.0	+2.0
African famine relief			30.0		25.0	+25.0
Albert Schweitzer Hospital				1.0	1.0	
Total economic assistance	1,510.6	1,221.9	1,610,868	1,218,222	1,429.734	+211.512
II. MILITARY ASSISTANCE						
Grant military assistance	652.0	493.9	550.0	420.0	512.5	+92.5
Regional naval training						
Security supporting assistance (outside Indochina)	100.0	107.8	125.0	125.0	125.0	
Military credit sales	525.0	358.6	450.0	200.0	325.0	+125.0
Military training			30.0	25.0		−25.0
Total military assistance	1,277.0	960.3	1,155.0	770.0	962.5	+192.5
Total economic and military assistance	2,787.5	2,182.2	2,765.868	1,988.222	2,392.234	+404.012
Other items:						
Loan reflows	323.0	251.0	323.0		161.5	+161.5
Drawdown authority for military aid	300.0		300.0		250.0	+250.0
Excess defense articles	185.0	185.0	185.0		150.0	+150.0
Total	808.0	436.0	808.0		561.5	+561.5
Grand total	3,595.5	2,618.2	3,573.868	1,988.222	2,953.734	+965.512

SENATE PROVISIONS REMOVED OR SERIOUSLY WEAKENED

ECONOMIC ASSISTANCE—S. 2335

1. The prohibition against "follow-on" aid projects was dropped.

2. The requirement that not more than one-third of the loan reflows available for further lending be used in any one of the new program categories was removed.

3. The requirement that not more than 50% of the appropriations for the new categories can be used as grants was dropped.

4. The provision encouraging and emphasizing a shift of bilateral aid programs to multilateral institutions was deleted.

5. The prohibition on training of foreign police forces was watered down to exempt training in the United States and all existing contracts for training abroad.

6. The Senate's repeal of the authority for use of loan reflows was delayed for two years, and, in the interim, 50% of loan repayments will be available for lending.

7. The earmarking for population programs in FY 1975 was cut from $150 million to $130 million.

8. The access to information provision was dropped.

MILITARY ASSISTANCE AND SALES—S. 1443

1. The Senate's rewrite of the statutory framework for the military aid and sales program was dropped.

2. The Senate authorized military grant on a country-by-country basis to only nine countries. These specific authorizations were stricken and the President given a lump sum of $512.5 million to use as he sees fit in giving arms aid to up to 31 countries, in addition to those given training aid only in the U.S.

3. The Senate's prohibition against lending weapons to other countries was eliminated.

4. The Senate's denial of general waiver authority to the President on military aid matters was eliminated.

5. The Senate did not give the President discretionary authority to draw on Defense Department stocks for use as military aid, as has been traditional in the past. This authority was reinstated for $250 million in this fiscal year.

6. The Senate returned funding of military aid to South Vietnam and Laos to funding out of the regular foreign aid program effective June 30, 1973. The House bill did the same but effective beginning July 1, 1974. The conference left funding for Vietnam in the Defense budget for the indefinite future.

7. The Senate bill required partial foreign currency payments for military grant aid, comparable to existing law. The conference struck this provision and repealed the current requirement.

8. The conference agreement dropped the Senate bill's requirement that sales of military equipment be handled through commercial channels wherever possible. This provision was designed to minimize the government's role as an arms salesman.

9. The Senate required that the minimum interest rate on military credit sales be set at the cost at which the government borrows money. The provision was dropped.

10. The Senate bill tightened the ceilings on military grants and governments sales to Latin America. The conference raised the effective ceiling.

11. The Senate bill's requirement that the value of excess defense articles given to foreign countries be deducted from appropriations for military aid was greatly weakened.

12. The Senate bill's requirement for strict Congressional control over loan and sale of military vessels was dropped.

13. The access to information provision was dropped.

SENATE AMENDMENTS DELETED OR WEAKENED SERIOUSLY

1. Mondale—Calling for convening of an international conference for controls of conventional arms.

2. Pell—U.S. aid policy toward Greece.

3. Pell—Support for the Vietnam cease-fire agreement.

4. Tunney/Magnuson—Vessel transfers and U.S. fishing interests.

5. Mondale—Austrian transfer center for Soviet Jews.

6. Taft—Earmarking $150 million for population in FY 1975 (agreed to $130 million).

7. Tunney—U.S. aid to Portugal.

8. Byrd of Virginia—India rupee agreement.

9. Byrd of W. Virginia—Reduction of AID administrative expenses to $24 million (agreed to $45 million).

10. Chiles—Prohibition against follow-on aid projects.

11. Stevens—Restrictions concerning transfer of vessels.

12. Hartke—International trade in narcotics.

13. Kennedy—Establish a Bureau of Humanitarian and Social Services.

14. Kennedy/Javits/Muskie—Aid for exchange of people between Pakistan and Bangladesh.

15. Kennedy—Earmarking for the Red Cross in Indochina.

16. Kennedy—Language for authorization of economic aid to Indochina.

17. Case—Emphasizing shift from bilateral to multilateral aid.

18. Case—Restore funding of military aid to Vietnam to the regular foreign assistance program.

19. Case/Proxmire—Public information on military aid matters.

20. Nelson—Establishing a system for Congressional action on certain military sales.

VIETNAM—THE MISSING IN ACTION

Mr. ROTH. Mr. President, one of the continuing tragedies of the Vietnam war is that more than 1,200 Americans are still missing and unaccounted for in Southeast Asia. We do not know what fate they have suffered, but their families and friends cannot forget those they love and we, as a Nation, cannot forget those who served their country in the most trying circumstances and were lost.

Since the January cease-fire agreement strenuous efforts have been made to find and account for these men. Searches of crash-sites have been carried out, but with only marginal results. Significant new operations cannot be made because of the continued refusal of North Vietnam and the other Communist parties in Indochina to permit inspections of crash-sites and other information gathering activities for this humanitarian purpose on the territories under their control. In addition, North Vietnam has not accounted for men we know they had captured and whom they are obligated to return or to account for under the cease-fire agreement.

There can be no improvement in our relations with North Vietnam until they have completely fulfilled their treaty obligations respecting POW's and MIA's. I cannot imagine the President of the United States, the Congress of the United States, or the people of this country seriously considering trade with, much less aid to, North Vietnam so long as our missing are still unaccounted for.

I think this message should be communicated loud and clear in the strongest possible terms to the North Vietnamese. That months have passed since the cease-fire accords makes this problem not less compelling, but more so. Our diplomatic efforts and our searches on behalf of our missing should not be reduced; they must be redoubled.

HOUNDING THE PRESIDENT OUT IS WRONG

Mr. FONG. Mr. President, a very distinguished former Member of the U.S. House of Representatives and former Ambassador to Italy, the Honorable Clare Booth Luce, has written a perceptive and informed article entitled "Hounding the President Out Is Wrong," which rightly points out that our Constitution provides the only proper means for removal of a President.

Mrs. Luce reminds her fellow countrymen that—

> Our Constitutional methods of relieving the country of an unpopular President (or any other elected official) are the electoral process, or, (when the gravamen are alleged crimes) the process of impeachment. Are these methods now to be forgone, in favor of poll-taking? If this precedent is established, are all high officials—senators, governors, even Supreme Court justices, to be expected to resign whenever Gallup, Harris, or Roper produce a one per cent sample of "public opinion" which shows that they have lost "credibility"? And exactly how low will their credibility rating have to fall before they agree to resign, in the public's interest? Will a 49.9 per cent confidence rating become the signal for them to hang their heads and quit? Or will they feel they can hold on until they reach President Truman's all-time "credibility" low of 23 per cent?

Mrs. Luce concluded:

> Until a law is passed requiring a public official to resign when a one per cent sampling of public opinion shows that he has lost a legally given percentage of the public's confidence, polls are no proper basis for demanding a political resignation. They are not even good grounds for impeachment. The grounds for impeachment are clearly set forth by the Constitution, and the process is left to the duly elected representatives of the people—their Congress.

Mr. President, I ask unanimous consent that the entire text of the article as printed in Newsday be printed in the body of the RECORD.

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

HOUNDING THE PRESIDENT OUT IS WRONG

(By Clare Booth Luce)

In all political questions, the interests of the nation are best served by upholding the spirit and following the letter of the Constitution.

What does the Constitution have to say about a President—any President—who is alleged to be guilty of crimes or misdemeanors which make him unworthy of his high office?

It says that the President is not above the law. It does, however, say that consequent to the unique position he occupies, he is a unique personage. (At 'this point in time,' or at any point in time, there is only one man who is President.) So the Constitution provides a unique process of law by which this unique personage can be brought to the bar of justice, and tried for any crimes he may allegedly have committed.

The Constitution says that the people's elected representatives in Congress can impeach (i.e., accuse or indict) a President for these alleged offenses. It says that he must then be tried for them in a court of the Senate presided over by the chief justice of the U.S. Supreme Court. It says that if this constitutionally appointed court finds him

guilty, he shall be removed from his high office. And it also says that if he is acquitted, he shall go about his presidential business, vindicated.

The Constitution does not say that this is a pleasant or an easy business. It does say that when a majority of the Congress deems it to be a necessary business, it is the business of Congress to proceed with it.

If the President is not above the law, neither is he below it. He has the same right as every other citizen to be considered innocent until he is hauled into court and proven guilty.

Today, much of the press (Time magazine included) is trying to deny him his right by forcing him to resign. Despite his protestation of innocence, the press has tried him and found him guilty. It now asks him to forgo his constitutional rights. It wants to get rid of a President without bothering with the legal formalities provided by the Constitution.

A few weeks ago, the owner of a large newspaper chain said, "Nixon will resign in a matter of weeks. No man can stand up to what we are pouring onto him and not crack up."

Is this way of getting rid of President Nixon in the best interests of the country? Let us ask, what if the fierce and relentless pressures of the media were, indeed, to break the President's health and spirit? And what if he were then to resign, a broken man, but a man still protesting his innocence?

The people would then never know the truth about his personal connection with that complex of scandals we call Watergate. A majority would certainly continue to assume his guilt, and cite his resignation as final proof of it, but they could never be really certain. But a minority—of some millions of people—would continue to assume his innocence, and would see him as the victim of a vengeful and partisan press. The unresolved question of the President's real guilt or innocence would fester in the body politic.

The press, in constituting itself Mr. Nixon's judge, jury and executioner, insists, of course, that it is acting as agent for the will of the majority of the people, as expressed in the polls. These polls, when one looks into the matter, are the result of one per cent or two per cent samplings—many of them telephone samplings—which are taken by privately owned firms—principally Gallup, Harris and Roper.

As everyone knows, political polls have not infrequently turned out to be very inaccurate. But assuming that the Nixon-resignation polls are accurate, to rest the case for the resignation of a chief executive on a minute sampling of public opinion raises a very serious question: Are grave constitutional questions, questions which are bound to affect the destiny of the nation and the economic fortunes of every citizen, henceforth to be resolved by a one per cent sampling of public opinion?

To repeat: Our constitutional methods of relieving the country of an unpopular President (or any other elected official) are the electoral process, or, (when the gravamen are alleged crimes) the process of impeachment. Are these methods now to be forgone, in favor of poll-taking? If this precedent is established, are all high officials—senators, governors, even Supreme Court justices, to be expected to resign whenever Gallup, Harris, or Roper produce a one per cent sample of "public opinion" which shows that they have lost "credibility"? And exactly how low will their credibility rating have to fall before they must agree to resign, in the public's interest? Will a 49.9 per cent confidence rating become the signal for them to hang their heads and quit? Or will they feel they can hold on until they reach President Truman's all-time "credibility" low of 23 per cent?

In passing, a recent Harris Poll showed that of all the institutions in American public life, the one that had lost credibility during the past few years at the fastest rate was—the press. The press printed this poll, of course. It is, perhaps, unnecessary to add that the press gave it very little editorial mention. But despite the loss of credibility which it showed, not a single editorial resignation followed its publication.

There is no question that, today, the press is sincere in its belief that the President's resignation would be best for the country. But if the press should achieve its goal by "pouring it on" in order to force his resignation, and justifying its action by the polls, a very dangerous and undemocratic precedent will have been established. For the press and pollsters will be wielding that power over the fate of politicians and officials which the Constitution has expressly reserved to the people at the ballot box.

Until a law is passed requiring a public official to resign when a one per cent sampling of public opinion shows that he has lost a legally given percentage of the public's confidence, polls are no proper basis for demanding a political resignation. They are not even good grounds for impeachment. The grounds for impeachment are clearly set forth by the Constitution, and the process is left to the duty elected representatives of the people—their Congress.

ENERGY CONSERVATION WORKS

Mr. BEALL. Mr. President, I firmly believe that voluntary fuel conservation is the best way to meet the short-run problems posed by the energy crisis which faces our Nation today.

Therefore, it is particularly gratifying to me when I read of successful efforts to curb the demand for our precious fuel resources. In the Baltimore Evening Sun of November 16, 1973, Anne S. Philbin reports on the cumulative efforts of Federal employees in region 3, which happens to include my State of Maryland. The article points out that in the first full month of the Federal effort to conserve energy, region 3 saved 7 million kilowatt-hours of electricity, as compared with the same time in 1972.

I commend Federal employees in this region, and ask unanimous consent that the article "U.S. Region Saves Power" be printed in the RECORD at the conclusion of my remarks.

Mr. President, it is my earnest hope that we will be reading more such articles in the near future as all of our citizens do their part to ease the demand for all forms of energy.

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

U.S. REGION SAVES POWER

(By Anne S. Philbin)

Federal employes in Region 3, which includes Maryland, saved 7 million kilowatt-hours of electricity in the first month of the government's conservation program.

This saving is the equivalent of enough electricity to take care of more than 10,000 accidental users for 30 days, according to a spokesman for the Baltimore Gas and Electric Company.

President Nixon set a goal of a 7 percent reduction in energy demands for federal government operations beginning last July 1 for the following 12 months. Since then thermostats have been adjusted in government buildings, thousands of light bulbs removed, building cleaning times changed to daylight hours, and official travel reduced.

TWO MONTHS COMPARED

General Services Administration, in a memoranadum circulating in the Federal Building here, reports the 7 million kilowatt-hour saving was determined by comparing August, 1972, power usage with August, 1973, after conservation measures were introduced.

A GSA spokesman was unable to say how much of the 7 million kilowatt-hour saving achieved last August was saved by employes occupying federally owned or leased buildings in the Baltimore area.

Region 3 covers Maryland, Virginia, West Virginia, Delaware, parts of Pennsylvania, and the District of Columbia. In the latter area, there are about 375,000 government employes; in the Baltimore area there are about 85,000.

HEATING CUTBACK

Other measures instituted by GSA include a winter cutback in room and zone heating in government owned or leased buildings to between 65 and 68 degrees. Warehouse temperatures are to be even lower.

He estimates that removing about 22 per cent of the fluorescent light tubes in government office buildings will reduce electrical load usage by 20 percent, or the equivalent of 1 billion kilowatt-hours of electricity.

"If we can save this amount," he said, "it's like saving 580,000 tons of coal or 600,000 barrels of oil."

Workers began removing light bulbs in the Federal Building here as elsewhere in late June, but there are still some offices where the work has not been completed.

GSA last week ordered federal vehicles in its motor pools to observe a 50-mile-an-hour speed limit, and recommended agencies start buying compact cars. Mr. Sampson said GSA plans to buy 4,500 compacts for its own use, which represents 83 per cent of its total car purchases.

As a conservation measure, Mr. Sampson is driving a canary yellow Maverick, and an agency spokesman said GSA will issue a regulation soon directing federal agencies to use compact cars whenever possible.

ENERGY REORGANIZATION

Mr. RIBICOFF. Mr. President, on November 27, I introduced S. 2744, the Energy Reorganization Act of 1973. It would establish the organizational framework for the energy research, development, and regulation which are needed to make our country self-sufficient in energy supply.

The staff of the Subcommittee on Reorganization, Research, and International Organization, which I chair, has prepared, in cooperation with the Office of Management and Budget, explanations of the proposed organization and operation of the Energy Research and Development Administration and the Nuclear Energy Commission. So that my colleagues and the public may be better informed about this important legislation, I ask unanimous consent that the explanations be printed in the RECORD.

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

THE ENERGY RESEARCH AND DEVELOPMENT AGENCY

A massive federally sponsored R&D effort has been proposed by the President, providing for the expenditure of $10 billion over the next five years, in order to develop energy technologies to meet the Nation's energy needs. A new independent agency is needed to provide the proper organizational framework, management and technical expertise to achieve the Nation's R&D goals in the

energy area. Short term energy needs will mainly be fulfilled by relying on presently developed forms of energy. Longer range energy requirements can be satisfied only through more efficient use of present energy sources, development of new energy sources, and better conservation and utilization practices. The President is therefore proposing the establishment of an Energy Research and Development Administration (ERDA).

ERDA's mission will be to develop technologies for efficiently using fossil, nuclear and advanced energy sources to meet growing needs and in a manner consistent with sound environmental and safety practices. ERDA will have a broad R&D charter covering the development of technologies for all foreseeable energy sources and utilization systems. The agency will have responsibility for policy formulation, strategy development, planning, management, conduct of the energy R&D and for working with industry to assure that promising new technologies can be developed and applied. In addition, ERDA will continue the weapons production and development programs of the AEC.

ERDA will be formed by trasnfer of AEC's energy R&D, military applications, basic research, production, biomedical and environmental programs, Interior's Office of Coal Research and Bureau of Mines energy centers, NSF solar and geothermal energy development activities and portions of EPA's stationary source emissions control technology and alternative automotive power systems (AAPS) research programs. Exhibit A contains estimates of FY 74 program resources involved in the proposed transfers.

Advantages of ERDA are:

ERDA will be built upon the substantial scientific and technical base of the present Atomic Energy Commission and will make use of the technical management capabilities of that agency.

ERDA will provide a central agency for the conduct of most Federal energy R&D programs. ERDA will have a broad charter to conduct research and development on the full spectrum of our energy resources and utilization processes covering extraction, conversion, transmission and utilization technologies.

ERDA will be so organized and managed that fossil fuel, advanced energy sources and conservation will receive full recognition and priority along with nuclear energy R&D functions.

ERDA will work closely with EPO, DENR, NEC and other agencies in carrying out its mission.

ORGANIZATION CONCEPT

The ERDA's organization will be headed by a single Administrator and a Deputy Administrator, who will be appointed by the President with the advice and consent of the Senate and be principally concerned with setting R&D policy, external agency relationships and overall direction of the agency. There will also be a General Counsel appointed by the Administrator.

The proposed agency line organization is a balanced structure of five Assistant Administrators, each being responsible for a major program area, as follows: (Refer to the attached ERDA organization chart)

Fossil Energy Development
Nuclear Energy Development
Research and Advanced Energy Systems
Environment, Safety and Conservation
National Security Affairs

The Assistant Administrators will be appointed by the President and confirmed by the Senate.

An additional pool of not more than seven management positions at Executive Level V are proposed. The ERDA Administrator will appoint career officials to these positions and assign responsibilities. Possible uses include: heads of major staff offices, a deputy assistant administrator or other assignments.

The three Assistant Administrators for fossil, nuclear and advanced energy systems will plan and execute programs designed to develop technology by energy source. The objective will be to exploit major existing sources of energy and to explore new and advanced ways of producing energy, including consideration of, and research on, closely associated environmental, economic, safety, and conservation considerations. One advantage of organizing on the basis of energy sources is that it provides within an agency a means for assuring balance and meaningful priority setting among the competing energy sources.

Significant emphasis will be placed on fossil fuels; e.g., coal gasification, liquefaction, and clean combustion systems devices, etc., since this area appears to be the most promising, based on current resource reserves and research technologies. Over $50 million of the President's FY 1974 funding increase for energy research is for coal research to devise methods to convert coal into gas or liquids and to develop control technologies to reduce its air pollution characteristics when used directly.

Continued emphasis will be placed on nuclear energy development. Present programs to develop and demonstrate the commercial feasibility of breeder reactors will be continued. The breeder generates more nuclear fuels than is consumed in the process and this improves the efficient use of a valuable energy resource. This is an advantage over present commercial reactors. A major long term program on Controlled Thermonuclear Reactors (fusion) will be continued because of its tremendous clean energy potential. A major activity will also involve operation of the extensive government owned uranium enrichment operation to provide the domestic and much of the free world's supply of nuclear fuels. The program to transfer this to the private sector will continue to be emphasized. A high level of attention will be devoted to safety considerations in all nuclear activities.

Advanced energy technologies will aim at utilizing energy source and utilization technologies such as geothermal, solar, winds, tides, advanced power cycles automotive power systems, as well as providing a framework for exploring new concepts and ideas that evolve over time. A number of these have significant potential if economical and safe technologies can be developed. This area will also conduct basic physical research in energy related areas.

Environmental protection and safety activities are integral to each of the major energy development organization functions. However, because of the overriding importance of these aspects of energy use, a separate organization element will be provided to support R&D on biomedical and environmental effects associated with various energy systems and energy waste management as well as help assure that appropriate environmental and safety R&D and related considerations are addressed more broadly and comprehensively. Conservation R&D efforts will also be carried out within this major function and will include conducting general research concerned with slowing the rate of growth in demand. Each major program area will also be charged with assuring that the energy systems developed meet requisite environmental, safety, and conservation standards.

The remaining major organization area, National Security, will have responsibility for performing the AEC's military applications and reactor materials production programs. These functions will be carried out by ERDA under the same conditions of security and in much the same manner as is now the case in the AEC.

The basic structure outlined above for the organization of ERDA is designed to meet current needs as we now perceive them. Undoubtedly, adjustments in the structure will be needed as R&D problems change and as we gain experience with the organization. The legislation should provide flexibility to permit future changes when the need for them becomes clear.

ERDA's top management will review the alternative concepts and set program priorities among alternative technologies. The line Assistant Administrators will sponsor their technologies in this process. The ERDA Administrator and Deputy Administrator will be supported by a strong and independent analytic staff to provide assessments on developing technologies. ERDA R&D decisions will form an important input to the Administration in setting priorities and developing energy strategies.

The ERDA headquarters structure is designed to tape the AEC expertise in technical areas as well as in contract management and related skills. The existing AEC field organization will not be changed significantly in structure. Six energy labs from the Bureau of Mines involving about 700 career personnel will be affiliated with the current national laboratory structure. ERDA programs in fossil fuel R&D and advanced energy systems must be able to utilize existing AEC capability for physical, biomedical and environmental R&D as well as contract and other management support functions. Some use of the present nuclear capability to work on fossil fuel, advanced energy systems and conservation will probably be necessary and desirable. To the extent practicable, existing capital plant, fixed overhead and administrative overhead will be utilized.

A great deal of flexibility will be provided to the Administrator in carrying out the programs. Existing AEC and Bureau of Mines labs, outside contractors, universities, and private research institutions can be used to carry out the elements of the programs in achieving objectives.

The ERDA approach to developing safe, efficient energy sources will involve the energy industry to the maximum extent possible and will supplement existing and planned R&D by private industry. Once technology has been developed to assess its feasibility, industry will have to take the lead in further development and in applying it on a commercial scale. Therefore, ERDA's strategy will be to encourage independent energy R&D by working closely with industry in the development of technology to facilitate a rapid, smooth transfer. In this regard, jointly funded Federal and private projects will be encouraged.

CONCERNS ABOUT AEC DOMINANCE IN THE PROPOSED ERDA

One major concern of the coal industry as well as some members of Congress is that the existing AEC personnel and resources, might dominate other important elements of ERDA. However, special consideration has been given to this concern to assure that balance is achieved in developing technologies to meet energy needs. The more significant ERDA design features that will help to assure balance are:

The proposed ERDA organization is a significant departure from the AEC structure. There is a single Administrator, as compared to a Commission-General Management arrangement.

The top tier of ERDA is carefully designed to achieve balance among major energy sources—fossil, nuclear and advanced. Environmental, safety and conservation elements are also given a significant role along with the major ongoing responsibilities for military applications.

The President has stated that a significant amount of R&D funding will be for fossil fuels, especially coal and other energy sources. This will serve to balance the present nuclear imbalance in Federal energy

R&D funding and overcome the nuclear dominance concern.

The Administrator will be directly supported by a number of key high caliber analytic staff offices which will assist in neutralizing the energy source advocacy of the major program areas in assessing the merits of the various technologies and balancing resources among competing areas.

Existing regulatory responsibilities of the AEC will remain behind and become the Nuclear Energy Commission, a renamed independent regulatory agency.

WHAT MAJOR PROGRAMS WILL ERDA UNDERTAKE OVER THE NEXT FIVE YEARS AND AT WHAT APPROXIMATE FUNDING LEVELS?

The President has proposed a Federal energy research and development effort of $10 billion over a five-year period. He has also directed that an additional $115 million in fiscal year 1974 be devoted to the acceleration of certain existing projects and the initiation of new projects. About one-half of the funding for the new initiatives for fiscal year 1974 are devoted to coal research and development, with emphasis on producing clean liquid fuels from coal, improving mining techniques to increase coal mining safety and responsibility, accelerating the coal gasification program and developing improved combustion systems. The AEC in consultation with Interior and other agencies is to make recommendations by December 1, for energy R&D which should be included in the FY 1975 budget.

NUCLEAR ENERGY COMMISSION

The separation of regulatory functions from the research, development and production activities of the present Atomic Energy Commission is another step in the evolution of the Federal Government's involvement in nuclear energy. The five member AEC Commission, including its staff offices and Licensing Boards, plus the three regulatory Directorates under the Director of Regulation will form the nucleus of the renamed Nuclear Energy Commission (NEC). NEC will be an independent regulatory commission responsible for licensing the civilian use of nuclear power and materials.

BACKGROUND

Significant Federal involvement in nuclear energy began with the formation of the Manhattan Engineer District in 1942, and AEC was established in 1946. The first commercial uses of nuclear materials were authorized by the Atomic Energy Act of 1954, at which time the AEC established a comprehensive system of licensing. As the role of the AEC expanded from research and development into regulation of the use of nuclear production and development into regulation of the use of nuclear production and utilization facilities, the need for a separate regulatory staff was evident. In 1961, a new Director of Regulation was established reporting directly to the Commission.

The nuclear power industry has matured rapidly since this organizational change and the growth is continuing with the number of licenses issued for nuclear reactors currently doubling every two or three years. By 1980, 20–30% of electrical energy will be generated by nuclear reactors.

Maturity of the nuclear power industry requires a full-fledged regulatory agency free of development responsibilities in order to handle this ever-increasing workload in an impartial manner to assure the public health and safety.

ORGANIZATIONAL CONCEPT

NEC's mission will be to insure the protection of the public and the environment from potential health and safety hazards inherent in the use of nuclear materials.

The five member Commission will continue to carry out, but on a full-time basis, the regulatory functions of the present AEC which include:

Policy setting and assessment;

Oversight of regulatory operations;

Adjudication of licensing and related cases; and

Resource allocation.

The Chairman (Executive Level II) and four commissioners (Executive Level III) will be appointed by the President and confirmed by the Senate.

Regulatory responsibilities of the NEC encompass the licensing of all nuclear utilization and production facilities for industrial or commercial purposes including the transportation, disposal, import or export of these materials. Licenses are issued for such diverse uses as nuclear power generating plants, chemical separation plants, nuclear research facilities, and radioisotopes used in medical therapy.

The Commission will be supported by NEC staff resources which will include:

A General Counsel to provide legal advice and assistance.

A Controller to manage financial program.

A Secretary and Public Affairs Officer to assist in the conduct of Commission business.

A Policy Analysis Office to conduct broad policy planning analysis and assessment and operational planning and control functions.

In addition, the Commission will continue to be assisted by the licensing and advisory boards of the AEC, which will continue to report to the Commission. These include:

Atomic Safety and Licensing Board—to conduct public hearings and issue decisions of licensing.

Atomic Safety and Licensing Appeals Board—to conduct reviews of initial decisions and perform other appellate functions.

Advisory Committee on Reactor Safeguards—to review and advise the Commission on safety standards and facility license applications.

The line organization proposed by the Administration for NEC would be comprised of four directorates reporting to an Executive Director of Operations (Executive Level V) who will be appointed by the Commission. He would have responsibilities for direction and coordination of major program elements as delegated by the Commission with each Directorate responsible for a major regulatory function as follows: (refer to the attached NEC organization chart).

Standards setting for nuclear reactors.

Licensing of nuclear facilities and materials.

Inspection of nuclear facilities and activities and enforcement of NEC's regulations.

Confirmatory assessment research on safety, safeguards, and environmental concerns.

The Directorates of Standards, Licensing, and Inspection and Enforcement (now Directorate of Regulatory Operations) currently exist under the AEC's Director of Regulation and will be left intact in NEC. The new Directorate of Confirmatory Assessment will provide NEC with an independent capability for developing and analyzing technical information related to reactor safety, safeguards, and environmental protection that is required to assure effectiveness and objectivity in its standards, licensing, inspection and enforcement activities. Under NEC direction, such technical information and analytical methods will be developed in an organizational medium free of developmental bias. These independent data would be in confirmation of, and thus in addition to, data supplied by the proponents of the systems for which licenses are sought or other regulatory action requested. In addition, this Directorate will provide the Commission the capability to identify alternative technological approaches leading to improved reactor safety, safeguards, and environmental protection.

The basic structure outlined above for the organization of NEC is designed to meet current needs as we now perceive them. It is possible that adjustments in the structure will be needed as the number and complexity of regulated activities and facilities increase and as we gain experience with the organization. The legislation provides flexibility to permit future changes when the need for them becomes clear.

In order to maintain a high level of competence of the regulatory staff and to provide the broadest possible range of technical information, NEC will have the statutory authority to provide budgetary support for related research in reactor safety, and the biomedical and environmental sciences, or it may contract for such research from independent sources.

LIGHT WATER REACTOR SAFETY CONCERNS

Critics of AEC have raised questions whether there has been adequate protection of public health and safety of the Light Water Reactor now in commercial use. The AEC has undertaken extensive safety research of the Light Water Reactor at facilities in Idaho. The $51 million capital program is principally centered around the Loss of Fluid Test Facility (LOFT) and Power Burst Facility (PBF).

To insure that this priority safety research program adequately responds to known safety problems, NEC will have overall planing, funding, and evaluation authority of the Light Water Reactor Safety Program. ERDA will continue to perform the day-to-day management of the program on a reimbursable basis.

In addition, in the areas of biomedical and environmental research and waste management and transportation, it is expected that NEC will be provided additional funding (up to $5–10 million in NEC's first budget) to initiate such research in these general areas as required to insure the necessary resources for the protection of public health and safety.

NEC and the Advisory Committee on Reactor Safeguards will continue the AEC's present regulatory practice of conducting safety reviews of ERDA nuclear activities and facilities at the request of the ERDA Administrator and will participate in the review required by the National Environmental Protection Act of ERDA's environmental impact statements on nuclear programs.

REGULATORY AUTHORITIES ON NEW GENERATIONS OF NUCLEAR REACTORS

In order to insure the safety of future ERDA developed nuclear reactor power generating plant technologies, NEC will license these demonstration facilities. This will include the full provisions of Sec. 103 and Sec. 182 of the AEC Act of 1954 and means that ERDA will be required to meet the same rigid licensing regulations and procedures currently established for commercial nuclear reactor power plants before construction of a demonstration plant. As an example, the Liquid Metal Fast Breeder Reactor demonstration plant, which involves an electric power system component, will be required to obtain a NEC permit prior to construction. In addition, NEC would license high level radioactive waste storage facilities.

To summarize, the Nuclear Energy Commission is designed to insure the safety of nuclear power plants and related facilities, to eliminate the potential for regulatory and developmental conflicts, to eliminate the risk of subordinating regulatory to developmental functions, to maximize regulatory objectivity and impartiality, to increase public confidence, to permit the Commissioners to concentrate exclusively on regulatory issues, and to become the fully independent regulatory agency which the rapidly maturing nuclear industry requires.

THE PRESIDENT SHOULD NOT RESIGN

Mr. FONG. Mr. President, the contemporary columnist, Mr. William Safire, has written two essays analyzing and rebutting cries that President Nixon should resign.

In his first essay, entitled "Don't Quit," Mr. Safire pointed out that "Quitting would solve nothing, and could cause great mischief. . . ."

In his second essay, entitled "The 27th Amendment," Mr. Safire noted that:

Those who now demand that this President resign because he has "lost the ability to govern" are calling for the most fundamental change—not just in a leader, but in the traditions that make up our governmental system.

They cannot escape the consequences of their demand, which would be a kind of 27th Amendment, written or unwritten, that would say: "The President shall hold office for a term of four years, or until such time as his rating in the two leading national public opinion polls falls below 30 per cent for three consecutive months, at which time it can be assumed the President has lost the ability to govern and he must then resign."

Nobody has actually proposed such an amendment, of course—why, that would be downright radical—yet that would be the inescapable result of any successful hounding-into-resignation of a President.

The enormous power of precedent that has helped keep Presidents from resigning under pressure through two centuries, thus stabilizing our system, would be flip-flopped by a Nixon resignation: The pressure of precedent in the future would be to force Presidents who lose popular favor to submit their necks to the pollsters' ax.

When Americans come to consider the real choice that the resigners have posed, they will see that the alternative is not Nixon and controversy versus somebody else and unity—but the continuity of the present system versus its replacement by the parliamentary system.

Mr. Safire concluded:

If Mr. Nixon's critics turn their accusation that he cannot govern into a self-fulfilling prophecy; if they make the cry of "Resign!" a part of the American political discourse, then we are likely to wind up with the kind of Constitution Lord Macauley accused Americans of having: "All sail and no anchor."

Mr. President, I commend these thoughtful essays to my colleagues and ask unanimous consent that both essays be printed in the body of the RECORD.

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

DON'T QUIT

(By William Safire)

WASHINGTON, Nov. 4.—Columnists James Reston and Joseph Alsop have joined Tom Wicker and Anthony Lewis in urging President Nixon to resign.

For the long-run good of the country, I believe the President should not resign. Here is a response to some of the most frequently given reasons for demanding that he quit:

1. A President, embattled at home, invites miscalculation abroad.

That was the point made, supposedly in the President's defense, by Henry Kissinger, and seized upon by thoughtful Nixon-dumpers as evidence of the danger of having a President who does not bestride public opinion like a colossus.

However, in the last month's Mideast war, President Nixon proved that no flak, no matter how intense or prolonged, will stay him from acting firmly, cooly and decisively abroad. The most recurrent theme of his Presidency has been his firmness of purpose under fire, which has a way of resulting in honorable peace.

Much of the uproar abroad today comes from our allies, not our adversaries. The Neville Chamberlain elements of the British press, now decrying Mr. Nixon's "disheveled" and "dilapidated" leadership, are those who have shown themselves most ready to cast Hitler's escapees to the wolves, for fear of the discomfort Arab oilmen could inflict. Britain's hands-off policy might have evened the score for our 1956 Suez intervention, but this was hardly England's finest hour.

2. The country just cannot take any more Watergate revelations.

Some politicians are trying to transfer their own wrist-to-forehead public suffering to the people at large: because some Washington denizens cannot stand the gaff, they assume the country cannot.

A nation that experienced a decade featuring a rash of political assassinations, a series of race riots and city burnings that hung a pall of smoke over its capital, and more than 300 of its sons killed every week in an undeclared and unpopular war—such a nation is not about to come apart in this less violent decade at the revelation of political abuses. That is not blood, but vitriol, now running in the streets.

On the contrary, amid the worst of Watergate, the stock market has moved a hundred points up, interest rates and unemployment have come significantly down and the dollar has strengthened around the world. Perhaps a Washington too preoccupied to launch its weekly "bold new initiatives"—which used to lead to alienation, taxation, inflation and war—might turn out to be the best thing for the country. Whether or not a Federal numbness is the paradoxical cause, economic confidence is clearly on the rise.

3. As long as Mr. Nixon remains President, the investigation of his Administration will be impeded.

Of course it will. The President is the target of a grand jury and he can be expected to do what he can to defend himself. If he were to permit a Justice Department investigation to go in deep enough, and to go on long enough, to whip up unstoppable impeachment sentiment, would the President then win Brownie points for having run such a slambang inquiry?

Face it: Mr. Nixon stands accused, and he will cooperate as little as he must in the prosecution of himself, which under our system, is the right of the accused. To quit would be to confess guilt, as we have seen; no protestations of patriotic motive would wash; and it is wrong to demand that a man who considers himself innocent take action that is tantamount to confessing a crime.

If his accusers think the President has committed impeachable crimes, they should stop blaming him for not proving it for them. They should appoint their own prosecutor, arm him with the powers of judicial and legislative branches, and make their case or hold their peace.

4. Resignation would avert a horrendous confrontation.

Which is to say that the way to avert a constitutional clash is for one side to say it was wrong and to skulk off. By the same reasoning, why do not Congress and the courts "resign" the match—just forget about the whole thing? Same result—no clash—and the same feeling of resentment would ensue at justice not having been done.

A miscarriage of justice, whether the result of a witch hunt or a whitewash, is never "good for the country." In the sensible avoidance of confrontation, it is good to remember that it is not the President who is threatening to impeach the Congress.

It is possible to be furious with Mr. Nixon's encroachments on civil liberty, astounded at the blunders of his defense, worried about the erosion of public trust, fed up to here with apprehension that the worst is yet to come—and still, to resolutely oppose resignation.

Quitting would solve nothing, and could cause great mischief—about that, more in the next essay.

THE 27th AMENDMENT

(By William Safire)

WASHINGTON, Nov. 7.—Because the President's popularity has nosedived in the public opinion polls, we are told, he has lost the ability to govern: On that eminently practical ground, some of our pragmatic editorialists insist, the wise and patriotic course would be for Richard Nixon to resign.

That would be the "easy way," and nothing would be more unwise or unpatriotic because it would radically alter the nature of our system of government.

In a parliamentary system, when a government becomes unpopular and loses a vote of confidence, it "falls" and a new election is held. That system is fine for Great Britain; what it loses in stability it gains in responsiveness; but it is not the system the United States has had for two centuries.

The American system provides several restraints on the wide swings of public opinion. For example, only one-third of the Senate comes up for election every two years, so that a popular surge at any one time cannot suddenly transform the ideological bent of the whole of that deliberative body.

More to the point, our "Founding Fathers"—that phrase was coined by Warren G. Harding, of all people—rejected the parliamentary system in favor of the election of a separately powerful President for a specific term, so that a President could, if he felt he must, make unpopular decisions without being thrown out of office immediately.

Those who now demand that this President resign because he has "lost the ability to govern" are calling for the most fundamental change—not just in a leader, but in the traditions that make up our governmental system.

They cannot escape the consequences of their demand, which would be a kind of 27th Amendment, written or unwritten, that would say: "The President shall hold office for a term of four years, or until such time as his rating in the two leading national public opinion polls falls below 30 per cent for three consecutive months, at which time it can be assumed the President has lost the ability to govern and he must then resign."

Nobody has actually proposed such an amendment, of course—why, that would be downright radical—yet that would be the inescapable result of any successful hounding-into-resignation of a President.

The enormous power of precedent that has helped keep Presidents from resigning under pressure through two centuries, thus stabilizing our system, would be flip-flopped by a Nixon resignation: The pressure of precedent in the future would be to force Presidents who lose popular favor to submit their necks to the pollsters' ax.

The consequences cannot be dismissed with a flip "Watergate is unique." Hard cases make bad law, and the precedents we set today will shape the system our grandchildren will be living with. The shrill keening for resignation will soon become muted for reasons disparate as the situation is desperate:

First, a coup d'etat by forced resignation, by its nature, must be quick, but Mr. Nixon will not cooperate. Second, Nixon-haters are

already defecting from the quit-now ranks because they do not want to see him get off so easily—they want to nail their coonskin to the wall. And third, conservatives, no matter how angry or upset this week, will come to see the destabilizing effects of such a course, which is profoundly in opposition to conservative doctrine.

When Americans come to consider the real choice that the resigners have posed, they will see that the alternative is not Nixon and controversy versus somebody else and unity—but the continuity of the present system versus its replacement by the parliamentary system. The same people who claim our present situation to be unique, worthy of ditching 200 years of tradition, would—in all sincerity—find something uniquely disposable about next year's President. And the President in the year after that.

The legal overthrow of an elected leader is dirty work: people who demand that the President resign to avert impeachment are asking Mr. Nixon to do their dirty work for them. Is the prospect of the most extreme kind of struggle, followed by years of bitterness at what many will consider vindictive political usurpation, preferable to two years of a very careful Nixon Administration before the campaign of 1976 gets under way?

If Mr. Nixon's critics turn their accusation that he cannnot govern into a self-fulfilling prophecy; if they make the cry of "Resign!" a part of the American political discourse, then we are likely to wind up with the kind of Constitution Lord Macauley accused Americans of having: "All sail and no anchor."

FUEL FOR FISHERMEN

Mr. BEALL. Mr. President, certainly as we move toward meeting the massive challenges posed by the energy crisis, it ought to be the role of the Federal Government to insure that jobs are protected and that essential services and operations are continued. On November 27, I informed this body of my concern over the apparent inability of American farmers to receive needed fuel for their agricultural operations, due to bureaucratic delays which were holding up the flow of fuel to that sector of our Nation's economy. I was pleased, however, that the Office of Petroleum Allocation moved to cut the unnecessary redtape in the supply of diesel fuel by allowing priority uses, such as agriculture, mass transit, and energy-producing industries to directly request necessary fuel from their supplies, without formal petition or approval by Federal officials. I am very hopeful that this will end many intolerable delays, and I commend the Department of the Interior for this forward-looking step.

Mr. President, I also am pleased that the Office of Petroleum Allocation has announced allocation preferences for the marine and fisheries industry. In their order contained in the Federal Register of November 27, Administrator Eli T. Reich laid out procedures whereby commercial fishing vessels and associated seafood processing activities shall be granted preference for marine fuel.

As one who represents a State which is world-famous for its bountiful harvests of seafood products, I again commend the Office of Petroleum Allocation for its positive action. Only last year, the Chesapeake Bay seafood industry was disastrously hit by Hurricane Agnes, severely curtailing marine operations through a combination of excessive fresh water and vast amounts of sewage and other dangerous pollutants which flowed into the Bay and its tributaries. Only now is the industry beginning to recover, and thus the heavy burdens of the energy crisis could be a fatal blow for the many thousands of Marylanders who work on or near the water.

These new regulations will hopefully assist these people to remain in their important work, and allow them to continue to provide this Nation with high quality seafood products.

I ask unanimous consent that Advisory Notice No. 7 dealing with marine fuels be printed in the RECORD at the conclusion of my remarks.

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

[Advisory Notice No. 7]

MARINE FUELS

Preferences and Exceptions

Part A: Allocation preferences—Commercial Fishing Vessels and Associated Seafood Processing Activity. In order to relieve unintended results under the Mandatory Allocation Program for Middle Distillate Fuels, it has been determined that, pursuant to section 12 of the regulations (EPO Reg. 1, 38 FR 28660), suppliers shall give preference in the allocation of marine fuels in the middle distillate range for the following purposes for the period indicated:

1. For the operation of commercial fishing vessels of American ownership, registry, or operation engaged in the harvesting and transportation of marine food products to shore installations in the United States or its territories and in the operation of onboard equipment and gear; for a period of sixty days effective immediately, except as stated in 3 below.

2. For the operation of shoreside seafood processing installations in the United States or its territories for a period of sixty days effective immediately, where operations are construed to include the processing and storage of such marine products but not the distribution thereof.

3. For the operation of commercial fishing vessels of American ownership, registry, or operation engaged in the harvest of Yellow Fin Tuna during the Yellow Fin Tuna Season commencing on January 1, 1974, for the period of the 1974 season as determined by the Inter American Tropical Tuna Commission.

Part B: Temporary Exceptions from Mandatory Program. In order to assist petroleum suppliers in providing marine fuels to the preferred classes of end users described in Part A above, for a period of sixty days effective immediately the following classes of end users are excepted from the provisions of the Mandatory Allocation Program for Middle Distillate Fuels:

Ships and any other marine craft whose primary use is or will be of a recreational or pleasure nature, including both private and commercial yachts, cruise ships, sport fishing boats and other pleasure craft, whether owner operated, or chartered.

Suppliers of marine fuels should furnish such fuels to such end users only where such furnishing will not compromise the supply of the preferred end users described in Part A above.

Part C: General considerations. It is intended that the preference granted herein shall apply only to delivery of diesel fuels in the middle distillate range during the indicated periods and not to orders placed on a supplier for delivery beyond such period.

Purchasers requesting assistance under this notice will limit demands under these provisions to those volumes essential to the accomplishment of the basic preference function of each customer. It is necessary that customers receiving diesel fuel supplies under these preference categories furnish a written statement certifying to their supplier that volumes requested constitute essential requirements during the period covered by this notice. It is not intended that this notice be used as a device for stocking fuels against potential future needs.

ELI T. REICH,
Administrator.

NOVEMBER 23, 1973.

[FR Doc. 73-25216 Filed 11-23-73; 2:42 pm]

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

AMENDMENT OF THE SOCIAL SECURITY ACT

The PRESIDING OFFICER (Mr. CHILES). Under the previous order, the Senate will resume the consideration of H.R. 3153, which the clerk will state.

The second assistant legislative clerk read as follows:

A bill (H.R. 3153) to amend the Social Security Act to make certain technical and conforming changes.

The PRESIDING OFFICER. The pending question is on agreeing to the amendment—No. 724—of the Senator from Minnesota (Mr. MONDALE), which, in accordance with the unanimous consent agreement, will be voted on at 12 o'clock noon.

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. HELMS. 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. HELMS. Mr. President, I ask unanimous consent that it be in order to order the yeas and nays on four amendments which I have at the desk.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HELMS. I ask for the yeas and nays on my amendments Nos. 732, 740, 741, and 742.

Mr. ROBERT C. BYRD. Mr. President, does the Senator ask unanimous consent to have one show of seconds on all four amendments?

Mr. HELMS. Yes, Mr. President.

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

The yeas and nays were ordered.

Mr. HELMS. 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. COOK. 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. COOK. Mr. President, I ask unanimous consent that Lucy Knight, of my staff, be accorded the privilege of the floor during the debate on this bill, and votes.

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

Mr. COOK. 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.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote on the Mondale amendment be delayed for 5 minutes.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed the bill (S. 1559) to provide financial assistance to enable State and local governments to assume responsibilities for job training and community services, and for other purposes, with amendments, in which it requested the concurrence of the Senate; that the House insisted upon its amendments, asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PERKINS, Mr. DOMINICK V. DANIELS, Mr. GAYDOS, Mr. MEEDS, Mr. BURTON, Mrs. GRASSO, Mr. DENT, Mr. O'HARA, Mr. BADILLO, Mr. QUIE, Mr. ESCH, Mr. STEIGER of Wisconsin, Mr. FORSYTHE, Mr. PEYSER, and Mr. SARASIN were appointed managers on the part of the House at the conference.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that while Senators are attempting to work out some modification of the Mondale amendment, as I understand they are, the Senate proceed in the meantime to the consideration of the call of the calendar, beginning with Calendar No. 531 and going through Calendar No. 535; then proceeding with Calendar No. 537 through Calendar No. 545; and then beginning with Calendar No. 549 going through Calendar No. 551.

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

REFERRAL OF BILL TO THE COURT OF CLAIMS

The resolution (S. Res. 125) to refer the bill (S. 1970) entitled "A bill for the relief of Carl Johnstone, Junior" to the chief commissioner of the United States Court of Claims for a report thereon was considered and agreed to, as follows:

Resolved, That the bill (S. 1970) entitled "A bill for the relief of Carl Johnstone, Junior", now pending in the Senate, together with all accompanying papers, is referred to the chief commissioner of the United States Court of Claims. The chief commissioner shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States, or a gratuity, and the amount, if any, legally or equitably due from the United States to the claimant.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–571), explaining the purposes of the measure.

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

PURPOSE

The purpose of the resolution is to refer the bill (S. 1970) entitled "a bill for the relief of Carl Johnstone, Junior," now pending in the Senate, together with all accompanying papers, to the Chief Commissioner of the U.S. Court of Claims; the Chief Commissioner shall proceed with the same in accordance with the provisions of section 1492 and 2509 of title 28, United States Code, and report thereon to the Senate at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States, or a gratuity and the amount, if any, legally or equitably due from the United States to the claimant.

STATEMENT

S. 1970 would authorize the payment to Carl Johnstone, Jr., of $40,426.33 in full satisfaction of his claim against the United States for refund of overpayments of customs duties on entries of 13 airplanes imported by him during 1950, 1951, and 1952.

In the years 1950–52, the claimant purchased a number of airplanes in England. The airplanes were shipped separately to the United States. The first seven importations were ferried from England to Canada and, thence, to the United States through the port of Detroit. The next 11 entries were ferried from England to Canada and cleared through the port of Buffalo. All subsequent entries were ferried directly from England to New York. At this time the claimant became aware of the applicability of a lower valuation based upon the value of the airplanes in England, and action was instituted to recover duties paid on the first 18 importations which had been appraised at a Canadian value for the airplanes. Upon receipt of this information, Customs agreed that the lower English value was correct and, as appraisement of the last five shipments of airplanes ferried from England to Canada had not been completed, appropriate refunds were made. However, with regard to the first 13 shipments, the refunds were not, and have not been made. The claimant states that the time in which the Government could act had expired and that this was the sole reason why refunds were not made on these 13 entries.

The claimant contends that the failure to make the refund on the 13 aircraft was due to an administrative error of the Bureau of Customs.

The committee is of the opinion that it is appropriate to refer S. 1970 to the Chief Commissioner of the U.S. Court of Claims for a report thereon, because the Chief Commissioner of the Court of Claims is equipped to sift through the facts of this claim and to determine the merits thereof, and make a report to the Senate. The claimant will be required to carry the burden of proof of establishing in the proceeding before the Chief Commissioner of the Court of Claims that the failure of the Bureau of Customs to refund him the import duties on the 13 aircraft was due to an administrative error on its part.

The Department of the Treasury is opposed to the enactment of S. 1970. Attached hereto is a letter from the General Counsel of the Treasury to Chairman Eastland regarding S. 1381, 91st Congress, which was identical to S. 1970.

MARCOS ROJOS RODRIGUEZ

The Senate proceeded to consider the bill (S. 724) for the relief of Marcos Rojos Rodriguez which had been reported from the Committee on the Judiciary with an amendment on page 1, at the beginning of line 9, strike out "by him as the result of the accidental explosion of practice ammunition which United States Army Air Corps personnel negligently lost in a farm area and which was found by the said Marcos Rojos Rodriguez, in May 1925, while being employed as a farm laborer in such area: *Provided*, That no" and insert "by him as the result of the accidental explosion of a Mark I bomb fuse (Barlow type) which was found by Marcos Rojos Rodriguez, on May 28, 1925, in a potato field north of and adjacent to Kelly Field, Texas: *Provided*, That no"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Marcos Rojos Rodriguez of San Antonio, Texas, the sum of $15,000, in full satisfaction of all claims of the said Marcos Rojos Rodriguez against the United States for compensation for permanent personal injuries suffered by him as the result of the accidental explosion of a Mark I bomb fuse (Barlow type) which was found by Marcos Rojos Rodriguez, on May 28, 1925, in a potato field north of and adjacent to Kelly Field, Texas: *Provided*, That no part of the amount appropriated in this bill in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of service rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this bill shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding $1,000.

The amendment was agreed to.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an except from the report (No. 93–572), explaining the purposes of the measure.

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

PURPOSE OF AMENDMENT

In accordance with the recommendations of the Department of the Army, the purpose

of the amendment is to clarify certain aspects of the bill.

PURPOSE OF BILL AS AMENDED

The purpose of the bill as amended is to authorize and direct the Secretary of the Treasury to pay Marcos Rojos Rodriguez $15,000 in full satisfaction of his claims against the United States for injuries suffered by him as the result of the accidental explosion of a bomb fuse negligently lost in a farm area by U.S. Army Air Corps personnel, and found by Marcos Rojos Rodriguez in May 1925.

STATEMENT

The Department of the Army is not opposed to S. 724 and suggests that an award of $15,000 to Mr. Rodriguez is highly advantageous to the Government.

The facts of this case, as contained in the Department of the Army report, are as follows:

"Department of the Army records disclose that bills for the relief of Marcos Rodriguez were introduced, but not enacted, in the 69th, 70th, 71st, 72d, and 73d Congresses. These bills would have awarded Juan Rodriguez, father of Marcos Rodriguez, $900 for injuries sustained by his son and expenses incurred as a result of an explosion of a bomb on May 28, 1925 in a field at Kelly Aviation Field, San Antonio, Tex. A bill (S. 2398), identical with the present will was introduced, but not enacted, during the 90th Congress.

"Department of the Army records also disclose that a claim for $3,000 was filed by Juan Rodriguez for injuries to his son that resulted from the May 28, 1925, explosion. The incident was investigated and the facts developed were reported to the War Department. The claim file was referred to the Judge Advocate General for advice. The Judge Advocate General summarized the claim file as follows:

" 'The papers in reference show that Marcos Rodriguez, 13 years old, the son of the claimant, found, on May 28, 1925, a Mark I bomb fuse (Barlow type) in a potato field immediately north of and adjacent to Kelly Field, Tex.; that the child pounded the fuse upon a wagon wheel causing it to explode in his right hand and blowing off the thumb and first and middle fingers thereof; that the commanding officer at Kelly Field on June 4, 1925, appointed a board of officers under Army regulations to consider claims for damage or loss of private property; that this Board met at Kelly Field on July 13, 1925, to consider the claim of Juan Rodriguez; that the claimant under date of July 3, 1925, presented in writing a claim in the sum of $3,000 for the injury to his son; that the testimony before the board of officers shows that the fuse found in the potato field by young Marcos Rodriguez was a Mark I bomb fuse (Barlow type) and that the condition of the same indicated that it have been lying [sic] out in the weather for some time, possibly 2 or 3 years; that no evidence was adduced to account for the presence of the bomb fuse in the potato field; that the Board found that Marcos Rodriguez, 13 years old, son of Juan Rodriguez, lost a thumb and first two fingers of his right hand by reason of the explosion of a Mark I bomb fuse (Barlow type) which he found on a potato field immediately north of and adjacent to Kelly Field, Tex.; that the claim was one the settlement of which was not provided for by any specific law and should be considered in accordance with paragraph 10, Army Regulations 35–7020; that the injuries received by Marcos Rodriguez in the opinion of the Board reasonably supported a claim for $900; that the injury was not due wholly or in part to any fault or neglect on the part of the claimant or his son, but was probably due in part to ignorance and lack of experience on the part of the child; that the injury was not due wholly or in part to any fault or negligence of officers or employees of the Government; that the Board recommended that the Secretary of War submit to the Congress a draft of proposed legislation for relief of the claimant in the sum of $900; that the proceedings of the Board were approved by the commanding officer at Kelly Field and forwarded through military channels; that on August 17, 1925, the claimant, Juan Rodriguez signed a writing in which he stated his willingness to accept $900 in full settlement of the damages.'

"It was not clear to the Secretary of War whether the claim submitted by Juan Rodriguez was for damages sustained by him or his son, Marcos Rojos Rodriguez, and the Secretary did not forward the claim to Congress as the Claims Board recommended. On January 11, 1927, Congressman Wurzback of Texas introduced H.R. 16204, 69th Congress, to award Mr. Rodriguez $900. In response to a request for the views of the War Department on H.R. 16204, the Secretary of War forwarded Congress a copy of the claim file and neither favored nor opposed the bill. A copy of the claim file has not been found in Department of the Army records, however, a copy is in the National Archives files on H.R. 16204, 69th Congress.

"The Department of the Army has no objection to the compensation of Mr. Rodriguez for his injuries. It is observed that $900 (the amount recommended by the Claims Board and the amount mentioned in all but the last of the previous bills) invested in 1925 at 6 percent compounded annually would now amount to more than $10,000. Had the $900 been invested in appreciating property producing 6 percent income reinvested annually, the present worth would exceed $15,000. A study of Texas jury verdicts for the period 1900 to 1960 indicated that, had Mr. Rodriguez been able to obtain a judgment of $15,000 for his injuries, the judgment while generous, would not have been excessive.

"Prior to 1943, Mr. Rodriguez could obtain no compensation for injuries incurred in this manner other than by congressional action and none of the private bills introduced prior to 1943 for his relief was enacted. When administrative settlement of noncombat personal injury claims was authorized in 1943 (act of July 3, 1943, 57 Stat. 372), administrative relief was limited to the reasonable medical and hospital expenses actually incurred. Although a claimant might petition Congress for additional compensation administrative settlement of claims for other than reasonable medical and hospital expenses actually incurred was not authorized until the enactment of the act of September 2, 1958 (72 Stat. 1461). Damages for noncombat personal injury claims are now determined under the laws of the place where the act or omission causing the injury occurs (10 U.S.C. 2733, para. 11, AR 27–21).

"In view of the foregoing, an award of $15,000 for the damages suffered by Mr. Rodriguez is not unreasonable and enactment of the bill would not be, under the circumstances, preferential or precedential * * *."

The committee, after carefully considering all of the facts, agrees with the Department of the Army that legislative relief, under the circumstances of this case, would not be preferential or precedential.

Accordingly, the committee recommends that the bill, as amended, be favorably considered.

ARLINE LOADER AND MAURICE LOADER

The Senate proceeded to consider the bill (S. 774) for the relief of Arline Loader and Maurice Loader which had been reported from the Committee on the Judiciary with an amendment on page 2, line 2, after the word "of", strike out "20 per centum" and add "10 per centum"; so as to make the bill read:

S. 774

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of $20,000 to Arline Loader and Maurice Loader of Yachats, Oregon, in full settlement of their claims against the United States based upon the deaths of their sons, Maurice G. Loader and Frederic M. Loader, on October 15, 1944, as the result of the explosion of a thirty-seven-millimeter armor-piercing shell which United States military-personnel negligently left at an abandoned firing range and which was found by such sons.

SEC. 2. No part of the amount appropriated in this Act in excess of 10 per centum shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same is unlawful, any contract to the contrary notwithstanding. Violation of the provisions of this section is a misdemeanor punishable by a fine not to exceed $1,000.

The amendment was agreed to.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–573), explaining the purposes of the measure.

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

PURPOSE OF AMENDMENT

The purpose of the amendment is to limit any lawyer's fee to 10 percent of the claim.

PURPOSE

The purpose of the bill, as amended, is to pay to Arline and Maurice Loader, of Yachats, Oreg., $20,000 for the death of their sons, Maurice G. Loader and Frederic M. Loader, on October 15, 1944, as the result of the explosion of a 37-millimeter, armor-piercing shell found by the children on a firing range.

STATEMENT

A similar bill for these claimants in the 92d Congress, S. 341, was passed by the Senate and reported favorably by the Committee on the Judiciary of the House of Representatives, but no action was taken before adjournment.

A similar bill for these claimants in the 90th Congress, H.R. 1971, was passed by the House of Representatives but no action was taken in the Senate. In its favorable report on the bill, the Committee on the Judiciary of the House of Representatives said:

"The bill, H.R. 2016, was the subject of a subcommittee hearing on May 5, 1966. The testimony at that hearing and material submitted to the committee in support of the claim indicates that on the afternoon of October 15, 1944, four children, Maurice G. Loader, Jr., age 14; Frederic M. Loader, 13; Eleanor Loader, age 5; and Clifford Harp, age 14, were playing in the Loaders' garage located in Montara, Calif., a small coastal town approximately 20 miles south of San Francisco. The children were repairing a toy wagon and took from a tool box a 37-millimeter, armor-piercing shell which had apparently been found by a playmate of the oldest Loader child and brought into the Loaders' garage unknown to the parents, Maurice and Arline Loader. The shell exploded, killing Maurice G. Loader, Jr., and Frederic M. and injuring the other two children. The information available to the committee indicates

that the shell had been found on the Montara firing range, which had been used by the U.S. Army for anti-invasion maneuvers during World War II. The firing range, although encircled by a three-strand wire fence, was not adequately guarded notwithstanding that, previous to the tragedy, unexploded shells and grenades had been found on the range by children residing in Montara.

"As is noted in the Army Department report, a newspaper account of the tragedy outlines with considerable detail the facts of the explosion. That report also notes that the Army recognized the responsibility of the Government by paying $711 for funeral expenses relating to the two children killed in the blast.

"The Army has referred to the fact that the Congress has on a number of occasions passed bills granting similar compassionate relief to the parents of children killed or injured in similar accidents. Notwithstanding the outline of the facts in the Army report, that Department states that it did not have the information necessary to confirm or deny the facts of the case. The committee must disagree with this conclusion. The fact that the deaths resulted from an explosion of military ordnance is not controverted in any way. The records of the Army confirm that the Army recognized the claim to the extent then possible under the law by authorizing a payment of the funeral expenses for the dead children. In this connection, it is also clear that a release secured by the Army at that time was a prerequisite to payment of the only amount available and cannot now be taken as a reason for a denial of compassionate relief by legislative action. It cannot be denied that there has been a long delay in presenting and recognizing this claim but this does not lessen the loss to the parents. Under these circumstances and in the light of the fact that Congress has granted relief previously in similar cases, the committee recommends that the bill be considered favorably."

The committee believes that the bill is meritorious and recommends it favorably.

ROBERT J. MARTIN

The Senate proceeded to consider the bill (S. 1922) for the relief of Robert J. Martin which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and insert:

That, on such terms as it deems just, the United States Postal Service is authorized to compromise, release, or discharge in whole or in part the liability of Robert J. Martin, of Lake Carmel, New York, to the United States for the loss resulting from the theft of an amount of cash in his custody as a mailtruck driver, which was taken in a theft occurring on January 2, 1969.

The amendment was agreed to.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–574), explaining the purposes of the measure.

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

AMENDMENT

Strike all out after the enacting clause and insert in lieu thereof the following:

"That, on such terms as it deems just, the United States Postal Service is authorized to compromise, release, or discharge in whole or in part the liability of Robert J. Martin, of Lake Carmel, New York, to the United States for the loss resulting from the theft of an amount of cash in his custody as a mail truck driver, which was taken in a theft occurring on January 2, 1969."

PURPOSE OF THE AMENDMENT

The purpose of the amendment is to authorize the Postal Service to determine the amount of Mr. Martin's liability rather than specifically to relieve him of liability in the amount of $2,119.45.

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to authorize the Postal Service to discharge or adjust the claim of the United States against Mr. Robert J. Martin of Lake Carmel, New York, for liability to the United States for $2,119.45 which was in his custody as a mail truck driver and was taken in a theft occurring on January 2, 1969.

STATEMENT

On January 2, 1969, postal carrier Martin was assigned to make a motor vehicle trip between Tuckahoe, Eastchester, and Centuck Stations and the Main Post Office in Yonkers, New York. Mr. Martin picked up a registered pouch containing $1,118.45 in postal funds and accountable paper at the Tuckahoe Branch, and another registered pouch at the Eastchester Branch containing $1,001.00 in postal funds. He placed both pouches on the window tray in the cab of the truck.

When Mr. Martin arrived at Centuck Station, he backed his truck to the rear platform and loaded the outgoing parcel post from Centuck Station into the cargo area of his truck. He then went inside the station to pick up another registered pouch. He was inside the station for about 10 minutes during which time the cab of his truck was left unlocked and unprotected. Except for two lights in the ceiling of the platform, the area was in total darkness. When Mr. Martin returned to his truck he noticed that the two pouches were missing.

Investigation disclosed that Mr. Martin failed to follow postal regulations, parts 345.433a, 352.81 and 361.531 of the old Postal Manual, which was in effect at that time. These regulations required that an employee lock a vehicle containing mail when it was parked, even at a mail platform, unless the opened door or doors of the vehicle were in complete sight and could be reached quickly if theft were attempted. Moreover, with the exception of working sacks, the regulations required that collection sacks or satchels be kept in the load compartment of mail trucks—not in the driver compartment—and that they be protected from accident or theft.

Mr. Martin, who had been employed at the Yonkers, New York, post office for more than two years prior to the theft, informed postal inspectors at the time of the loss that he was aware of the regulations regarding the locking of unattended vehicles. Mr. Martin resigned his position with the former Post Office Department on July 15, 1969, and the amount of $283.43, representing contributions by him to the Civil Service Retirement Fund, was withheld, leaving a liability to the United States of $1,836.02.

The Postmaster at the Yonkers Post Office filed a claim with the former 39 U.S.C. 2403 to be relieved of liability for the loss of funds occasioned by the theft. The Finance Department, however, disallowed the claim on the grounds that Mr. Martin had failed to perform his duty to protect the mail at all times in accordance with applicable postal regulations. On June 30, 1970, in response to an appeal filed by the Yonkers Postmaster in behalf of Mr. Martin, the Assistant General Counsel of the Claims Division of the Post Office Department upheld the decision of the Finance Department.

The Postal Service takes the position, however, that although Mr. Martin failed to protect postal funds and accountable paper as required by postal regulations, it might be unduly harsh to hold him liable for the full amount of the loss.

While the Postal Reorganization Act provides that the Postal Service may, on such terms as it deems just and expedient, relieve an employee of a claim such as that involved here, 39 U.S.C. § 2601, the Comptroller General has ruled (B–171785, April 15, 1971) that the new authority may not be used to reopen cases decided by the General Accounting Office prior to the commencement of operations of the new Postal Service on July 1, 1971. The rationale of the Comptroller General's decision also applies to cases that were finally determined by the Post Office Department prior to the commencement of operations of the Postal Service. Since the present case was finally determined adversely to the claimant by the Post Office Department Claims Division prior to such date, relief for Mr. Martin must initiate with Congress.

The Committee believes that legislative relief is appropriate and recommends that the bill, as amended, be favorably considered.

M. SGT. EUGENE J. MIKULENKA

The bill (H.R. 1328) for the relief of M. Sgt. Eugene J. Mikulenka, U.S. Army, retired, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–555), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to authorize the payment of retired pay to M. Sgt. Eugene J. Mikulenka, U.S. Army, retired, as authorized by otherwise applicable law despite the fact that he was paid compensation for disabling injuries to both hands while performing duties as a Federal civilian employee after he had retired from the Army.

STATEMENT

The facts of this case, as contained in House Reports No. 93–176, are as follows:

"The Army in its report to the committee on the bill stated it was not opposed to enactment of the bill.

"After serving more than 24 years of active service with the Army, Eugene J. Mikulenka retired in the grade of master sergeant on July 31, 1960. On the basis of his years of retired service, his military retired pay amounts to $305.80 a month. Shortly after his retirement on November 1, 1960, Mr. Mikulenka accepted civilian employment with the Army at Camp Stanley, San Antonio, Tex., as an ammunition inspector.

"On March 8, 1968, while working in the testing area with six other persons, Sergeant Mikulenka found a phosphorous grenade which had become 'armed' in an unexplained manner. Realizing that an explosion in that location would seriously endanger his coworkers, he picked up the grenade and ran toward a water barrel. Before he could reach it, the grenade exploded in his hands. He suffered severe burns and was hospitalized, eventually losing his right hand and incurring a permanent disability of his left hand. For this act of conspicuous bravery, Sergeant Mikulenka was awarded the Meritorious Civilian Service Award.

"Since he was a retired enlisted man at the time of the accident, Sergeant Mikulenka was entitled under the law to both his salary as a civilian employee and his military retired

pay. A retired enlisted man is not subject to the provisions of the Dual Compensation Act (5 U.S.C. 5532).

"Based on the injuries and disabilities that he sustained in the explosion of the phosphorous grenade, Mr. Mikulenka was entitled to payments under the Federal Employees Compensation Act (5 U.S.C. 8101–8173) which were computed to be $33,207.67. While the provisions of that act provided that an employee could receive compensation payments in addition to payments in the form of pension for service in the Army, Navy, or Air Force, Mr. Mikulenka was held to be barred from receiving both his payments and his retired pay because 'retired pay' has been interpreted as not being the same as 'pension' as provided in the exception in the Federal Employees Compensation Act. *Steelman* v. *United States*, 318 F2d 733, 162 Ct. Cl. 81 (1963). As a result he was forced to make an election between compensation and the retired pay to which he was entitled as a retired Sergeant. In order to receive the disability payments to which he was entitled under the Federal Compensation Act for the injuries he suffered as a civilian employee, Mr. Mikulenka chose to waive his retired pay. The amended bill would allow Mr. Mikulenka to receive his military retired pay even though he had accepted the award.

"In indicating that it would have no objection to the bill, the Department of the Army concluded that this case is readily distinguishable from the general run of workmen's compensation cases. One point emphasized by the Army was that Mr. Mikulenka's injuries resulted from a deliberate effort on his part to prevent death or injury to his fellow workers despite the danger and risk to himself. The Army also pointed out that this case is distinguishable from those in which individuals seek two conflicting payments while serving in the same capacity. In this connection, the committee notes that this is an obvious point since Mr. Mikulenka earned his right to receive retirement pay because he served twenty-four years in the Army including service during World War II, and then after retirement became a Federal employee and was injured while acting in his civilian capacity. In this connection, the Army stated:

" 'Because of the extraordinary circumstances surrounding the incident and Sergeant Mikulenka's heroic conduct, the Department of the Army is of the opinion that favorable action is warranted on the bill, if it is amended so as to provide only for his entitlement to his military retired pay as well as the disability payments from the Bureau of Employees' Compensation. In arriving at this conclusion, the Department considered this case in the light of past bills involving injuries arising from industrial accidents, and finds that it is readily distinguishable from the general run of workmen's compensation type cases. In most incidents, the employee is injured by his unintentional act or that of a fellow worker and not as the result of a deliberate act taken at a great personal risk to himself to prevent death or injury to others. This case is also distinguishable from those in which a claimant seeks two conflicting payments while serving in the same capacity (e.g., the individual who is awarded disability retired pay as a member of the military service and subsequently seeks additional common law damages for the same injury); or a case in which he is receiving benefits from the military departments because of a disability and later requests additional disability benefits for service as a civilian employee. Instead, this bill involves a former soldier who, after earning an entitlement to military retired pay based on his years of service, suffers a crippling injury while employed as a civilian employee (in a capacity having no connection with his former military status) and which injury greatly impairs his ability to secure gainful employment.

" 'It is the opinion of the Department of the Army that it would be inequtiable, under these circumstances, to require the claimant to make an election particularly when his self-sacrificing effort prevented death or injury to the other employees and attendant claims by them upon the Government.'

"The committee finds that this matter is a proper subject for legislative relief."

In agreement with the views of the House of Representatives, the committee recommends that H.R. 1328 be favorably considered.

EDGAR P. FAULKNER AND RAY H. NEW

The bill (H.R. 1948) for the relief of Edgar P. Faulkner and Ray H. New was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–557), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to authorize the U.S. Postal Service, on such terms as it deems just, to compromise, release, or discharge in whole or in part the liability of Edgar P. Faulkner, as postmaster, and Ray H. New, as assistant postmaster, at the Tucker, Ga. Post Office, to the United States for the loss resulting from the burglary at that post office on the night of June 19, 1969.

STATEMENT

The facts of this case as contained in House Report 93–432 are as follows:

"The U.S. Postal Service in its report on the bill stated that it favors enactment of the bill with the amendment recommended by the Committee.

"On the night of June 19, 1969, burglars forcibly entered the Tucker Post Office, used torches to open the walk-in vault of the post office, and opened a safe inside the vault without visible signs of force. The main stamp stock and savings stamps were taken from a wire cage inside the vault. Drawers located inside the safe were pried open and cash and stamps were taken from them. A burglar-resistant chest inside the safe was not attacked. While the chest protected a quantity of large denomination stamps, it was not filled to capacity and could have been used to protect a portion of the stamp stock that was taken. Losses as a result of the burglary totaled $47,860.78 in stamps and funds—$31,026.47 in postage stamps, $563.94 in postal funds, and $16,270.10 in U.S. Savings Stamps.

"On June 24, 1970, the General Accounting Office (hereinafter GAO) held Postmaster Faulkner and Assistant Postmaster Ray H. New jointly and severally liable for $18,770.00, the value of that portion of the stamp stock which could have been placed in the unutilized space in the burglar-resistant chest. GAO based its ruling on the ground that, contrary to postal regulations in effect at the time, Faulkner and New had failed to fill the burglar-resistant chests to capacity.

"The Postal Service took the position, however, that Postmaster Faulkner and Assistant Postmaster New were not negligent. In its opinion they had, in conformity with Postal Service regulations, made every reasonable effort to protect postal funds and stamps at the Tucker Post Office, since they had properly locked the modern walk-in vault, which had been equipped with a new burglar-resistant door only five years prior to the burglary. Accordingly, the Postal Service filed a request with the GAO for reconsideration of its decision. However, GAO affirmed its prior decision on October 31, 1972. The committee feels that relief as provided in this bill is consistent with the current law governing Postal Service operations.

"While the Postal Reorganization Act provides that the Postal Service may, on such terms as it deems just and expedient, relieve an employee of a claim such as that involved here, 39 U.S.C. § 2601, the Comptroller General has ruled (B–171785, April 15, 1971) that the new authority may not be used to reopen cases decided by GAO prior to the commencement of operations of the new Postal Service, July 1, 1971. Since this case was finally determined adversely to the claimants prior to such date, relief for Postmaster Faulkner and Assistant Postmaster New must initiate with Congress.

"The committee agrees that the bill should be amended to include provision for equivalent relief for the Assistant Postmaster as recommended by the Postal Service. It is recommended that the bill be considered favorably."

In agreement with the views of the House of Representatives, the committee recommends favorable consideration of H.R. 1948.

HAZEL W. LAWSON AND LLOYD C. JOHNSON

The bill (H.R. 1949) for the relief of Hazel W. Lawson and Lloyd C. Johnson was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–558), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to authorize the U.S. Postal Service, on such terms as it deems just, to compromise, release, or discharge in whole or in part the liability of Hazel W. Lawson, postmaster, and Lloyd C. Johnson, assistant postmaster, of the Avondale Estates Post Office, Avondale, Ga., to the United States for the loss resulting from a burglary at that post office on July 3, 1967.

STATEMENT

The facts of this case as contained in House Report 93–433 are as follows:

"The U.S. Postal Service in its report on the bill indicated it favors enactment of the bill with the amendment recommended by the committee.

"As is outlined in the report of the Postal Service, on the night of July 3, 1967, burglars forcibly entered the post office and opened two safes by 'peeling.' One of these safes was equipped with an inner security chamber, known as a burglar-resistant chest. While it was the usual procedure to store part of the stamp stock in the inner chest, no stamps were stored therein on the night of the burglary. Assistant Postmaster Lloyd C. Johnson stated that he had not placed stamp stock in the inner chest so as to leave room for an incoming shipment of stamps. His statement was corroborated by Postmaster Lawson, who indicated that Assistant Postmaster Johnson used the inner chest as a usual procedure and was careful and conscientious employee. Losses as a result of the burglary totaled $33,290.56 in stamps—$3,755.20 in fixed credit stamp stock and $29,535.36 in main stamp stock. The main stamp stock represented $26,400.00 in postage stamps,

$3,119.35 in U.S. Savings Stamps, and $16.01 in Documentary Stamps.

"The General Accounting Office disallowed $26,400.00 of Assistant Postmaster Johnson's claim for credit. GAO based the ruling on the ground that, contrary to postal regulations in effect at the time, Johnson was negligent in failing to fill the burglar-resistant chest to capacity. GAO relieved Postmaster Lawson of financial responsibility for the loss, but held her accountable for collecting the $26,400.00 in postage stamp losses from Assistant Postmaster Johnson.

"The Postal Service stated that it took the position, however, that Lawson and Johnson were not negligent, and that they had, in conformity with Postal Service regulations, made every reasonable effort to protect postal funds and stamps at the post office, since they had properly locked all safes, fixed credit drawers, and compartments. In its opinion, the Assistant Postmaster's failure to utilize the inner chest in this instance was an error in judgment, rather than negligence.

"The committee feels it is relevant to note that while the Postal Reorganization Act provides that the Postal Service may, on such terms as it deems just and expedient, relieve an employee of a claim such as that involved here, 39 U.S.C. § 2601, the Comptroller General has ruled (B-171785, April 15, 1971) that the new authority may not be used to reopen cases decided by GAO prior to the commencement of operations of the new Postal Service, July 1, 1971. As noted by the Postal Service, since this case was finally determined adversely to the claimants prior to such date, relief for Lawson and Johnson must initiate with Congress.

"It is recommended that the bill amended to provide for a similar opportunity for relief for Assistant Postmaster Lloyd C. Johnson, be considered favorably."

In agreement with the views of the House of Representatives, the committee recommends favorable consideration of H.R. 1949.

JOSEPH C. LEEBA

The bill (H.R. 2207) for the relief of Joseph C. Leeba was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an exerpt from the report (No. 93-559), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to authorize the U.S. Postal Service to compromise, release or discharge, in whole or in part, on such terms as it may deem just the liability of Joseph C. Leeba, Superintendent of the West Side Postal Station, Youngstown, Ohio, for the loss resulting from the burglary at that postal station on February 22, 1969.

STATEMENT

The fact in the case as contained in House Report 93-446 are as follows:

"In its report to the committee on the bill, the U.S. Postal Service indicated it would have no objection to enactment of the bill with the amendment recommended by the committee.

"On February 22, 1969, burglars forcibly entered the West Side Postal Station by forcing the lock on the front door and used a cutting torch to open the two station safes. Each safe was equipped with an inner security chamber, known as a burglar-resistant chest. The burglars were unsuccessful in their attempts to break into these chests, which were almost empty, and which could easily have held all of the main stamp stock of the station. This stock was stored, however, inside the main compartments of the safes, from which it was taken. Losses as a result of the burglary total $9,673.41 in stamps—$8,173.51 in postage stamps and $1,499.90 in U.S. Savings Stamps.

"The Director of the Postal Data Center at St. Louis disallowed $2,283.81 of Superintendent Leeba's claim for credit. The decision was based on the ground that, contrary to postal regulations in effect at the time, Mr. Leeba had failed to fill the burglar-resistant chests to capacity. On November 3, 1969, in response to an appeal filed by Mr. Leeba, the Acting Assistant General Counsel of the Claims Division of the Post Office Department upheld the decision of the Postal Data Center.

"The Postal Service takes the position, however, that although Superintendent Leeba failed to utilize the burglar-resistant chest for protection of stamp stock, it might be neither just nor expedient to hold him liable for the full amount disallowed.

"As is noted in the report of the Postal Service, the Postal Reorganization Act provides that the Postal Service may, on such terms as it deems just and expedient, relieve an employee of a claim such as that involved here, 30 U.S.C. § 2601, however, the Comptroller General has ruled (B-171785, April 15, 1971) that the new authority may not be used to reopen cases decided by the General Accounting Office prior to the commencement of operations of the new Postal Service on July 1, 1971. The rationale of the Comptroller General's decision also applies to cases that were finally determined by the Post Office Department prior to the commencement of operations of the Postal Service. Since the present case was finally determined adversely to the claimant by the Post Office Department Claims Division prior to such date, relief for Mr. Leeba must initiate with Congress.

"The committee agrees that the language suggested by the Postal Service will provide an appropriate and equitable way to extend relief in this situation. Accordingly, it is recommended that the bill be amended in this manner and that the amended bill be considered favorably."

In agreement with the views of the House, the committee recommends the bill favorably.

CORNELIUS S. BALL AND OTHERS

The bill (H.R. 2213) for the relief of Cornelius S. Ball, Victor F. Mann, Jr., George J. Posner, Dominick A. Sgammato, and James R. Walsh was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-560), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to authorize the Postmaster General to compromise, release or discharge, in whole or in part, the liability of five named individuals, postmasters at Rye, Harrison, Mamaroneck, Mt. Vernon, and Larchmont, N.Y., of liability to the United States resulting from the sale of postage stamps on September 13, 1969, to a person purporting to represent the Allison Mailing List Corp. of New York.

STATEMENT

The facts in the case as contained in House Report 93-94 are as follows:

"The U.S. Postal Service in a report to the committee on the bill indicated that it would have no objection to the bill with the amendment now recommended by the committee.

"The losses referred to in the bill at the five post offices occurred in a similar manner. As is outlined in the report of the U.S. Postal Service in each instance a person approached the window clerk or postmaster and inquired if his postage order was ready and, at the same time, handed the postal employee a First National City Bank of Rye, N.Y. cashier's check for $5,000 payable to the postmaster, and drawn on the account of Allison Mailing List. Later investigation disclosed that the cashier's checks had been stolen and were part of an overrun printed for the First National City Bank. The checks were identical to bona fide checks acceptable under the then current instructions to postal personnel. Postal Manual, 441.221. In all instances, the person presenting the check indicated that his employer had previously telephoned the post office requesting the stamps listed on the order. When questioned by postal employees, the person furnished logical and convincing answers.

"On the basis of these facts, the Post Office Department recommended to the General Accounting Office that the postmasters not be held personally liable for the losses. The General Accounting Office denied the applications for relief on the ground that the individuals had not exercised reasonable and prudent judgment in accepting the checks. In commenting upon this situation, the Postal Service stated that it favors the granting of relief of the postmasters in this case. The person presenting each check was evidently a skilled confidence man, and we are aware of the fact that the general public, and the reasonably prudent man, are highly susceptible to the confidence games of such individuals. The Postal Service observed that the checks gave every appearance of being legitimate cashier's checks of a type looked upon by the general public, and the reasonably prudent man, as being on the same footing as cash. Given the circumstances at the time, the Postal Service concluded that the postal employees acted as reasonably prudent men and should be relieved of liability.

"The language recommended as a committee amendment embodies the recommendation of the Postal Service in its report to the committee. As observed in that report while the Postal Reorganization Act provides that the Postal Service may, on such terms as it deems just and expedient, relieve employees of claims such as those involved here, 39 U.S.C. 2601, the Comptroller General has ruled (B-171785, April 15, 1971) that this authority may not be used to reopen cases decided by GAO prior to the commencement of operations of the new Postal Service, July 1, 1971. The benefits of the new law were not available to the five individuals named in the bill because their appeals for relief were rejected prior to July 1, 1971. Their only recourse therefor is to appeal to the Congress for relief.

"The committee agrees that the most equitable manner of providing relief in that situation is to extend these individuals the same benefits that are now provided for under the law and to authorize the Postal Service to consider the application for relief. It is recommended that the amended bill be considered favorably."

In agreement with the views of the House, the Committee recommends the bill favorably.

JAMES EVANS ET AL.

The bill (H.R. 3044) for the relief of James Evans, publisher of the Colfax County Press, and Morris Odvarka was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-561), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to provide relief to the publisher of a newspaper published in Clarkson, Nebraska, and the postmaster of a situation involving a postage deficiency. Section 1 of the bill would relieve James Evans, a publisher of the Colfax County Press, published in Clarkson, Nebraska, of liability to the United States in the amount of $1,342.48; the amount of the postage deficiency assessed against him as the result of the mailing of certain supplemental publications along with a regular issue of the Colfax County Press at second class, rather than third class postage rates.

Section 2 of the amended bill would authorize the United States Postal Service, on such terms as it deems just, to compromise, release or discharge, in whole or in part, the liability of Morris Odvarka for a postage deficiency charged against his account as postmaster of Clarkson, Nebraska, by reason of the facts referred to in the first section of the bill.

STATEMENT

The United States Postal Service in its report to the committee on the bill stated that it would have no objection to the enactment of the bill as passed by the House of Representatives.

As is outlined in the report of the United States Postal Service, issues of the Colfax County Press containing an advertising supplement was mailed at second class postage rate in the period from May 15, 1968 to May 5, 1971. This was subsequently determined not to have been the proper rate chargeable for the supplement since, under these circumstances, the supplement is considered not to be germane to the publication. Under such circumstances, the proper rate chargeable for the supplement was the single piece third class rate. The pertinent regulations provide that publications which are distinct from and independent of the regular issue, such as catalogs, circulars, handbills, posters, and other special advertisements, and which are, therefore, not germane to the issue, may not be inserted as supplements to publications of the second-class. (Postal Service Manual, section 132.44c.) Because insufficient postage was paid a deficiency in the amount of $1,342.48, arose.

The Postal Service file reveals that the deficiency was discovered during a routine inspection of the Clarkson post office on April 8, 1971. The case was submitted to Headquarters for verification. Subsequently, in a letter to the postmaster dated May 13, 1971, Headquarters confirmed the legal impropriety of including the advertising supplement in mailings of the publication without payment of the appropriate third-class postage.

The Postal Service, while noting that the publication is legally liable for the deficiency referred to in the bill, concluded that in equity and good conscience, the Postal Service did not believe it should assert a claim against the publication for the deficiency. This conclusion was based on the fact that the Post Office accepted mailings of the Colfax County Press containing the advertising supplement during the period involved. The Postal Service further recommended that the bill be amended to provide the Service with authority to compromise, release or discharge in whole or in part the liability of the postmaster. This authority would be the equivalent of the authority now provided by the Post Office under section 2601 of title 39 of the United States Code in parallel cases occurring after July 1, 1971.

The Postal Service in its report to the House Judiciary Committee stated in its conclusions as follows:

"It is unquestioned that the publication is legally liable for the deficiency. However, in equity and good conscience we do not believe we should now assert a claim against the publication for the deficiency, since the post office accepted mailings of the Colfax County Press containing the advertising supplement throughout the period from May 15, 1968, to May 5, 1971.

"We also believe that the postmaster should be granted some relief, in part, because he had little experience with second-class mail requirements. This is evidenced by the fact that the Colfax County Press is the only publication entered as second-class mail at Clarkson.

"In our view the most appropriate disposition of the case would be achieved by amending H.R. 3044 to relieve the publication in the amount of the deficiency ($1,342.48); and to authorize the United States Postal Service, on such terms as it deems just, to compromise, release, or discharge in whole or in part the liability of the postmaster. Section 2601 of title 39, United States Code, now gives the Postal Service authority to determine cases involving employee liability. However, it has been determined that this new authority may not be used to reopen cases decided prior to the commencement of operations of the Postal Service on July 1, 1971."

The committee agrees that this is a proper subject for legislative relief in the form recommended by the United States Postal Service and it is recommended that the bill be considered favorably.

EUGENIA C. LYTTLE

The bill (H.R. 3530) for the relief of Eugenia C. Lyttle was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-562), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation, is to authorize the United States Postal Service to compromise, release or discharge in whole or in part the liability of Eugenia C. Lyttle, former postmaster at Manchester, Kentucky, for the loss resulting from a burglary at the Manchester Post Office on the night of May 11 and 12, 1969.

STATEMENT

The facts in the case as contained in House Report 93-436 are as follows:

"The Postal Service in a report to the committee on the bill indicated it would have no objection to the bill with the amendment recommended by the committee.

"The burglary referred to in the amended bill occurred on the night of May 11, 1969 when burglars forcibly entered the Manchester Post Office and opened two safes by "peeling." One safe was equipped with an inner security chamber, known as a burglar-resistant chest. The burglar-resistant chest was left unlocked and was used for storing blank money order forms. This safe also contained fixed credit drawers which were pried open and emptied by the burglars. The other safe, which contained no burglar-resistant chest, was used by former Postmaster Lyttle for the storage of the main stock. Losses in main stock as a result of the burglary totaled $13,208.46 in stamps and funds—$12,952.29 in postage stamps, $245.67 in postal funds, and $10.50 in U.S. Savings Stamps.

"The Postal Service report stated that on April 15, 1971, the General Accounting Office disallowed former Postmaster Lyttle's claim for credit for the losses in main stock. GAO based its ruling on the ground that the Postmaster's failure to utilize available protective equipment for maximum protection of postal funds and stamp stock constituted negligence. The Postal Service stated however that it feels that while it could not condone a failure to make maximum utilization of security facilities, it would be neither just nor expedient to hold former Postmaster Lyttle liable for the full amount of $13,208.46. Ms. Lyttle felt that she had, in conformity with Post Office Department regulations, made every reasonable effort to protect postal funds and stamps, since she had properly locked both safes, and since the postal inspectors who inspected the Manchester Post Office in October 1967 had taken no exception to the manner in which she used the safes. Accordingly, we feel that her failure to properly utilize the inner chest was an error in judgment, rather than negligence.

"The Postal Service referred to the current law on relief of liability when it stated that while the Postal Reorganization Act provides that the Postal Service may, on such terms as it deems just and expedient, relieve an employee of a claim such as that involved here, 39 U.S.C. § 2601, the Comptroller General has ruled (B-17185, April 15, 1971) that the new authority may not be used to reopen cases decided by GAO prior to the commencement of operations of the new Postal Service. July 1, 1971. Since this case was finally determined adversely to the claimant prior to such date, relief for former Postmaster Lyttle must initiate with Congress.

"In indicating it would have no objection to an amended bill the Postal Service stated:

" 'In our view the most appropriate disposition of the case would be achieved by amending H.R. 3530 to authorize the Postal Service, on such terms as it deems just, to compromise, release, or discharge in whole or in part the liability of Ms. Lyttle. The Postal Service would have no objection to the enactment of H.R. 3530, if amended as stated.'

"The committee recommends that the amended bill be considered favorably."

JAMES E. FRY, JR., AND MARGARET E. FRY

The bill (H.R. 3751) for the relief of James E. Fry, Jr., and Margaret E. Fry was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-563), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to authorize the Secretary of the Army to receive, consider, settle, and pay any claim filed under section 2733(b) of title 10, United States Code, or any regulation promulgated thereunder, by James E. Fry, Jr., and Margaret E. Fry of Brighton, Colo., for damage allegedly caused to their property in 1966 as the result of the contamination of a stream, running under the land of the said James E. Fry, Jr., and Margaret E. Fry, by chemical waste disposed of by personnel at the Rocky Mountain Arsenal in Colorado.

STATEMENT

The facts of the case as contained in House Report 93-185 are as follows:

"The Department of the Army in its report stated that it is not opposed to the bill.

"The bill would merely permit the Department of the Army to receive, consider, settle, and pay any claim filed under the established procedures for the consideration of claims under the military claims procedures of section 2733 of title 10. This would be made possible by the provision in the bill waiving the limitations of section 2733(b) which requires that claims be filed within 2 years from the time the claim accrues.

PURPOSE

"The Army report goes into some detail in outlining the history of the Fry claim, and the aspects of the law which were interpreted as requiring the Army to rule that the claim filed in 1967 was barred by the limitations of section 2733(b). The Army summarized these facts as follow:

"(a) The Frys are the sole owners of a tract of land consisting of 391.56 acres situated in the northwest quarter of section 14, Township 2 South, Range 67 west, and the western half of the southwestern quarter of section 11, Township of 2 South, Range 67 West, Adams County, Colorado.

"(b) There is evidence to support the Frys' allegation of some casual relation between the property damage to their land and crops due to water pollution and the activities of the Rocky Mountain Arsenal in Denver, Colorado.

"(c) In 1954 the Frys first heard complaints from surrounding neighbors about water pollution caused by the Rocky Mountain Arsenal and at that time they were aware that claims against the United States were being filed.

"(d) On January 8, 1960, tests were conducted by local state health officials, on land surrounding the Frys' tract. Letters were sent by the Tri-County District Health Department, Aurora, Colorado, during the months of January and February 1960, which informed land owners in the area that the chloride content of their wells exceeded 200 parts per million. Two hundred fifty parts per million was the acceptable limit.

"(e) In 1964 and 1965, Mr. Fry planted corn crops and noticed early signs of retardation, but later these crops developed satisfactorily and showed no further signs of damage. During that time, he stated that he 'suspected the water.'

"(f) Sometime prior to 1965 Mr. Fry was informed by a member of the United States Geological Survey that the water contamination in the area might disappear in 20 to 30 years.

"(g) On January 20, 1967, the Frys filed a claim for property damage against the United States under the provisions of section 2733, title 10, United States Code, as follows:

"1. Contaminated wells with a total flow of 885 gallons per minute	$75,640.00
2. Abandonment of tile line	1,274.00
3. Abandonment of holding pond	967.80
4. Damage to 1966 crops and land	2,274.00
5. Claim for digging well to replace those contaminated	3,961.81
Total claim	84,090.61

"(h) By letter dated October 6, 1967, the U.S. Army Claims Service notified the Frys that their claim had been disapproved because, under the applicable Colorado law, they were deemed to have known that their water was contaminated, and that the Rocky Mountain Arsenal was the source of the contamination, in 1964. Thus, on January 20, 1967, the two-year limitation period for the filing of administrative claims under section 2733 of title 10, United States Code, had elapsed.

"The Frys appealed the decision denying their claim (on the grounds discussed later). Their appeal was denied by the Deputy Assistant Secretary of the Army (Financial Management) on January 23, 1968.

"As noted earlier, there is evidence that property belonging to the Frys was damaged by the Department of the Army. The only controversy is whether the Frys filed their claim in a timely manner. In denying the Fry's claim, the Department of the Army asserted that:

"(a) Under clause (1) of subsection (b) of section 2733 of title 10, United States Code, all claims for property damage must be presented within two years 'after it [the claim] accrues.' Determination of when a claim accrues under this provision of Federal law depends on the applicable law of Colorado which was the situs of the tort.

"(b) Under Colorado law, a claim of the type asserted by the Frys accrues: (1) when the land is known (or should be known) by the claimant to be damaged, and (2) the source of the damage is known (or should be known) by the claimant. *Zimmerman* v. *Hinderlander*, 97 P. 2d 443 (Colo. 1939); *Middlecamp Bessimer Irrigating Co.*, 103 P. 280 (Colo. 1909); *Rose* v. *Agricultural Ditch and Reservoir Co.*, 202 P. 112 (Colo. 1921).

"(c) The record discloses that, prior to January 20, 1965, the Frys knew (or should have known) that their land had been damaged by chemical contamination, and that the probable source of that contamination was the U.S. Army Rocky Mountain Arsenal.

"The Frys have consistently maintained the following position:

"(a) The claim first accrued on June 20, 1966, because the Tri-County District Health Department then received the results of a sample which had a content of 510 parts per million of chloride. This content was well above the acceptable limit of 250 parts per million. At about the same time, the damage to crops was also shown, for the claimants then had side by side comparisons made of crops watered by contaminated and uncontaminated wells.

"(b) The Frys did not have any clear notice of the contamination of wells before 1966. They substantiated this contention by a letter dated March 20, 1968, from Mr. Thomas E. Vigil of the Tri-County District Health Department to the effect that the records were reviewed and showed that the Health Department had not notified the Frys of any earlier reports that the well water pollution exceeded the standards set forth by the U.S. Public Health Service. Mr. Fry further states that he asked the Army to notify him of any contamination in the wells which he gave the Army permission to drill.

"(c) In the spring of 1964 the Frys only suspected the water, but since they used herbicides they could not be sure of the source of any contamination. Also, in irrigating the land after the original retardation there was no noticeable ill effects, which could conclusively be attributed to the water or herbicides, in three out of four tests. The Frys further state that this claim is supported by a statement from one Norval Daniels who was employed as a ditch rider for the Burlington Ditch Company and in his job passed claimants' field of corn daily. Mr. Daniels noted that one end of the cornfield was irrigated from the wells in question and the other was not, but at harvest time the corn appeared equally good at both ends of the tract.

"After reviewing these contentions, it is the opinion of this Department that the claimants have not exhausted their judicial remedies because they can seek a judicial determination, within six years of the date of the alleged injury, as to whether the administrative statute of limitations had run. The pursuit of this remedy, however, would be burdensome upon the claimants and upon the Department of the Army and would probably result in an affirmance of this Department's determination that the two-year administrative statute had run. No matter what the court's decision, the claim would still be unresolved. If a favorable decision to the claimant were made, the Department would still be required to hear the claim on its merits. If, on the other hand, the decision were adverse to the claimants, they could seek a private relief bill to remove the time bar.

"In indicating it had no objection to enactment of the bill, the Army recognized the equitable considerations justifying relief in this instance. The Army stated:

" 'In view of these considerations, the Department of the Army on behalf of the Department of Defense has no objection to the enactment of the bill. This conclusion is based upon the fact that the claimants have presented persuasive reasons for their failure to take timely action. Although these reasons do not provide a legal basis for tolling the statute, they do raise compelling, equitable considerations and indicate that the claimants' assigned reasons for their forbearance in filing a claim represented an honest desire to avoid filing until they were convinced that an injury had resulted and also that the United States was responsible. The good faith of the claimants is also demonstrated by the fact that the claimants continued to plant the crops in 1964 and 1965, and did not seek to recover for any damages to crops during that period.

" 'The cost of the bill, if enacted, cannot be determined at this time.' "

It is recommended that the bill be considered favorably.

Attached hereto and made a part hereof is the report of the Secretary of the Army.

MANUEL H. SILVA

The bill (H.R. 4175) for the relief of Manuel H. Silva was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-564), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to pay Manuel H. Silva $6,240 to compensate him for the loss of a group of pigs during a cholera outbreak under adverse circumstances, including a major snow storm, which delayed an inspection of the animals for 7 days, during which the 156 animals referred to in the bill died and therefore could not be the subjects of compensation.

STATEMENT

The facts of the case as contained in House Report 93-186 are as follows:

"The Department of Agriculture in its report to the committee on an identical bill in the 92d Congress stated that it favored enactment of the bill.

"In the report of the Department of Agriculture, it was explained that the Department is cooperating with several States in a program to eradicate hog cholera and the progress in this cooperative program is excellent. A most important element of the program is the prompt slaughter of swine infected and/or exposed to the disease. In recognition of the losses they suffer as part of this effort to control the spread of the disease, owners are paid an indemnity in ac-

cordance with Title 9, Code of Federal Regulations, Part 56.

"The Department stated that there are several conditions, however, which must be met in connection with these indemnity payments. One is that a State or Federal animal health official must inspect the animals and make a positive diagnosis that they are infected and/or exposed to hog cholera before the swine are ordered to be slaughtered.

"On December 22, 1970, Mr. Silva, of Ipswich, New Hampshire, reported to the New Hampshire State Veterinarian that his animals were sick. The hog cholera diagnostician for the State of New Hampshire, an employee of Department of Agriculture was not available as he was on approved annual leave. A USDA diagnostician from Vermont arrived at Concord, New Hampshire, on the night of December 23, 1970. On the morning of December 24, the Vermont diagnostician was advised by the New Hampshire State Veterinarian that the roads to Mr. Silva's premises were impassable because of a heavy snowfall, and that he should return to Vermont. It was December 29, 1970, before it was possible to inspect the animals and complete the diagnosis: by that time, a number of pigs were dead.

"The completion of the diagnosis is a condition of eligibility for indemnity payments under the Federal-State cooperative hog cholera eradication program. When the disease was diagnosed as hog cholera, the Department worked with Mr. Silva to eliminate the disease from his premises and paid indemnity for infected and/or exposed swine which had to be killed.

"In indicating that it favored legislative relief in this instance, the Department stated:

"The bill is concerned with payment for those swine owned by Mr. Silva which died but for which Mr. Silva was not eligible for indemnity payment under the cooperative program, due to a sequence of events over which Silva had no control. As a result of the leave of the Federal diagnostician, the inability to arrange for a substitute diagnostician prepared to make the very quick inspections necessary in the suppression of hog cholera, and heavy snow which prevented the substitute diagnostician from making an inspection, final diagnosis was delayed seven days from time of notification. Mr. Silva did all that could be expected of him in reporting the disease situation to proper officials.

" 'Thus we believe Mr. Silva is entitled to the relief proposed by H.R. 13012, and accordingly, we favor enactment of the bill.' "

The committee agrees that this case is a proper subject for legislative relief and recommends that the bill be considered favorably.

FIRST LT. JOHN P. DUNN, U.S. ARMY

The bill (H.R. 4448) for the relief of 1st Lt. John P. Dunn, Army of the United States, retired, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–565), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation, is to authorize the payment of the amount certified by the Comptroller General as the amount of retired pay due him under applicable law for the period of November 1, 1954 to March 4, 1958. He was paid retired pay for subsequent periods but the period stated in the bill was barred by the 10-year statute of limitations. His entitlement was established after the running of the statute by a correction made by the Board for the Correction of Military Records.

STATEMENT

The facts of this case as contained in House Report 93–188 are as follows:

"The Department of the Army in its report to the Commitee stated that it is not opposed to enactment of the bill. The Comptroller General did not recommend favorable consideration.

"Lieutenant Dunn served on extended active duty as an enlisted man from June 3, 1915, through July 17, 1919. He was an enlisted member of the regular Army reserve from July 18, 1919, through June 4, 1920, and held a commission in the Officers Reserve Corps from August 8, 1924, through August 7, 1939. He attained age 60 on October 28, 1954. On January 10, 1957, he filed an application for retirement benefits under the provisions of 10 U.S.C. 1331–1337. On February 4, 1957, he was informed that he was not eligible for retirement benefits because he had completed only 19 years, 11 months and 10 days of the 20 years of qualifying services required for retirement. On September 21, 1967, Lieutenant Dunn filed an application for Correction of Military Records alleging that his service had been computed incorrectly because he had completed 20 years of qualifying service for the purpose of retirement. On October 18, 1967, it was determined that an error had been made and his records were corrected to credit him with over 20 years of qualifying service for retirement purposes. On January 10, 1968, he was placed on the Army of the United States Retired List in the grade of first lieutenant with an effective date of November 1, 1954; The General Accounting Office approved payment of retired pay to Lieutenant Dunn for all payments due after March 5, 1958, but invoked the 10-year statute of limitations and disallowed all payments for retirement pay for the period between November 1, 1954, and March 4, 1958.

"In indicating that it is not opposed to the bill, the Army stated:

" 'The Department is generally opposed to the payment of claims barred by the statute of limitations, but in this case the objections based upon the passage of time are not applicable. The facts necessary to support this claim are firmly established and well documented. Lieutenant Dunn made timely application for retired pay in January 1957, but due solely to an administrative error he was not retired until January 1968. It is the opinion of the Department of the Army that it is inequitable to invoke the statute of limitations as a bar to the payment of any retired pay to which he would have been entitled since November 1, 1954.

" 'Lieutenant Dunn's entitlement to retirement pay for periods before the date of his application is based on the decision of the Court of Claims in the case of *Seagrove v. United States*, 131 Ct. Cls. 790. That decision holds that entitlement to retirement pay under 10 U.S.C. 1331–1337 begins from the date the retiree meets both the age and service requirement without regard to the date of application for such benefits, subject, of course, to the statute of limitations.'

"In view of the considerations outlined in the report of the Department of the Army, it is recommended that the bill be considered favorably."

In agreement with the views of the House of Representatives the Committee recommends favorable consideration of H.R. 4448.

WILLIAM M. STARRS

The bill (H.R. 8406) for the relief of William M. Starrs, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93–569), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to pay to William M. Starrs, of Savannah, Ga., $1,332.10 in full settlement of all his claims based on special separate maintenance allowance leave erroneously granted to him in June 1969, while he was serving as a civilian employee of the Department of the Army.

STATEMENT

In a report to the House committee on the bill, the General Accounting Office indicated that it had no objection to a bill providing for a payment of $1,234.10 and made no comment concerning the balance of the claim other than to set forth the facts and computation relating to that aspect of the claim. The Army in its report on the bill deferred to the views of the General Accounting Office.

As outlined in the reports of the General Accounting Office and the Department of the Army.

"Mr. William M. Starrs was employed by the Army as a Recreation Specialist (dramatics) for one year beginning June 15, 1968, and assigned to duty in the Special Services Office in Saigon, Republic of Vietnam. When his tour neared completion he was asked if he wished to continue his employment. On March 25, 1969, he responded to the Long Binh Area Civilian Personnel Office, using a form provided by that office, and stated, "I desire to apply for the Separate Maintenance Allowance Leave and extend my tour of duty for an additional 6 months." His request was approved by the Staff Entertainment Director in Saigon and the Special Services Officer in Danang. On April 28, 1969, he wrote to the Saigon Area Civilian Personnel Office and requested leave for "the period of 17 Jun 69 to 17 Jul 69."

"On May 17, 1969, he received 'an advance payment of Special Separate Maintenance Allowance' in the amount of $1,234.10 'for air travel' to and from Savannah, Georgia, and on June 17, 1969, he departed Saigon for Savannah. On July 5, 1969, he wrote from Savannah to the Long Binh Civilian Personnel Office stating he would be hospitalized on July 6, 1969, for surgery and would be disabled until the end of August 1969. He requested sick leave and inclosed a certificate from his surgeon. A few days later, he received a letter from the Staff Entertainment Director informing him that he was not entitled to Special Separate Maintenance Allowance leave, because he had never been entitled to a Separate Maintenance Allowance and this allowance was a prerequisite to entitlement to the leave. An inclosure covers the conditions established by the State Department for this entitlement. The Army noted that this standard applies to all United States employees serving overseas.

"On September 3, 1969, Mr. Starrs wrote from Savannah to the Long Binh Civilian Personnel Office because he had received no reply to his request for sick leave. He stated in that letter that the personnel office had assured him it would notify him of his eligibility for Special Separate Maintenance Allowance but failed to do so. He asserted that if he had been notified of his ineligibility, he would not have contracted for an additional six months' duty in Vietnam. In the absence of any notification, he considered the approval of his superiors and the sub-

sequent payment of $1,234.10 to be tantamount to notice of eligibility. He concluded the letter with alternative proposals that leave be granted, as agreed, and that he return to complete his six months of service, or that the six months' extension be considered invalid and that he return only one-half of the advanced round-trip fare on the basis that he was entitled to return transportation under the terms of his initial employment.

"The Army advised the House Judiciary Committee that the Department record include an undispatched letter of the Saigon Area Civilian Personnel Office, dated November 18, 1969, addressed to Mr. Starrs. It was in response to his September 3, 1969, letter, and stated that the granting of Special Separate Maintenance Allowance leave and payment of $1,234.10 was 'in error as you must be entitled to Separate Maintenance Allowance prior to receiving a special award. . . . It is regretted that you were not properly advised prior to taking leave.' It also stated that if Mr. Starrs wished, the Government would transfer him back to the United States and he could repay one-half of the advanced round-trip fare. Army records do not indicate why a reply was not made to Mr. Starrs' letter of September 3, 1969, or why the letter of November 18, 1969, was not sent to him.

"In the absence of any reply and on advice from the Office of the Adjutant General, Washington, D.C., Mr. Starrs went to Saigon in November 1969, in a further attempt to resolve the problem. When he arrived there, according to the allegations in his attorney's letter of December 19, 1969, to the sponsor of the bill, he was informed his return was not necessary and that "the payroll office and others * * * were terribly sorry that the mix-up had occurred, and it was the Government's fault, but that they couldn't do anything about it." Mr. Starrs resigned on December 6, 1969, and returned to the United States by transportation furnished by the Government. Mr. Starrs was paid through August 9, 1969, after the $1,234.10 advance had been deducted.

"As originally introduced, this bill provided for payment of $4,600.11. Mr. Starrs contends he is entitled to $617.05 for one-half of the round-trip fare 'plus his loss of pay when he was in Savannah not knowing whether he was supposed to go back to Vietnam.' The Army noted that a computation by the General Accounting Office discloses that the maximum possible amount claimed should be limited to $3,263.47. The sum is computed as follows: $2,646.42 in net pay (after making the following deductions: $246.67 for retirement; $44.82 for health insurance; $34.65 for life insurance; and $821.84 for Federal taxes) plus the mentioned $617.05. In a statement filed with the House Committee. Mr. Starrs claimed the following items as the basis for his claim:

"Round-trip plane ticket	$1,234.10
Room and lodging in Saigon	98.00
Lost wages	3,888.00
Subtotal	5,220.10
Less back wages paid	619.99
Total	4,600.11

"After a review of all of the facts of the case, the House Judiciary Committee concluded that the bill should be amended to provide for a payment of $1,332.10. This is the figure recommended by the General Accounting Office. $1,234.10, plus $98.00, the amount that Mr. Starrs stated he was required to pay for room and lodging when he travelled to Vietnam to resolve his problems relating to this employment. The House Judiciary Committee agrees with the General Accounting Office that Mr. Starrs should be repaid the $1,230.00 representing the travel allowance, in view of the confusion which existed concerning his entitlement to return to the United States for visitation purposes. It is also felt that under the circumstances, he should be reimbursed for the cost of his food and lodging on the occasion of his return to Vietnam."

The committee is in agreement with the conclusion reached by the House Judiciary Committee that this bill, H.R. 8406, should be considered favorably.

LUTHER V. WINSTEAD

The bill (H.R. 9276) for the relief of Luther V. Winstead was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-570), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to authorize the U.S. Postal Service, on such terms as it deems just, to compromise, release, or discharge in whole or in part the joint and several liability of Luther V. Winstead, postmaster at the Clinton, Md., Post Office for a deficiency in the amount of $17,406.82 in the postal funds and accountable papers resulting from a burglary at the Clinton Post Office in Clinton, Md., on May 6, 1967.

STATEMENT

The facts of this case as contained in House Report 93-544 are, as follows:

"In its report to the committee on a similar bill in the 92d Congress, the Postal Service stated it would have no objection to a bill amended in the manner now recommended by the committee.

"The liability referred to in the bill represents the value of a portion of postal funds and accountable paper lost as a result of a burglary of the Clinton Post Office on May 6, 1967. The burglar forcibly opened two safes. The burglar-resistant chest in one of the safes appeared to be in good operating condition and bore no evidence of attack, yet it was open. In the absence of evidence of visible use of force to open the burglar-resistant chest the General Accounting Office found that a legal presumption of negligence arose that the person having custody of the safe was in some way derelict in his duties. Accordingly, on December 17, 1970, the General Accounting Office disallowed $17,406.82 of Postmaster Winstead's claim for credit, representing the value of that portion of postal funds and stamp stock that could have been stored in the chest.

"In its report to the committee, the Postal Service stated that the circumstances of the case are such that some relief should be granted to Mr. Winstead, and further that it should be noted that he is being held liable as a matter of law because of his status as postmaster. In similar private relief cases, the Postal Service has recommended that the legislation be drawn so as to authorize the Postmaster General, on such terms as he deems just, to compromise, release, or discharge in whole or in part the liability of the parties involved. This is in keeping with section 2601 of title 39, United States Code, under which the Postal Service now has authority to determine cases of this kind. This new authority may not be used to reopen cases decided by the General Accounting Office prior to the commencement of operations of the Postal Service on July 1, 1971. (Ruling of the Comptroller General, No. B-17185, April 15, 1971). In view of these facts, the committee concluded that relief as provided in the amended bill is required in the present case.

"It is recommended that the amended bill be considered favorably."

CLAUDE V. ALCORN ET AL.

The Senate proceeded to consider the bill (H.R. 1316) for the relief of Claude V. Alcorn and 21 others which had been reported from the Committee on the Judiciary with amendments on page 2, in line 18, after "computation," strike out "transportation on board the vessels at the recomputation,".

On page 3, beginning at the end of line 1, strike out "subsection (a) of this section" and insert in lieu thereof "this Act".

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-575), explaining the purposes of the measure.

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

PURPOSE OF THE AMENDMENTS

The purpose of the amendments is to correct typographical errors in the bill.

PURPOSE OF THE BILL AS AMENDED

The purpose of the proposed legislation, as amended, is to provide that 22 named employees of the National Oceanic and Atmospheric Administration are not to be deemed to have been transported to Seattle in 1967 and 1968 on board National Oceanic and Atmospheric vessels at Government expense in connection with a change of permanent duty station, so as to qualify these employees for travel expenses in accordance with the provisions of the bill.

STATEMENT

The Department of Commerce in a report to the House Judiciary Committee recommended enactment of the bill. The facts of this case, as contained in House Report No. 92-1357 on an identical bill in the 92d Congress, are as follows:

"The employees listed in the bill, whose permanent duty station was Norfolk, Va., were assigned to temporary duty on NOAA vessels which sailed to Seattle, Wash. After their arrival, they were informed that their permanent duty station was changed to Seattle. The employees were permitted to return to Norfolk to move their families and household goods to Seattle, their return trip to Seattle to be paid under the authority of an administrative memorandum which was afterward found to be in error and was rescinded. As noted in the department's report the Comptroller General ruled that the Government had already paid for the travel expenses of the employees when they were initially transported to Seattle aboard the ships to which they were assigned. Apparently the Comptroller General took the position that the return trip to Seattle was solely for their personal convenience, so that the payment had been erroneous. The committee feels this evaluation fails to take into account the equities of the case.

"By providing that the initial trips of these employees to Seattle would not be deemed transportation to new permanent duty stations at Government expense, H.R. 11814 would permit payment of the per diem and

mileage expenses of the employees in moving their household from Norfolk to Seattle to be included in computing the total transportation and moving expenses to which they are entitled. In effect, the bill will make possible payments to the employees in accordance with the administrative memorandum originally issued to them prior to their move.

"The committee is impressed by the statement in the Department of Commerce report that the employees named in the bill relied in good faith on erroneous administrative advice to the effect that they could make the second trip from Norfolk to Seattle to move their household effects and that they would be reimbursed for their expenses of that trip. The Department further expressly stated that the enactment of the bill "is justified in order to avoid an inequitable situation which would otherwise exist." The Department therefore recommended that the bill be enacted with the amendment recommended by the committee that the travel expenses of each of the named persons be computed or recomputed "to provide payment of mileage traveled in privately owned vehicles at a rate not to exceed 12 cents per mile per diem at a rate not to exceed $16 per day for actual traveltime between duty stations not to exceed 8½ days."

"The Department further advised the committee that it estimated that the total costs involved in this computation would be estimated at $6,000.

"It is recommended that the bill be considered favorably."

In agreement with the views of the House of Representatives, the committee recommends that H.R. 1316, as amended, be favorably considered.

QUORUM CALL

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.

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

AMENDMENT OF THE SOCIAL SECURITY ACT

The Senate resumed the consideration of the bill (H.R. 3153) to amend the Social Security Act to make certain technical and conforming changes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote on the Mondale amendment be delayed an additional 5 minutes.

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum—Mr. President, I withhold that request.

Mr. CRANSTON. Mr. President, I ask unanimous consent that Louise Ringwald be given the privileges of the floor during debate and consideration of this measure.

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

Mr. TAFT. Mr. President, I ask unanimous consent that Rod Solomon be given the privilege of the floor during debate and consideration and the vote on this legislation.

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

QUORUM CALL

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. MONDALE. 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. MONDALE. Mr. President, I ask unanimous consent that I may modify my amendment.

When that request is granted, I will describe my modifications.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Minnesota? The Chair hears none, and it is so ordered. The amendment is so modified.

Will the Senator please send his modification to the desk?

Mr. MONDALE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

Mr. DOMINICK. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard and the clerk will state the amendment.

The assistant legislative clerk read as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . Title IV-A of the Social Security Act is amended by adding at the end thereof the following new section:

"CHILD CARE STANDARDS

"SEC. . Child day care services provided under the Social Security Act shall meet the following standards: (1) in-home care shall meet standards established by the State, reasonably in accord with recommended standards of national standards-setting organizations (such as the Child Welfare League of America and the National Council of Homemaker-Home Health Aid Services), and (II) out-of-home day care facilities shall be licensed by the State or approved as meeting the standards for such licensing, and shall comply with the requirements of section 422(a)(1) of the Social Security Act and the provisions of the Federal Interagency Day Care Requirements of 1968, and provided that subdivision III of such requirements with respect to educational services shall be recommended to the States and not required, and that staffing standards for children aged ten and above in day-care centers may be revised by the Secretary, provided that for children ten to fourteen such standards shall in no case require fewer than one adult to twenty children, and for school-aged children nine and less years of age shall in no case require fewer than one adult to fifteen children.

Mr. MONDALE. Mr. President——

The PRESIDING OFFICER. The Chair will state that there is no time for debate on this amendment. The time for the vote has arrived.

Mr. MONDALE. Mr. President, I ask unanimous consent for 2 minutes on the amendment, because I think this compromise now takes away all or most of the controversy.

The PRESIDING OFFICER. Is there objection?

Mr. CURTIS. Mr. President, reserving the right to object, may I have 2 minutes?

Mr. MONDALE. I ask for 4 minutes, and I would like 2 of them.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. MONDALE. Mr. President, I have talked with the distinguished floor manager, and I have made two changes in the pending amendment which I believe makes the amendment, as revised, acceptable to the chairman of the Finance Committee.

The first change would be to recommend to the States that day care programs include an educational component, but not to require that the States provide an educational component. Right now, the standards require it.

Second, we say that for school age children in after-hours day care centers, the staff ratios could be changed from what the day care standards now require. Under the modification, for children age 9 and below in day care centers, you could have 1 staff person for 15, whereas you must now have 1 staff person for 10; and for children over 9, you could have a staff ratio of 1 adult to 20, whereas the present regulations require 1 staff person for 10.

In a sense, we go a substantial way toward meeting the criticisms of our amendment by the distinguished chairman of the Finance Committee, and I hope that, as revised, it might have the support of the chairman.

Mr. CURTIS. Mr. President, I think we should have our attention called to the fact that we are running far afield in legislating. If a community wants to admit one more child to a day care center, they have to get an act of Congress to do it.

By the Senator's proposal, we do not delegate to the Secretary the authority to lay down regulations for the conduct of day care. We fix into law how many teachers or supervisors or custodians shall be required.

The time may come when some Senators will receive letters asking them to amend the law so that a day care center can take in one more child.

Mr. President, this is not a proper subject of legislation. The issue is, shall the regulations on day care be handled by the Federal Government or by the States? I happen to believe that it should be by the States. But to those who believe that it should be done by the Federal Government, I submit that the amended amendment is worse than the amendment itself. I think it should be defeated and that time should be given for it to be revised again.

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

Mr. MONDALE. I yield.

The PRESIDING OFFICER. There is no further time.

Mr. LONG. Mr. President, I ask unanimous consent for 2 additional minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. LONG. Mr. President, I believe that the vote on this amendment will be close, unless there is a compromise or agreement, and it is difficult to say how the Senate decision will go. I think the Senator's proposal is a fair compromise.

The Senator's amendment, as modified, would rely upon State law in several situations. In the health area, it would provide for the general requirements for sanitation and public health which are in existing State laws. The original amendment provides that provision must be made for education services under the supervision of a staff member trained or experienced in the field. But the modification, I think, would place the staffing requirements within the limits that the State could manage.

I discussed this matter and explained yesterday that with regard to small children, the amendment as first offered could double or even triple the staffing requirements, and the Senator has agreed to change that, in a spirit of compromise. He has modified his amendment so that in the area of school-age children it would present a problem for only 16 States. I think the States can comply with the modification.

It seems to me that in view of the fact that there is a strong degree of support for the amendment, this is a good compromise. I do not think any of us could expect to have our way entirely in these matters. The Senator certainly does not expect to have his way in all respects in taking the position he is offering here. I think we would be well advised to meet him half way on it.

Mr. HOLLINGS. Mr. President, as a cosponsor of this amendment, I rise to support it and urge its adoption. I listened with interest yesterday to the debate surrounding this proposal, and I would now respond to the criticisms raised.

The opponents of this amendment say that it will cost too much. But the question of cost for social services has already been settled, by the members of the Finance Committee, including the opponents of this amendment. This committee and the Senate as a whole has set a ceiling on the amount of Federal dollars which can be expended for social services. Hence, we are not talking about a cost to the Federal Government or to the American taxpayer. What we are talking about here is how this money should be spent. Are we fashioning the program whereby children can receive the kind of care which they need in an institutional setting? Certainly that is the case.

The question is what are the minimal amounts which need to be spent in order to guarantee that the children will receive the kinds of services and the quality of care to which they are entitled? Obviously, to do something right takes more money than to do it halfway or inadequately. We have a responsibility to the parents who need these day care centers to insure that when they entrust their children to the care of a facility funded with Federal dollars it will meet certain minimum standards of care. As the proponents of the amendment have repeatedly pointed out, the standards to which we are now addressing ourselves have been in effect since 1968 and were promulgated after consultation with all groups having expertise in the area of child care. Hence, they reflect what the experts feel children need in order to receive proper care.

Opponents of the amendment also contend that the Federal Government cannot and should not set standards in this area and that rather, the States have the authority and responsibility to set the standards for child care centers. This argument ignores the obvious fact that Congress has on many occasions initiated standards directed toward assuring the safety and well-being of our children. I would cite only a few examples such as the Flammable Fabrics Act, which required the children's nightwear meet certain standards of flammability, the food and drug laws which protect the quality of food and medicines which our children consume, and the recently created Product Safety Commission which is directed to set standards for the safety of toys so that our children will not be injured and killed as a result of unsafe toys.

It is Congress which has set the goal, through the social services program, to establish and maintain, with Federal funds, day care centers in order to encourage families to break the welfare cycle. By giving their children a wholesome place to stay during the day, we hope to encourage the mothers to get off of welfare and begin to earn a living for their family or to supplement the marginal income of her husband so that the family can lift itself up. Since we have undertaken this task, we have a responsibility to these families and to their children of insuring that the task is done properly. We must see that the children receive the best possible care. We are not asking for gold-plated care; we do not want one "nanny" for each child, but any mother with three or four youngsters knows the demands that they make, and to ask, for example, that there be one adult to care for each five or six children of 1 to 2 years of age is certainly not extravagant. Understaffed centers, poor sanitation, inadequate heating or lighting, dangerous facilities are certainly not situations which we want to tolerate or perpetuate with the Federal dollar. With inadequate facilities, we can do positive harm to these young children. With adequate facilities, we can do positive good.

We have, therefore, a responsibility to insure that the program is carried out in a meaningful, responsible manner. By keeping in effect the Federal standards that were set in 1968, we are assuming that responsibility and guaranteeing the quality of care that our children deserve. If we were in fact treading on the States' toes, we would certainly hear the opposition of the Governors of the States. With respect to this amendment, Mr. President, the opposite is true, namely, the National Governors' Conference has endorsed these standards, as a part of the social services amendments introduced in October, S. 2528. In addition the standards have been thrice adopted by the Senate.

My colleague from New York (Mr. BUCKLEY) has put this amendment in its most precise perspective. He contends, and I think rightly so, that regardless of your opinion concerning day care centers, if we are in fact going to fund such centers through a Federal program, we have a responsibility to the recipients of this Federal aid, the low income children, to see that the Federal aid is distributed in a safe, healthy and proper manner. This is all the standards do. It is a commendable goal, and I urge my colleagues to again approve its adoption.

Mr. ROTH. Mr. President, I called Dr. Miklos T. Lazar, director of Social Services Division, Health and Social Services Department, State of Delaware, for his comments on the proposed amendment. Dr. Lazar advised me as follows:

> The State of Delaware favors retention of the 1968 Federal Interagency Day Care Requirements with some adaptations. The Federal Interagency Day Care Requirements provide a solid base from which each state can further develop its own Day Care Program. The removal of such requirements would give too much latitude to the individual states and would, therefore, open the stage for a weakening of the Nation's Day Care Programs.
>
> In order to realistically accommodate the needs and capabilities of Day Care providers, revisions may be needed in the area of staff-child ratios. Provided steps are taken to assess the competencies of the Day Care staff, a slight reduction of the number of adults required would have the effect of lowering the cost of Day Care significantly, without jeopardizing the quality of care. In addition, a payment ceiling scale, adjusted according to geographic areas, should be developed to ensure quality care at a reasonable cost.
>
> In conjunction with a revision of Day Care standards, specific guidelines, which currently do not exist, should be made available to the states so that they can effectively enforce these standards.

Mr. President, I intend to vote for the amendment.

Mr. DOMENICI. Mr. President, I would like to urge my colleagues' support for amendment No. 724 to H.R. 3153 which would simply maintain minimal standards to assure that federally assisted day care programs do not harm children. These standards have been in effect for 5 years.

As I understand it, the committee bill, without this amendment would drop entirely all standards for day care centers. No protections would be required for young children served by these programs.

Mr. President, I have listened to the debate among my colleagues and I have also read and been aware of many serious instances of deplorable child care conditions in some States due to the lack of proper minimal standards. In my own State of New Mexico, centers are already complying with the 1968 Federal interagency day care requirements. I do not see any reason to back away from these sensible requirements.

It seems only reasonable and honorable to insure adequate care and facilities to all our Nation's children entrusted

in the care of day care centers and I would hope my colleagues agree.

The PRESIDING OFFICER. All time on the amendment has expired.

The question is on agreeing to the amendment of the Senator from Minnesota, as amended. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Wyoming (Mr. McGEE), the Senator from South Dakota (Mr. McGOVERN), the Senator from New Mexico (Mr. MONTOYA), the Senator from Texas (Mr. BENTSEN), and the Senator from Iowa (Mr. CLARK) are necessarily absent.

I also announce that the Senator from Missouri (Mr. SYMINGTON) is absent because of illness.

I further announce that, if present and voting, the Senator from Wyoming (Mr. McGEE) and the Senator from Iowa (Mr. CLARK) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Virginia (Mr. WILLIAM L. SCOTT), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The Senator from Idaho (Mr. McCLURE) and the Senator from Oregon (Mr. PACKWOOD) are absent on official business.

The Senator from Wyoming (Mr. HANSEN) and the Senator from Ohio (Mr. SAXBE) are detained on official business.

The result was announced—yeas 67, nays 20, as follows:

[No. 526 Leg.]

YEAS—67

Abourezk	Gravel	Mondale
Aiken	Griffin	Moss
Bayh	Gurney	Muskie
Beall	Hart	Nelson
Bible	Hartke	Pastore
Biden	Haskell	Pearson
Brock	Hatfield	Pell
Brooke	Hathaway	Percy
Buckley	Hollings	Proxmire
Burdick	Huddleston	Randolph
Byrd, Robert C.	Hughes	Ribicoff
Cannon	Humphrey	Roth
Case	Inouye	Schweiker
Chiles	Jackson	Scott, Hugh
Church	Javits	Stafford
Cook	Johnston	Stevens
Cranston	Kennedy	Stevenson
Dole	Long	Taft
Domenici	Magnuson	Tunney
Dominick	Mansfield	Weicker
Eagleton	Mathias	Williams
Fong	McIntyre	
Fulbright	Metcalf	

NAYS—20

Allen	Curtis	McClellan
Bartlett	Eastland	Nunn
Bellmon	Ervin	Sparkman
Bennett	Fannin	Stennis
Byrd, Harry F., Jr.	Goldwater	Talmadge
	Helms	Thurmond
Cotton	Hruska	Tower

NOT VOTING—13

Baker	McGee	Scott, William L.
Bentsen	McGovern	Symington
Clark	Montoya	Young
Hansen	Packwood	
McClure	Saxbe	

So Mr. MONDALE'S amendment (No. 724), as modified, was agreed to.

Mr. MONDALE. Mr. President, there is an amendment at the desk which I call up and ask unanimous consent to have its reading dispensed with.

The PRESIDING OFFICER. Is there objection?

Mr. CURTIS. Mr. President, reserving the right to object, is this a printed amendment?

Mr. MONDALE. This is not a printed amendment. I understood the Senator from Nebraska was a cosponsor. It is an amendment which I understand is acceptable to the committee. It deals with the appeals procedure for nursing homes and hospitals.

Mr. CURTIS. I have no objection.

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

The amendment offered by Mr. MONDALE for himself, Mr. TALMADGE, Mr. DOLE, and Mr. GURNEY, is as follows:

On page 153, after line 23, insert the following:

JUDICIAL REVIEW OF DECISIONS OF PROVIDER REIMBURSEMENT REVIEW BOARD

SEC. 193. (a) Section 1878(f) of the Social Security Act is amended to read as follows:

"(f)(1) A decision of the Board shall be final unless the Secretary, on his own motion, and within 60 days after the provider of services is notified of the Board's decision reverses, affirms, or modifies the Board's decision. Providers shall have the right to obtain judicial review of any final decision of the Board, or of any reversal, affirmance, or modification by the Secretary, by a civil action commenced within 60 days of the date on which notice of any final decision by the Board or of any reversal, affirmance or modification by the Secretary is received. Such action shall be brought in the district court of the United States for the judicial district in which the provider is located or in the District Court for the District of Columbia and shall be tried pursuant to the applicable provisions under chapter 7 of title 5, United States Code, notwithstanding any other provisions in section 205.

"(2) Where a provider seeks judicial review pursuant to paragraph (1), the amount in controversy shall be subject to annual interest beginning on the first day of the first month beginning after the 180 day period as determined pursuant to subsection (a)(3) and equal to the rate of return of equity capital established by regulation pursuant to section 1861(v)(1)(B) and in effect at the time the civil action authorized under paragraph (1) is commenced, to be awarded by the reviewing court in favor of the prevailing party.

"(3) No interest awarded pursuant to paragraph (2) shall be deemed income or cost for the purposes of determining reimbursement due providers under this Act."

(b) Notwithstanding any other provision of law, section 1878 of the Social Security Act shall not be construed as affecting any right to judicial review which may otherwise be available under law to providers of services with respect to cost reports for accounting periods ending prior to June 30, 1973.

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

Mr. MONDALE. I yield.

Mr. FONG. Mr. President, I ask unanimous consent that Mr. Seto, of the staff, be allowed the privileges of the floor.

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

Mr. MONDALE. Mr. President, this is an amendment which I would have raised in the committee—Mr. President, may I have order?

The PRESIDING OFFICER. The Senate will come to order. The Senator will suspend until the Chamber has come to order. Will those Senators who are conversing in the Chamber please remove themselves from the Chamber?

The Senator will suspend temporarily until we have had complete order.

The Senator will resume.

Mr. MONDALE. Mr. President, this is an amendment that I would have raised in committee, but there were some technical problems and we worked those out with the staff of the Finance Committee. I understand the amendment is now acceptable to the floor manager. As I understand it, the Department of HEW no longer objects.

It is designed to deal with what I think was an error in the social security amendments passed a few years ago.

The purpose of my amendment to H.R. 3153 is to make certain modifications in section 1878 of the Social Security Act in order to clarify the rights granted to providers of services to obtain administrative and judicial review of disputed reimbursement issues under medicare.

Last year's social security amendments, Public Law 92-603, established in section 1878 a provision for a Provider Reimbursement Review Board to hear appeals involving disputed reimbursement amounts. Under that provision, providers of services were granted judicial review only in the limited instance wherein the Secretary of HEW on his own motion, reverses or modifies a decision of the Board that was favorable to the provider. There was no provision for judicial review of Board decisions that are unfavorable to a provider.

The amendment which I am offering would correct this inequity by offering to providers the right of judicial review of any Board decision or subsequent modification or reversal by the Secretary.

This amendment would not alter in any way the administrative appeals procedures currently provided for in section 1878 of the act. Although the scope of judicial review in the medicare program would be broadened by my amendment, I do not anticipate that this would result in any significant increase in litigation. Section 1878 contains adequate safeguards against frivilous civil actions and protects the operational integrity of the program.

This amendment provides appeals for nursing homes and hospitals when they feel they have been aggrieved by certain decisions. This amendment is offered to correct that inequity and I think would be in the interest of justice. I understand the amendment will be taken by the committee.

Mr. NELSON. Mr. President, the amendment has been examined by the staff and is acceptable to the minority and majority sides. I think it serves an appropriate way of providing an appeal procedure. So, acting in behalf of the manager of the bill, I will accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. ROBERT C. BYRD. Mr. President,

I call up my amendment No. 728 and ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment (No. 728) is as follows:

Intended to be proposed by Mr. ROBERT C. BYRD to H.R. 3153, an Act to amend the Social Security Act to make certain technical and conforming changes, viz:

At the end of part A of title I of the bill, insert the following new section:

ACTUARIALLY REDUCED BENEFITS FOR WIDOWS AT AGE 55

SEC. . (a)(1) Section 202( )(1)(B) of the Social Security Act is amended by striking out "60" wherever it appears therein and inserting in lieu thereof "55".

(2) Section 202(e)(1) of such Act is amended, in the matter following subparagraph (F), by striking out "60" and inserting in lieu thereof "55".

(3) Section 202(e)(4) of such Act is amended by striking out "60" and inserting in lieu thereof "55".

(4) Section 202(e)(5) of such Act is amended by striking out "60" and inserting in lieu thereof "55".

(b) The third sentence of section 203(d) of such Act is amended by striking out "60 (but only if she became so entitled prior to attaining age 60)" and inserting in lieu thereof "55 (but only if she became so entitled prior to attaining age 55)".

(c) Section 203(f)(1)(D) is amended by striking out "60 (but only if she became so entitled prior to attaining age 60)" and inserting in lieu thereof "55 (but only if she became so entitled prior to attaining age 55)".

(d) Section 222(b)(1) of such Act is amended by striking out "a widow, widower, or surviving divorced wife who has not attained age 60," and inserting in lieu thereof "a widow or surviving divorced wife who has not attained age 55, a widower who has not attained age 60,".

(e)(1) Section 222(d)(1)(C) of such Act is amended by striking out "60" and inserting in lieu thereof "55".

(2) Section 222(d)(1) of such Act, in the matter following subparagraph (D), by striking out "for widows and surviving divorced wives who have not attained age 60" and inserting in lieu thereof "for widows and surviving divorced wives who have not attained age 55".

(f) The first sentence of section 225 of such Act is amended by striking out "widow or surviving divorced wife who has not attained age 60" and inserting in lieu thereof "widow or surviving divorced wife who has not attained age 55".

(g) The amendments made by this section shall apply with respect to monthly insurance benefits payable under title II of the Social Security Act for months after the month in which this Act is enacted, on the basis of applications filed in or after the month in which this Act is enacted.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may temporarily lay the pending amendment aside now and that the able Senator from New Jersey may be recognized. I understand he has an amendment to be called up which will be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered, and the Senator from New Jersey is recognized.

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

Mr. WILLIAMS. I yield.

Mr. FANNIN. Mr. President, I ask unanimous consent that George Pritts and Rick Lavis be given the privilege of the floor during the consideration of and voting on this measure.

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

Mr. ROBERT C. BYRD. Mr. President, it is my understanding that the distinguished Senator from New York (Mr. JAVITS) has an amendment which will be accepted by the managers of the bill. If I am correct, I ask unanimous consent that my amendment remain temporarily laid aside until the disposition of both the Williams amendment and the Javits amendment.

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

SUPPORT FOR 11-PERCENT SOCIAL SECURITY INCREASE

Mr. CHURCH. Mr. President, I strongly support the social security improvements in H.R. 3153.

Several of these provisions will be of vital importance for individuals struggling on limited, fixed incomes.

First, H.R. 3153 would provide a two-step, 11-percent cost-of-living increase in social security benefits for more than 29 million beneficiaries. The first step would be an interim 7-percent raise effective the month of enactment. The second step would make the full 11-percent increase effective in June 1974. On an individual basis, these provisions would raise average monthly benefits from: $162 for retired workers to $173 effective the month of enactment and then to $181 in June 1974; $277 for aged couples to $296 and then $310 in June; and $158 for elderly widows to $169 and then to $177 in June.

Equally important, it would help remove 800,000 Americans from the poverty rolls, including 550,000 65 and above.

Second, H.R. 3153 would provide an increase in the special minimum monthly benefit, which is now equal to $8.50 multiplied by the number of years of covered employment in excess of 10 years, but not greater than 30 years. Under the provisions in the bill, the multiple for the special minimum payment would be boosted from $8.50 to $9.10 the month of enactment, and then to $9.50 next June. Thus, a worker with 30 or more years of coverage would have his special minimum payment increased from $170 to $190 a month.

Third, the automatic cost-of-living adjustment provision would be improved by measuring the increase on the basis of the change in the Consumer Price Index from the first calendar quarter of 1 year to the first calendar quarter in the folowing year, rather than from the second quarter in 1 year to the second quarter in the following year.

An exception would be made for the first automatic increase effective for June 1975, which would be based upon the rise in the CPI between the second quarter in 1974 and the first quarter in 1975. Additionally, the effective date for the cost-of-living adjustment would be in June, instead of January. These two changes would reduce the lag between the end of the calendar quarter used to measure the rise in the cost of living and the payment of the resulting benefit increase from 7 months to 3 months. It would also mean that automatic benefit increases in the future would be payable in the month in which any revised premiums under the supplemental medical insurance program would be effective, thus providing the opportunity to make both adjustments in benefit checks in the same month.

Fourth, the monthly income standards for the new supplemental security income program would be raised in January 1974 from $130 to $140 for eligible individuals and from $195 to $210 for qualifying couples. A further increase would be provided in July 1974: to $146 for single persons and $219 for couples. The income standards would also be increased proportionately for essential persons, generally younger spouses of assistance recipients who are 65 and above. For these individuals, the income standard would be raised from $65 to $70 in January, and then to $73 in July.

All Americans have been hard hit by the wave of rising prices during the past year. But no age group has been victimized to the extent of the aged. Many have already cut back on their food consumption, even though they may have endangered their health. Others have been forced to seek out food substitutes, such as dog food. And far too many have simply done without.

The evidence is all too clear, in my judgment, that inflationary pressures will intensify in the months ahead. In August the wholesale price index leaped forward at an astounding and record-breaking pace of 6.2 percent. And, it will be just a matter of time before that surge is reflected in higher retail prices throughout the Nation.

Older Americans cannot wait any longer. Time is not on their side. For many, enactment of this two-step 11 percent social security increase is literally a life or death matter—especially those who are now rummaging through garbage cans for their next meal.

For these reasons, I again urge early adoption of the social security provisions. No other legislation is more important from the standpoint of 21 million Americans 65 and over nor more deserving of immediate congressional approval than these measures now before us.

Mr. WILLIAMS. Mr. President, I have an amendment at the desk which I ask to have stated.

The PRESIDING OFFICER. The clerk will state the amendment.

The second assistant legislative clerk read the amendment offered by Mr. WILLIAMS for himself and Mr. CASE as follows:

At the end of part A of title I of the bill, insert the following new section:

INCLUSION OF NEW JERSEY AMONG STATES PERMITTED TO DIVIDE THEIR RETIREMENT SYSTEMS

SEC. —. Section 218(d)(6)(C) of the Social Security Act is amended by inserting "New Jersey," after "Nevada,".

Mr. WILLIAMS. Mr. President, this amendment would simply add the State of New Jersey to a list of 21 States which are allowed to divide a public retirement system coverage group to obtain social security coverage. Under this provision, a State at its option may divide a public retirement coverage group and extend social security coverage to those employees who elected to obtain coverage and exclude those who voted against coverage.

Mr. President, I appreciate the fact that the manager of the bill sees merit in including New Jersey in the group of States that can be covered in this way. It represents a major amendment for the public employees in New Jersey.

Mr. NELSON. Mr. President, this is an amendment which is perfectly acceptable. It has been cleared on the minority side and with the staff. Therefore, I am willing to accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the Williams amendment (putting the question).

The amendment was agreed to.

AMENDMENT NO. 725

Mr. JAVITS. Mr. President, I call up amendment No. 725 and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

On page 171, line 17, add the following new title:

TITLE IV—TO AMEND TITLE IV OF THE SOCIAL SECURITY ACT TO ELIMINATE THE PRECONDITION FOR FEDERAL FINANCIAL PARTICIPATION THAT CHILDREN IN FOSTER CARE BE REMOVED FROM THEIR HOMES AS A RESULT OF JUDICIAL DETERMINATION

SEC. 401. (a) Paragraph (1) of section 408(a) of the Social Security Act is amended by deleting the "," at the end thereof and inserting in lieu thereof "or any other procedures authorized under the State law and approved by the Secretary".

(b) Paragraph (3) of such section is amended by deleting the "," immediately preceding "and" and inserting in lieu thereof "or any other procedure authorized under State law and approved by the Secretary".

Mr. JAVITS. The purpose of the amendment is to deal with a procedural question in the law respecting children in foster care. One of the provisions of existing law relates to a requirement for a court order before the child placed in foster care can qualify for support. Apparently in New York they have worked out less formal procedures than court proceedings or court orders. Therefore, in order to accommodate that kind of a procedure—and I understand that the department has no objection—this amendment provides that other procedures authorized under State law and approved by the Secretary would be just as satisfactory as the court proposition.

FOSTER CARE AMENDMENT

The amendment would modify section 408(a) of the Social Security Act which now requires that in order for a State to obtain Federal financial participation in the care of children in foster homes, placement must have been the result of a court order.

It has been the experience of social service officials in New York City that such a requirement for a judicial determination is not only unwarranted but in many cases prevents placement which would be beneficial to the child, because of a family's reluctance to participate in court proceedings.

While it is clear that the Government has a responsibility to insure that tax funds are not used to support foster care placement unless absolutely necessary for the welfare of the child. I believe that the Department of Health, Education, and Welfare should have some flexibility in making such arrangements. Thus, my amendment provides that Federal financial participation be continued in cases where there are court orders or where other appropriate procedure approved by the Secretary has been complied with. We contemplate, for example, a situation where there has been a voluntary surrender by the parent and a certification by the appropriate State official that the child would be best cared for outside the home.

It is my understanding that the chairman and the ranking member of the Finance Committee have given consideration to this amendment and I urge its prompt adoption.

Mr. CURTIS. Mr. President, will the Senator yield for a question or two?

Mr. JAVITS. Certainly.

Mr. CURTIS. To what extent will this change present procedures?

Mr. JAVITS. The present law requires—and it is very narrow in its statement—a court order.

I will read to the Senate the exact provision which concerns this matter. The present law says that the placement must have been as the result of a court order.

I wrote the chairman of the committee and the ranking minority member of the committee a letter on November 13.

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

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

NOVEMBER 13, 1973.

Hon. RUSSELL B. LONG,
Chairman, Senate Finance Committee, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to you with regard to a proposed amendment to H.R. 3153, which I understand will be reported by the Finance Committee this week. It is my understanding that Jule M. Sugarman, Administrator of the New York City Human Resources Administration has been in touch with you concerning this amendment.

Under existing law, in order for a state to obtain federal financial participation in the cost of maintaining children in foster care, such children must have been placed in foster care as a result of a judicial determination that continuation in their own home would be contrary to the welfare of the child. The experience of the City of New York has been that this requirement of a court order is not only burdensome but indeed often hinders placements which would otherwise be justified because of the parents reluctance to go through court proceedings. Therefore, in spite of the loss of federal reimbursement city authorities have continued to place children in foster care with the concurrence of the parents but without a court order where this was necessary.

On September 1, 1973 the State of New York passed legislation to conform state law to the federal requirements. This means that in non-judicial placements the City loses not only the federal contribution but the State contribution as well thereby making such voluntary placements impossible for all practical purposes.

The amendment I proposed to offer would amend Section 408(a) of the Social Security Act by authorizing federal reimbursement for foster care undertaken "under court order or by any other procedures authorized under state law and approved by the Secretary of Health, Education and Welfare."

Mr. Sugarman's office advises me that you have expressed a willingness to take this amendment on the floor and I will proceed under that assumption unless I hear from you otherwise. I have advised Senator Bennett of my intentions and asked for his concurrence as well.

Thank you for your understanding and cooperation on this matter which is of great interest to the City of New York.

With best regards,

Sincerely,

JACOB K. JAVITS.

Mr. JAVITS. Mr. President, I state in the letter as follows:

Under existing law, in order for a state to obtain federal financial participation in the cost of maintaining children in foster care, such children must have been placed in foster care as a result of a judicial determination that continuation in their own home would be contrary to the welfare of the child. The experience of the City of New York has been that this requirement of a courts order is not only burdensome but indeed often hinders placements which would otherwise be justified because of the parents reluctance to go through court proceedings. Therefore, in spite of the loss of federal reimbursement city authorities have continued to place children in foster care with the concurrence of the parents but without a court order where this was necessary.

On September 1, 1973 the State of New York passed legislation to conform state law to the federal requirements. This means that in non-judicial placements the City loses not only the federal contribution but the State contribution as well thereby making such voluntary placements impossible for all practical purposes.

The situation in the city is such that it has had to continue to place children in foster homes with the concurrence of the parents, but without a court order.

The way in which I have sought to protect the United States is to require that approval be given by the Secretary if the procedure used is other than a court order. This is what this amendment provides.

Mr. CURTIS. Could the Senator give us an illustration of the handling of a case other than by court order? How is it done in the State of New York?

Mr. JAVITS. It would be done if we had a family which, for example, because of poverty or other conditions might have a mother who is in difficulty, perhaps mental difficulties or other such difficul-

ties. There may be a number of children, maybe older children. That often happens. To bring such a person to court and have court proceedings would be so traumatic that our authorities with her consent and with that of the father and after a determination by appropriate State officials that placement is necessary for the child's welfare, would place that child in a foster home with foster parents without a court proceeding which would be so traumatic for the mother. That would be highly desirable in those cases. And under the procedure in my amendment, that would have to be approved by the Secretary of HEW.

I really substitute the approval of the Secretary of HEW for the approval of a court. And the Federal law now does not permit that. It says that it should be strictly a court order, which is very narrow under these circumstances.

Mr. CURTIS. The persons who would have to meet the income and property tests are the foster parents and not the natural parents?

Mr. JAVITS. No. As I understand it everyone has to meet whatever test the law provides. My amendment does not in any way obviate that. It obviates only the proceedings before a court. It provides that instead of having a court proceeding, it allows any such other procedure as is satisfactory to the Secretary.

Mr. CURTIS. Does the Senator have an estimate of the additional Federal costs?

Mr. JAVITS. There should be none whatever unless one considers the approval of the Secretary to be an additional cost. Indeed there would be considerable savings in terms of paper work and court costs in a jurisdiction like New York City where there are currently more than 28,000 children in foster care.

Mr. CURTIS. Would it enlarge a number of benefits?

Mr. JAVITS. It should not in any way, except that if we do not do this, we would have deprived some highly deserving children of this benefit in cases in which because of the condition of the family or the parents we cannot take them to court. However, it should not in any way affect substantively the situation.

Mr. CURTIS. Mr. President, I have no further questions.

Mr. NELSON. Mr. President, I have consulted with the staff and I have listened to the discussion. On behalf of the manager of the bill, I am perfectly willing to accept the amendment of the distinguished Senator from New York.

The PRESIDING OFFICER. The question is on agreeing to the Javits amendment putting the question.

The amendment was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NELSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, am I recognized under the previous unanimous-consent order?

The PRESIDING OFFICER. The Senator is correct. The Senator from West Virginia has an amendment pending at this point.

Mr. ROBERT C. BYRD. Mr. President, if the distinguished Senator from Indiana wishes to call up an amendment, he might do so at this time. I have an amendment pending.

Mr. President, it is my understanding that the distinguished Senator from Indiana has an amendment that will be accepted and that it would therefore not take much time.

I ask unanimous consent, therefore, that my pending amendment be temporarily laid aside to allow the Senator from Indiana to call up his amendment which I understand will be agreed to.

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

Mr. HARTKE. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

Strike out all of subsection "e" of section 102 of title I beginning on page 20, line 12 to page 21, line 2.

Mr. HARTKE. Mr. President, I move to delete in its entirety subsection (e) of section 102. This subsection would, for the purpose of veterans' pensions, disregard any social security increase which we pass here today.

Mr. President, as much as I have been long concerned about the adequacy of veterans' pensions and, further, that veterans should not be unfairly penalized by virtue of any social security increase they receive I have reluctantly concluded that this provision is the wrong provision at the wrong time.

To briefly review the circumstances surrounding the provision in question, it should be remembered that the amount of pension for which a veteran or a survivor is entitled is determined by the amount of the recipient's countable nonpension income. Thus, an increase in social security—90 percent of which is counted as income—has often meant a decrease in a veteran's pension. In past years, the decrease in pensions has sometimes been greater than the social security increase producing a net loss to a veteran or a widow. Thanks to increasing refinements in the pension system enacted by Congress, however, this is no longer true and any veteran continuing to receive pensions always receives a net increase in the Federal payments to him when social security is increased.

For example, the average social security increase—under the 1972 20 percent raise—to a pensioner was approximately $26.50 per month. The average decrease in the VA pension on the other hand was approximately $7. Nevertheless, this decrease together with a continuing inflation prompted the Veterans' Affairs Committee, which I am privileged to chair, to push for increased veterans' pensions. As my colleagues are aware, we recently passed a $239 million bill providing for a minimum 10 percent increase in veterans' pensions which now is on the President's desk awaiting signature. While the bill is not all that the Senate had wanted, it does address itself to the problems of inflation and the decreases occasioned by social security which veterans experienced this year. As you also know, both the House and the Senate are committed to the process of overall pension review for comprehensive legislation which will be reported from the Veterans' Committee in 1974.

In this connection it is important to emphasize first that whether there is any provision in this bill affecting veterans or not, no veteran's pension will be affected by this social security increase next year. The earliest then, that a veteran's pension could be affected by any social security increases enacted by Congress this year will be over a year from now in 1975. In this connection, I ask unanimous consent to place a memorandum from the general counsel of the Veterans' Administration confirming this interpretation in the RECORD at this point.

There being no objection, the memorandum was ordered printed as follows:

NOVEMBER 16, 1973.

To: Chief Benefits Director (21).
From: General Counsel (02).
Subject: Determining income in 1974 for pension and dependency and indemnity compensation.

1. In your memorandum of November 12, 1973, you request my opinion on the following question based on an assumption that the rates of pension and dependency and indemnity compensation for parents would be increased effective January 1, 1974:

"In determining the annual income of pensioners and DIC parents for 1974 and in establishing the payment rates under the formula in the new legislative increase, does the law require that the social security increases expected in 1974 be counted?"

2. As stated in our memorandum of September 17, 1973, to which you refer, "notwithstanding notice of an increase in retirement prior to the deadline for reporting anticipated income for a forthcoming year, the end-of-the-year rule of [38 U.S.C.] 3012(b)(4) would still apply." This memorandum, as does our earlier opinion of January 26, 1968, adopted by the Administrator in his report of February 5, 1968, on H.R. 12555, 90th Congress, deals solely with the computation of income and is not related to the rate of pension payable, except to the extent that once income is determined, the rate payable for such income can be ascertained.

3. We find no legal basis for adjusting the pension rate in 1974 based upon increased social security payments expected later that year. Counting the 1974 social security increases in determining income would result in reducing the pension otherwise payable under the assumed increased rates. To do so, as suggested in the third paragraph of your memorandum, would be violative of section 3012(b)(4) as interpreted in the mentioned opinions.

4. Pension payable for 1974 should be based on the actual social security income received in 1973 in line with the aforementioned opinions. As previously indicated, the rate of pension has no bearing on the method of computing income. Once income is determined, the amount of pension to be paid would, of course, be fixed according to the rates then in effect.

5. The statutory method for determining the income of parents for the purposes of receiving dependency and indemnity compensation is similar to that of computing income for pension purposes. Section 3012

(b) (4) is also applicable to reductions of such compensation. Therefore, the views expressed above with respect to pension apply equally to dependency and indemnity compensation.

6. It follows that your question, as set forth in the first paragraph, must be answered in the negative.

JOHN J. CORCORAN.

Mr. HARTKE. Second, this provision as presently written would not do what it is intended to do; that is, treat all veterans in a fair and equitable manner. By singling out social security, this bill would discriminate against veterans who receive increases in civil service annuities, railroad retirement, or private annuities. Thus, you would have the situation where two veterans with identical outside income would receive different pensions. I can assure my colleagues that they have not seen mail that can be generated until you have a situation in which veterans with identical income are paid different pensions.

Third, I am informed that the provision as drawn now would be impossible to administer by the Veterans' Administration. The Veterans' Administration has termed this provision an "administrative nightmare" as the following memorandum indicates:

EFFECTS OF THE SOCIAL SECURITY "PASS THROUGH" TURNS A SIMPLE SYSTEM INTO A HIGHLY COMPLEX ONE

Pension is paid based upon countable income, self-reporting through annual income questionnaires, and therefore kept simple.

Pensioners receive income from various sources, and most have income from more than one source. When income from any one or combination of sources undergoes change, an adjustment in rates is made.

For social security and other retirement incomes, ten percent is excluded in determining the pension rate payable.

The "pass thru" proposal would create an administrative monstrosity.

For those on the pension rolls who are receiving social security, the social security portion of their income would be of three components: the "pass thru" amount which is never to be counted as income; the balance of which 10% is not counted, and 90% which is counted.

By law, social security will be adjusted each year in line with changes in the cost of living. The percentage will be applied to the total social security payable. Where there is a portion not to be counted, that amount, and the % increase would be excluded. The individual is not usually certain of the amount of his benefit increase (with medicare, etc. deductions) nor can we be sure of the amount which will be the total increase "pass thru". Automatic adjustments will not be feasible for all of these cases, for individual treatment and adjudication would mean incurring tremendous administrative costs.

The problem would also be compounded when income other than social security changes and an adjustment must be made. The various components of social security must be unraveled to properly assign the pension rate.

There would be further problems should a pensioner be taken off the rolls for a period of time due to employment or other change in income, and then again become eligible. Another complex income determination would have to be made for each case.

The "pass thru" would also create disparite classes of pensioners. For all future payments, we would have to distinguish between those receiving pension before 1/1/74 and receiving social security and those entitled on or after 1/1/74, as well as those who may have received pension before 1/1/74 but did not commence receipt of social security until after that date.

I might add that the veteran's organizations have recognized that this is not the best way to approach the problem and I ask unanimous consent that copies of letters from the American Legion addressed to my distinguished colleague, Senator RIBICOFF, which explain the difficulties of this provision be inserted in the RECORD at this point.

There being no objection the letters were ordered printed as follows:

NOVEMBER 16, 1973.

Hon. ABRAHAM RIBICOFF,
U.S. Senate,
Washington, D.C.

DEAR SENATOR RIBICOFF: The American Legion is grateful to you again this year for your efforts to improve the veterans nonservice-connected pension program. With your cooperation, H.R. 9474 passed the Senate today and the VA beneficiaries will receive a minimum ten percent increase in monthly benefits commencing next January.

The merit of excluding monthly social security benefits from counting as income for VA pension purposes has been studied by The American Legion on several occasions. Each time the organization has concluded that to do so would discriminate against other veterans whose retirement type incomes are derived from other sources, and for the further reason that such might defeat the needs test for pension eligibility.

As you know, the pension program, as established in 1933, is an income maintenance and not a retirement program. It was designed to help relieve or prevent need arising from nonservice-connected disability with associated unemployability. It also provides assistance to the spouse where the veteran's death removed the principal means of support. It is the Nation's means of assuring war veterans of an honorable form of financial assistance when they lack sufficient resources to meet the cost of their reasonable needs.

Under present law, all payments of any kind or from any source (including salary, retirements, annuity payments or similar income), are counted as annual income for pension purposes. Additionally, the law excludes from these income determinations ten percent of the amount of payments to a veteran or widow or child under public or private retirement, annuity, endowment, or similar plans or programs.

From the foregoing, it is patent that the income of these beneficiaries receive equal consideration in annual income determinations. The American Legion believes that an equitable and just solution to the needs of pensioners lies not in the exclusion of income types, but by providing for adequate income limits, and monthly pension payable. We are aware that both the Senate and House Committees on Veterans' Affairs are committed to restudy all facets of the veterans pension program next year. They hope to find a just solution to the existing inequities so that the Congress will not have to reconsider this type of legislation each time social security benefits and other retirement type incomes are increased to keep pace with the rise in the cost of living. It is our understanding that as a result of the projected Congressional study of the pension program, the Veterans Administration has agreed that any increases in social security benefits presently under consideration by the Congress will not be considered as income in 1974.

Again, thank you for your splendid support and cooperation.

Sincerely yours,

HERALD E. STRINGER,
Director, National Legislative Commission.

THE AMERICAN LEGION,
Washington, D.C., November 28, 1973.

Hon. ABRAHAM RIBICOFF,
U.S. Senate,
Washington, D.C.

DEAR SENATOR RIBICOFF: This has further reference to my letter of November 16 concerning your amendment to H.R. 3153, the Social Security Amendments, to exclude social security increases from counting as income for veterans pension purposes.

As you know, the Veterans Administration has agreed that any social security increases enacted this year will not count as income for veterans pension purposes for the year 1974. Also, the Senate and House Committees on Veterans Affairs are committed to make a comprehensive study of the entire veterans pension program during the second session of the 93rd Congress in an effort to find an equitable solution to this problem.

For these and other reasons The American Legion hopes you will withdraw your amendment to H.R. 3153.

Your continued cooperation with this office is greatly appreciated.

Sincerely yours,

HERALD E. STRINGER,
Director, National Legislative Commission.

Mr. HARTKE. Finally, I want to assure my colleagues that the Veterans' Affairs Committees of both the Senate and the House will be dealing with the whole problem of veterans' pensions next year and that we fully expect to have a thorough, comprehensive, and equitable bill for all of our veterans long before any social security increase could possibly affect their veterans pension.

Mr. President, as much as I appreciate and sympathize with the motives of the veterans' disregard provision of this bill, I urge my colleagues not to treat the problem on a piecemeal basis—and one that will not work. Let the Veterans' Affairs Committee deal with the whole problem.

I commend the Senator from Connecticut (Mr. RIBICOFF) for his intention to assure that veterans should not be penalized. I agree with the spirit of the motives that prompted the original provision in this bill. Unfortunately, as I have indicated it does not accomplish the intended result.

I have discussed this matter with the Finance Committee, and I understand that they are willing to accept the amendment which I offer today.

Mr. NELSON. Mr. President, it was the intention of the Finance Committee, as the Senator from Indiana, who is Chairman of the Veterans' Affairs Committee, has said. With the assurance of the Veterans' Affairs Committee that this would be appropriately handled by the committee, we are willing to accept the amendment.

Mr. HARTKE. Let me say to the floor manager of the bill that the veterans organizations recognize this is not the proper approach. As the letter from the American Legion addressed to Senator RIBICOFF indicates, they have requested that this change be made.

Mr. NELSON. On behalf of the manager of the bill, I am willing to accept the amendment.

Mr. CURTIS. Mr. President, will the Senator state again where he would begin striking out, beginning on what page?

Mr. HARTKE. It would strike the en-

tire subsection "e" of section 102 of title I which would disregard this social security increase in determining income for purposes of the pension to which a veteran or his survivor would be entitled.

Mr. CURTIS. On what page?

Mr. HARTKE. Page 20.

Mr. CURTIS. Line what?

Mr. HARTKE. Lines 7 to 12.

Mr. CURTIS. Lines 7 to 12?

Mr. HARTKE. Yes. Beginning with line 12 on page 20, down to page 21, line 2. That entire subsection.

Mr. CURTIS. Will the Senator state again what this language would do if it were left in here?

Mr. HARTKE. Subsection E would purport for the purposes of determining the amount of a veteran's pension to be paid to disregard any social security increase passed this year. I should point out that with respect to social security increases that have adversely affected veterans' pensions that there has already passed Congress a measure which is on the President's desk, which has no substantial objection, which would correct those deficiencies.

Quite simply we have taken care of past problems with that bill and we have another program coming from the Veterans' Administration to deal with this matter in depth. The Veterans' Administration is opposed to the provision which my amendment would delete. The veterans' organizations are opposed to it, and the Veterans' Affairs Committee is opposed to it.

Mr. CURTIS. They are opposed to its being handled in the social security legislation; is that what the Senator means?

Mr. HARTKE. No. In this particular case I would be perfectly willing to waive jurisdiction if this were an equitable and workable provision of real benefit to the veterans. But it is not. The railroad employees, for example, and certain pensioners of the Government who are traditionally taken care of would not be aided by this provision. In other words, the legislative procedure does not accomplish the spirit which it was intended to accomplish.

Mr. CURTIS. And what the Senator proposes to do is strike it out entirely?

Mr. HARTKE. That is right.

Mr. CURTIS. I thank the Senator.

Mr. THURMOND. Mr. President, initially, I want to preface my remarks with a statement concerning social welfare legislation in general, and non-service-connected veterans pension legislation in particular.

First, I believe that every able-bodied man should work or train for work, and the emphasis of our legislative activity should encourage that end. While the great majority of the American people are physically and mentally capable of holding a job, there are many, who, because of infirmities of the mind or body, are not able to hold a job or even train for work, no matter how hard they try or what their desires may be.

Those in the latter group, Mr. President, deserve our best efforts to help them maintain a standard of living above the poverty level, and the full benefits of all the governmental programs which have been designed to aid them in their battle to maintain a decent standard of living for themselves and their families.

Second, many of our veterans who draw non-service-connected pensions fall in the group that I have just described. Many of these veterans, because of age and/or disability, qualify for both social security benefits and a veterans pension. The combination of these benefits affords the non-service-connected pensioner a minimum standard of living, and enables him to live in the manner befitting one who was willing to sacrifice his life and body for his country.

Mr. President, no government program is wasted when it is aimed at compensating the American veteran for the service he has rendered our country. After all, we are free to stand here today in free and open debate because of his sacrifice when our Nation needed him most.

No veteran should ever be penalized because of his status as a veteran. The benefit of every program which would accrue to him if he were not a veteran should, and must, continue to be available to him as a veteran.

Ostensibly, it is this very point which poses a problem in reconciling the social security laws with the veterans' pension laws. Since veterans' pensions are based on need, and increase in social security payments often lifts the veteran's income above the limitation which qualifies him for a non-service-connected pension. A raise in social security benefits helps the normal recipient meet increased living costs, but an anomalous situation occurs for many veterans or their widows. They are told to expect an increase in social security benefits, but a decrease in their pension because their income has increased to a point of lifting them into another increment level for pension purposes. Some even have their income level raised to a point where no pension at all is available.

Mr. President, this problem has plagued us for many years, and I have given considerable thought to a lasting solution. Unfortunately, I must admit, and I believe that other members of the Veterans' Affairs Committee and the Finance Committee will agree, we have been unable to devise a workable solution for this complex problem.

In the last session of Congress, I cosponsored a bill with the chairman of the Veterans' Affairs Committee, Senator HARTKE, which contained a provision for a $400 increase in the income limitations in computing countable income for non-service-connected pension purposes. A $400 increase would have offset recent social security increases. This bill passed the Senate unanimously on October 11, 1972, but the House did not act on it before adjournment. Consequently, we reintroduced this bill as S. 275 in the present Congress, and again it passed the Senate unanimously on August 2, 1973.

However, the House again refused to act on this provision. In discussions with the leadership of the House committee, it became evident that the House would not accept an increase in income limitations for computing the non-service-connected pensions.

First, it was pointed out that such an approach offered only a piecemeal solution. Each time a social security increase occurred, a subsequent increase in income limitations would be necessary to protect the status of the non-service-connected pensioner.

Second, each increase in income limitations would qualify additional veterans for the pension rolls, and we would be aiding the man who needed the additional benefits least, and not the one who needed help the most.

Third, the addition of more and more veterans to the pension rolls would set into motion an unending process which the present compensation and pension budget could not withstand.

So, on November 16 of this year, the Senate concurred without dissenting vote in the House amendments which struck the provision for an increase in income limitations. Basically the veterans non-service-connected pension legislation of 1973 provided authority for a 10 percent cost of living increase as temporary relief. However, at the time of passage, the colloquy on the Senate floor between Senators HARTKE, HANSEN, and myself pointed to a total commitment to reexamine the entire pension system early in the next session. It is my expectation that a full-fledged examination of the veterans pension system will be a primary effort to the Veterans' Affairs Committee early next year.

While at first glance it may seem logical to adopt the Finance Committee's proposal to disregard social security increases in computing the veteran's non-service-connected pension, close scrutiny reveals that such a proposal would not solve the problem. It, too, would provide only a piecemeal approach to a very complex problem.

Second, while seeking to alleviate an inequity, it would in fact, cause a further inequity in the pension law. Veterans with the same income would be classified differently for pension purposes. While income from social security would be disregarded in determining the pension for one veterans, another veteran with an equal income from another source would have his income counted for pension purposes.

Third, the Veterans' Administration, in consultation with the staff of the Veterans' Affairs Committee, has pointed out that a "pass-through" provision would be hard to administer. In an effort to forestall any harsh effects caused by the enactment of H.R. 3153, an opinion by the General Counsel of the VA submitted to the general counsel of the Veterans' Affairs Committee, has pointed out that any increases in social security will not be counted until January 1, 1975. Therefore, the increases encompassed in this bill will not affect our pensioners in the next year. During 1974, the Congress will have the time to seek a permanent solution to this problem.

Fourth, various veterans service organizations recommend that a "pass-through" or "disregard" clause in social security law will not serve the best interests of all veterans.

Senator HARTKE's amendment recognizes these problems and deletes the

"pass-through" or "disregard" provisions in the bill. After careful study and consultation with him, I am convinced that his amendment represents the best interest of the veteran.

Mr. President, I believe that all veterans legislation must be directed toward the benefit of the veteran, and I am hopeful that logic, and not emotion, will control our thoughts as we consider the Hartke amendment.

My duty, as the senior Republican on the Veterans' Affairs Committee, is to protect the best interests of the American veteran. With that thought in mind, I urge my colleagues to support the Hartke amendment, but with the full realization that the Veterans' Affairs Committee, as well as the full Senate, is charged with the duty of examining the veterans pension system and seeking to propose a final and equitable solution to this perplexing problem which faces the non-service-connected veteran.

While we all realize the need for changes in the veterans' pension law, I am sure that views will differ on the approaches to a solution. I am looking forward to a forthright discussion of these issues, and believe that exhaustive hearings before the Veterans' Affairs Committee, with VA witnesses, service organization spokesmen, and veterans themselves, provides the best forum for an in-depth examination of this problem. I am hopeful that Senators, themselves, will feel free to come before the committee and propose fresh ideas and approaches.

Finally, let me emphasize that our veterans are not impressed with rhetoric or shallow solutions that do not strike at the heart of the problem. When their incomes are cut, they expect action and hard work on our part to find a solution.

The Finance Committee's proposal for a "disregard" is admirable in motive and intention, but I believe that a better solution can and will be worked out by waiting on the Veterans' Affairs Committee to examine thoroughly this problem. Senator HARTKE long ago committed himself to seeking a solution, and I joined him, Senator HANSEN, the ranking minority member, and other committee members in a bipartisan effort to find an answer. The committee will continue its efforts.

Therefore, Mr. President, I support the Hartke amendment and urge my colleagues to do likewise.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Indiana.

The amendment was agreed to.

Mr. HARTKE. I thank the distinguished assistant majority leader for permitting us to take this legislative action at this time.

The PRESIDING OFFICER. The Senator from West Virgina is recognized.

Mr. ROBERT C. BYRD. Mr. President, my amendment will amend the Social Security Act by reducing from 60 to 55, the age at which a woman may become entitled to actuarially reduced widow's insurance benefits themselves.

Throughout my entire congressional career, I have consistently supported and introduced legislation designed to provide more realistic social security benefits, and legislation designed to improve and strengthen the structure, administration, and financing of the social security system.

Last fall, I introduced this measure as an amendment to H.R. 1, and it was adopted by the Senate. Unfortunately, the House conferees would not accept this amendment and it, therefore, was not included in the conference-reported bill. I have also introduced this proposal as a separate bill. S. 2679 on November 9, 1973. While there were many improvements and liberalizations contained in H.R. 1, as finally enacted, I also hope that the need for additional improvements, such as would be effectuated by my amendment, will now be more clearly recognized by Members in both Houses of Congress so that this proposal might receive expeditious consideration and enactment into law this session.

Beyond the 28 million citizens who are already drawing social security benefits, there are many widows between the ages of 55 and 60 who, at this stage in their lives, are unable to establish a new career, or to reactivate an old one. It is this group of widows that my amendment is aimed at assisting.

Under the provision of my amendment which will permit actuarially reduced widows' insurance benefits to be received at age 55, the Social Security Administration has estimated that approximately 310,000 widows may claim benefits the first year, creating an initial cost of about $600 million. But in the long run, there would be no, or very little, increased cost because it would balance out.

In West Virginia, approximately 5,300 widows would become eligible for actuarially reduced benefits, if the age requirement were lowered 60 to 55. The increase in benefits for West Virginians would be approximately $10 million.

I would like to cite several examples, which have been computed by the actuarial experts of the Social Security Administration which show how my amendment will affect widows. These examples include the 7 percent increase.

First. Widow A is 55 years old and her husband had average monthly earnings of $500 per month. Her reduced benefits would be $175.40 per month.

Second. Widow B is 55 years old and her husband had average monthly earnings of $800 per month. Her reduced benefits total $201.50 per month.

Third. Widow C is 55 years old and her husband had average monthly earnings of $800 per month. Her reduced benefits total $222.80 per month.

This amendment, if adopted and enacted, will provide benefits for a group of persons who need it most—widows who are unable to work and who desperately need these benefits, but who have been unable to obtain them because of the social security age requirement. In the majority of cases, these widows' husbands had paid into the program for a long time, and these are people who deserve to receive some type of benefits now.

Mr. CURTIS. Mr. President, will the distinguished Senator from West Virginia yield for a question or two?

Mr. ROBERT C. BYRD. Yes.

Mr. CURTIS. As I understand, what the Senator proposes relates to the benefits for women.

Mr. ROBERT C. BYRD. Yes; for widows.

Mr. CURTIS. Not all women?

Mr. ROBERT C. BYRD. No; only widows.

Mr. CURTIS. At the present time, if the husband is the primary beneficiary, and he dies, at what age do the benefits start for the widow?

Mr. ROBERT C. BYRD. At age 62 for full benefits; for actuarially reduced benefits, at age 60.

Mr. CURTIS. What the Senator proposes to do would change it to what?

Mr. ROBERT C. BYRD. The age at which widows could receive actuarially reduced benefits would be lowered from the present age of 60 years to 55 years.

Mr. CURTIS. How many widows would this proposal affect?

Mr. ROBERT C. BYRD. I understand that it would affect about 310,000 widows, who would claim benefits in the first year.

Mr. CURTIS. If the Senator's amendment were accepted, all widows falling in that age category could avail themselves of benefits?

Mr. ROBERT C. BYRD. They would have the option of availing themselves of benefits.

Mr. CURTIS. Suppose that a woman had been a widow for many years, and her deceased husband was not qualified for a primary benefit, but she was working in her own right. Would she be able to avail herself of the benefits proposed by the Senator's amendment?

Mr. ROBERT C. BYRD. Widows could receive benefits only at age 62 on their own employment record.

Mr. CURTIS. In other words, the Senator is proposing——

Mr. ROBERT C. BYRD. This amendment would not affect that category.

Mr. CURTIS. I understand; but the Senator is proposing that a widow have a preferential position over women who must work and support themselves.

Mr. ROBERT C. BYRD. That is already the law. Under present law, a widow whose husband was covered may elect, at age 60, to take actuarially reduced benefits; whereas, a widow in the other category cannot do so but must wait until age 62. The former may have no skills for the current labor market, because she has been a housewife over the years. The latter is currently employed in today's labor market and possesses the skills needed.

Mr. CURTIS. The Senator is widening the period from 2 years to 7?

Mr. ROBERT C. BYRD. My amendment makes it possible for the widow who, perhaps has long been a housewife and out of touch with the skills required for a job, and whose husband was in covered employment, to elect to receive actuarially reduced benefits 5 years earlier than she can now receive such benefits under present law.

Mr. CURTIS. The first full year's cost will be $600 million.

Mr. ROBERT C. BYRD. The first full year's cost is estimated at $600 million.

Mr. CURTIS. Is it the Senator's contention that there would not be any additional cost?

Mr. ROBERT C. BYRD. It is my contention that over the long run, the initial cost would be almost washed out, because the widows who elected to take benefits at age 55 would have to take a reduced benefit below that which they would otherwise receive if they waited until they were 60. So, in the long run, the initial cost would be made up by balancing out—they would receive 15 years' worth of benefits spread over 20 years, perhaps.

Mr. CURTIS. I am aware that, theoretically, that contention is made, but if it were literally true, everyone could then retire at 40 years of age at reduced benefits, and it will cost the system nothing.

Mr. ROBERT C. BYRD. The law does not allow everyone to retire at 40——

Mr. CURTIS. No, no; but if it does not cost anything to give the reduced benefits at a lower age and the Congress chose to make it possible for someone 40 years of age to do it, it would not cost them, if the Senator's theory is correct.

Mr. ROBERT C. BYRD. Actuarially it is supposed to balance out. I am not an actuary. I suppose at age 40, an actuarially reduced benefit would be down to nothing.

Mr. CURTIS. I know it is, theoretically. Does the Senator have an estimate of how many of these widows might cease working and, thus, would be no longer paying social security taxes into the fund?

Mr. ROBERT C. BYRD. I can only say that I am advised by the Social Security Administration there is a potential of 310,000 widows. How many of these are working at the present and would not elect to retire at age 55, I have no way of knowing.

Mr. CURTIS. Does this amendment have the support of the Department?

Mr. ROBERT C. BYRD. I cannot say that it has the support of the Department.

Mr. CURTIS. Does the Senator know whether they are objecting to it?

Mr. ROBERT C. BYRD. I do not know for a fact that they are objecting to it. I cannot answer that question.

Mr. CURTIS. I thank the Senator from West Virginia very much for his courtesy in answering these questions. I feel that amendments of this kind, materially lowering the retirement age, should not be adopted by consent or by a voice vote but that the Senate should vote on them. I am afraid we do not have sufficient Senators in the Chamber at this moment for a rollcall—to second a request for a rollcall vote, but I think we should have one.

Mr. ROBERT C. BYRD. I agree with the Senator. While I stated that I cannot say as a matter of fact that the Social Security Administration does not approve this amendment, I can only assume that it does oppose it, because I think the administration has opposed similar amendments in the past. How strong that opposition is, I have no way of knowing. But I agree there should be a rollcall vote on this. If I could get the unanimous consent of the Senate, I should like to lay this amendment temporarily aside and take up a second amendment, after which I will have no additional amendments.

Mr. HARTKE. Mr. President, will the Senator from West Virginia yield for a question or two on this amendment?

Mr. CURTIS. Could I ask unanimous consent for a rollcall vote——

Mr. ROBERT C. BYRD. I would have to object, but I hope that——

Mr. CURTIS. I would like to argue about that, but if we can pass a law by unanimous consent, why on earth can we not have a rollcall vote by unanimous consent?

Mr. ROBERT C. BYRD. I am willing to discuss that with the Senator. I will not argue with him on it. This business of securing one-fifth of the Members present to order a rollcall vote is a constitutional inhibition and not mine, but——

Mr. CURTIS. Would the Senator yield if I might make a——

Mr. ROBERT C. BYRD. Yes.

Mr. CURTIS. Ask for a quorum call.

Mr. ROBERT C. BYRD. Would the Senator allow us to proceed? We will get a sufficient number of hands. If the Senator would yield, so that we could proceed with a little discussion with the Senator from Indiana, I believe, in the long run, that will save time.

Mr. CURTIS. Does the Senator have another amendment?

Mr. ROBERT C. BYRD. I was going to ask unanimous consent that I could set this amendment temporarily aside until we have a sufficient number of Senators in the Chamber to get the yeas and nays.

Mr. CURTIS. These ladies may be 60 years old by the time that happens. [Laughter.]

Mr. ROBERT C. BYRD. I am sure they will receive good encouragement from the Senator's vote on this amendment.

Mr. CURTIS. That is right.

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on the pending amendment.

The yeas and nays were ordered.

Mr. CURTIS. 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.

Mr. ROBERT C. BYRD. Mr. President, I have called off the quorum, with the understanding of the distinguished Senator from Illinois (Mr. PERCY) that we will protect the rights of the distinguished Senator from Nebraska (Mr. CURTIS) while he is talking on the telephone; but I think that in the long run this will save time because it will give the Senator from Indiana (Mr. HARTKE) an opportunity to make his statement.

I yield to the Senator from Indiana.

Mr. HARTKE. I thank the Senator from West Virginia. I wanted to ask the Senator, is not this amendment an attempt to provide an opportunity for widows to go ahead and retire at an earlier age than they have previously been able to retire, in view of the fact that they were forced to work beyond the period of time, and that many of them are not sick but are disabled, that is, in the terminology of the social security laws and who are, frankly, beyond their physical capabilities to continue to act and work.

Mr. ROBERT C. BYRD. The Senator is correct. My amendment only goes to the problem of widows. It gives them the option to retire at an earlier age than they presently can retire, with the understanding that they will receive actuarially reduced benefits if they do so choose to retire at an earlier age.

Mr. HARTKE. All right. In the discussion with the Senator from Nebraska (Mr. CURTIS), which dealt with the question, will it permit anyone to retire on reduced benefits when, theoretically, that might be true but the fact is, if one retired at 40, he would not get anything because, actuarially, it would not work out that way to a great extent. The individual retiring at 55 would find that his reduced benefits would be so substantially less than he would get if he continued to work, that he will continue to work, if he can. But under such circumstances, where the necessities would indicate that they should or could retire, this amendment provides an opportunity for them. So, really, this is an opportunity amendment and not a mandatory amendment; is that not correct?

Mr. ROBERT C. BYRD. The able Senator from Indiana has stated the case precisely, in support of the amendment.

Mr. President, now that the Senator from Nebraska has returned to the Chamber, may I say to him that I called off the quorum with the understanding of the distinguished Senator from Illinois (Mr. PERCY) that the rights of the Senator from Nebraska (Mr. CURTIS) would be fully protected and that we would carry on this colloquy in the meantime.

Mr. CURTIS. Mr. President, I am seeking recognition in my own right now.

The PRESIDING OFFICER (Mr. BIDEN). The Senator from Nebraska is recognized.

Mr. CURTIS. Mr. President, this amendment sounds like it would not cost anything. I do not think that is correct. I also point out that it would be inequitable to enact. Are we to say to some women who have had to work hard all their lives that they cannot elect to retire at a reduced benefit at age 55 but that widows can? Some people who are beneficiaries of social security need that benefit very badly to live on. A larger number need it. But not all beneficiaries of social security are in dire need. This amendment makes no such qualification. A widow has an optional retirement at 55, but working women have no such option.

There is a reason for permitting some reduction in age for an optional retirement, because when people get to a certain age, it is difficult for them to carry on. That is why it is in the law that they could have an option at 60. No evidence has been presented that the same facts prevail in reference to a widow at age 55.

There is still another factor that makes this expensive, and it is this: Beginning not too many months from now, our program for the aged, blind, and disabled, which has been on a matching basis, is going to be taken over by the Federal Government. So those people who have been on old age assistance and have been getting a benefit through the State, which was matched by the Federal Government, are going to receive a supplemental income payment. That supplemental income payment is to bring their income up to a certain amount. If a social security payment is low, their payment from the Federal Government for the supplemental income will be larger. So someone can elect to take a reduced social security payment and thereby qualify for a higher supplemental income payment which is borne entirely by the Federal Government. The proposition that this would all be washed out because of the actuarial considerations had some validity before the enactment of the law relating to the supplemental income program. It does not have that validity any longer.

I submit, further, that I do not believe it would be just to have more liberal provisions for women who have not worked under covered employment than women who have had to work all their lives and will have to work until they are of retirement age.

I have had an opportunity to confer with the representatives of the Department of Health, Education, and Welfare, and they are opposed to the amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. ROBERT C. BYRD. Mr. President, I have a question to ask the distinguished Senator.

I recognize that under the present law, there is an apparent discrimination in favor of the widow and against the working woman. That discrimination, I think, covers a period of 2 years. At present, the widow can elect to retire at age 60; whereas, the other party cannot elect to retire until age 62. So that is a built-in discrimination, I suppose, that we have had to accept all along.

Would the distinguished Senator be willing to accept a modification of my amendment which would provide that the woman in the second category, to which the Senator has been addressing himself, could elect to retire at age 60 rather than at age 62?

Mr. CURTIS. I would not say that I would oppose it, but I would certainly oppose it as a floor amendment. These matters are involved: The cost estimates need to be explored. Also, I doubt very much whether many Senators are aware of the supplemental income provision which is going to be available to all adults when they are 65—those who happen to need it. I think the picture has changed entirely since then. While I would not at all take the position that I am not in favor of some further liberalization for all women, including those who must work all the time, I think it should be done by committee action.

Mr. ROBERT C. BYRD. Mr. President, I think the Senator's argument has a great deal of merit. By unanimous consent, I would like to modify my amendment to allow men and women to retire with actuarially reduced benefits at age 60, rather than at age 62, as at present, retaining the language in the amendment I have offered, which would allow widows to retire at age 55.

Mr. CURTIS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CURTIS. The yeas and nays have been ordered. Can such modification be made?

The PRESIDING OFFICER. Only by unanimous consent.

Mr. CURTIS. I am constrained to object, not because I would throw a difficulty into the procedure; but I do not believe that these moves should be made without being considered by a committee and the committee bringing in a recommendation. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I can, of course, offer an amendment to my own amendment. Am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. In the past, on a number of occasions, the Senate has adopted an amendment I have offered reducing the age from 62 to 60, with actuarially reduced benefits, for both men and women.

I am torn between two emotions, as to whether or not to proceed accordingly to try to amend my own amendment, which I have a right to do. I realize that if I do, the Senator may wish to talk for a while on that amendment. I do not know what his inclination would be.

I also realize that my amendment reducing the age from 62 to 60 has been offered by me at least four, five, or six times and has been adopted in the Senate, over a period of several years, and it has never gotten through the conference with the other body.

Last year, I offered the amendment to lower the age for widows to 50, and at the suggestion of the distinguished senior Senator from Kentucky at that time, Mr. COOPER, I agreed to modify my amendment to make it age 55, rather than 50. So I would assume that my amendment might have a better chance of surviving in conference if I stayed with the amendment I have offered today, rather than attempting to expand it at this point to include other groups. Half a loaf would be better than no loaf at all.

I say again that I think the Senator's suggestion has a great deal of merit, that other women should also have some option. But I will not attempt to amend my amendment on this occasion. I will let the amendment stand, and I hope that the Senate will agree to the amendment.

May I ask the Senator if he would allow me to do this? I have one other amendment. I would like to ask unanimous consent, and I will ask unanimous consent, and the Senator may object if he wishes, that the pending amendment be temporarily laid aside and that I proceed with the second amendment, discuss it, request the yeas and nays on it, have the yeas and nays ordered, and then have the two votes occur back to back.

The PRESIDING OFFICER. Is there objection?

Mr. CURTIS. Mr. President, reserving the right to object, and I do not know that I will object, in the interest of orderly procedure I would like to be informed what the second amendment is about.

Mr. ROBERT C. BYRD. Yes, I think the Senator is entitled to know that.

I do not know how Lyndon Johnson, when he was majority leader, used to be able to carry so many papers around in all of his pockets and in both of his arms and be able to avoid losing them. Apparently I am not doing too well at it myself.

Mr. President, this is not a printed amendment. I shall state to the Senators what it would do.

Mr. President, this amendment would amend the social security law by allowing social security recipients to earn up to $3,000 a year without being penalized. The Senator is familiar with the subject matter.

If the Senator has no objection, I could offer it and then discuss it. If he would prefer to wait for a vote until after the prior amendment, that is all right with me.

Mr. CURTIS. I would have no objection to such a procedure, I think it might even be true that it would be helpful to Members of the Senate—at this point I am not willing to agree to a general limitation of time, but if the Senator wishes to suggest a time for the votes, that is all right with me, too.

Mr. ROBERT C. BYRD. Mr. President, could I get the Senator's consent to proceed with the vote on the pending amendment and immediately thereafter I then be recognized to call up this second amendment?

Mr. CURTIS. Yes, either that or discuss the second one.

Mr. ROBERT C. BYRD. Discuss it now, and then go to a vote on both amendments?

Mr. CURTIS. I have no objection.

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

Mr. ROBERT C. BYRD. Mr. President, I send the amendment to the desk and ask that the Clerk state it.

The PRESIDING OFFICER. Without objection, the pending amendment will be temporarily laid aside.

The clerk will state the second amendment.

The legislative clerk proceeded to read the amendment.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

At the end of part A of title I of the bill, insert the following new section:

LIBERALIZATION OF EARNING TEST

SEC. 111A. (a) Paragraphs (1), (3), and (4)(B) of section 203(f), and paragraph (1)(A) of section 203(h), of the Social Security Act are each amended by striking out "$175" and inserting in lieu thereof "$250".

(b) The amendments made by subsection (a) shall apply with respect to taxable years beginning after December 31, 1973.

(c) Section 202 of Public Law 93-66 is hereby repealed.

Mr. ROBERT C. BYRD. Mr. President, my amendment would amend the social security law by allowing social security beneficiaries to earn up to $3,000 per year without being penalized by loss of benefits. Under existing social security law, beneficiaries are allowed to earn up to $2,100 per year before being penalized with loss of earnings, and on January 1, 1974, this limitation will be increased to $2,400.

Presently, if a beneficiary earns over $2,100, he is penalized $1 for every $2 that he earns and he loses benefits in this amount—a grossy unfair procedure which inures against those who can least afford it.

This limitation penalizes the wrong persons. Commonsense would indicate that. Citizens who have been working all their lives and contributing to the system during this working period from their hard earned salaries should not, at this point in their lives, be penalized for working.

Mr. President, at the present time the maximum social security benefits are $266 per month for a man who reached age 65 in 1973 and had maximum earnings through 1972, and many persons need additional funds, above that amount, to sustain themselves. Surely, they should not be penalized for having the incentive to go out to earn the extra money needed.

Under present law, beneficiaries who reach age 72 receive their full benefits without regard to any earnings limitation. I do not understand why they should be penalized between the ages of 70 and 72.

Another glaring inequity in the earnings test application is that in determining whether the earnings limitation has been exceeded, only "wages" and "net earnings from self employment" are considered—whether or not such wages or earnings are derived from employment covered by the Social Security Act. Income which is neither wages nor net earnings from self-employment is not counted. Thus, persons who are wealthy or have private investments, and who receive income from interest, dividends and rentals from real estate or any amount of income from pensions or annuities may do so without having any reductions in OASDI benefits.

Mr. President, when this retirement test was put into law, in 1935, there might have been valid reasons for discouraging older workers from working past an arbitrary retirement age. This was during the depression years when it was necessary to increase job opportunities for younger workers. However today's high economy does not need such restrictive measures. By keeping these older persons from working, we are in effect, depriving this country of valuable skills and productivity.

Also, the Federal Government has been engaged in a campaign within the past 5 years to prohibit and to discourage the discrimination against workers because of age, and to encourage the hiring and retention of older workers.

The income limitation test discriminates against those individuals who can afford it least—those who must work to supplement their benefits. When we consider that the average social security benefit which is received at this time is approximately $2,000 per year, it is obvious that many individuals have to work. This provision causes a great deal of hardship in cases where the individual has need for more income than social security benefits can provide. That is why I propose to increase this limitation to $3,000 per year.

Mr. President, these people should not be penalized; rather they should be commended for the desire to go out and continue to work for themselves and contribute to the upbuilding of their communities and the Nation itself.

Mr. President, I think that about sums it up.

Mr. FANNIN. Mr. President, the Senator has a very meritorious amendment. Similar amendments have been considered over the years and in recent months have been discussed in the committee. But the consideration involved has been the barrier.

As I understand the amount involved would be in the neighborhood of $600 million.

Mr. ROBERT C. BYRD. About $800 million, I am told.

Mr. FANNIN. $800 million?

Mr. ROBERT C. BYRD. Yes.

Mr. FANNIN. That is the limiting factor as to whether or not we can take a jump of that magnitude, with the budget that is now certainly above what was anticipated, and creating the further problem that if we do not know exactly what it is to be, the problem could be greater.

I ask the Senator if he has any method of financing this additional amount that would be involved?

Mr. ROBERT C. BYRD. I do not provide for the financing of the additional cost in this amendment.

Mr. FANNIN. But the cost would be in the neighborhood of $800 million?

Mr. ROBERT C. BYRD. That is correct.

Mr. CURTIS. Mr. President, would the distinguished Senator advise us what the cost of the proposal would be, the yearly cost?

Mr. ROBERT C. BYRD. About $800 million, I am advised.

Mr. CURTIS. That would be recurring every year?

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. CURTIS. Does the Senator provide any financing?

Mr. ROBERT C. BYRD. I do not in this amendment.

Mr. CURTIS. Is the Senator aware that the goal that the committee adhered to for many years was to have at least 1 year's reserve in the trust fund, and that is down now to 70 percent a year?

Mr. ROBERT C. BYRD. I am sure the Senator is correct in his statement.

Mr. CURTIS. Mr. President, I again remind the Senate that this is one of the dangers of these proposals on the floor. Here we are increasing benefits by almost $1 billion with no provision to pay for it. It would further deplete the reserve which is down now to less than a year.

I thank the Senator for yielding.

Mr. ROBERT C. BYRD. Mr. President, I think the record should show that it is quite traditional around here to add these social security amendments on the floor without accompanying them at the time with a self-financing provision.

Mr. CURTIS. Not so on the part of the Committee on Finance.

Mr. ROBERT C. BYRD. I agree with the Senator. I am not a member of that distinguished committee.

Mr. CURTIS. That is why I believe the Senator should take all these amendments to the committee and convince the committee. They are not hard to convince.

Mr. ROBERT C. BYRD. I agree. What I said is not true on the part of the Committee on Finance, but it is true, I think, on the part of most Senators who are not on the Committee on Finance, as I am not, and who come to the floor with what they consider meritorious amendments. Ordinarily, they are not required to crank into those amendments a self-financing provision.

I am not stepping beyond the limits today. The cost would be 0.15 of 1 percent of payroll, and although it does not sound like a great deal, it amounts in totality to a considerable amount of money. But this is something the conferees ordinarily, in regard to many amendments, work out in conference, as to the financing aspect.

Mr. CURTIS. The conferees have no authority to impose a tax that is neither in the House version nor the Senate version.

Mr. ROBERT C. BYRD. I think the Senator does not want to crucify me on that cross at this point. Senators from time to time, and I included, have offered amendments on the floor of the Senate without including self-financing provisions. I am not a member of the Committee on Finance.

Mr. CURTIS. It is not the Senator who is being crucified in this matter, but the poor kids, the poor people working, who are 20 and 30 years of age. They are having the stability of the social security system eroded.

Mr. ROBERT C. BYRD. I am certainly not in favor of undermining the social security trust fund, but when we talk about those people who are 20 and 30 years of age, I can remember a time in this country when there was no social security program, and all that the old folks could do when they could no longer work was stand at the gates of their children with their hats in their hands or go over the hill to the poorhouse. It

did not only constitute a problem for the parents; it was also an additional burden on those young people 20 and 30 years of age who were trying to rear families and for whom the burden of taking care of a parent was a burden which was just economically unbearable. The social security program relieved the young people of that burden.

So there are two or three things to be said when we start talking about people in this country who are 30 or 40 years of age. The social security program has also benefited them because it has aided in the care of their parents who otherwise would be a burden on them.

I recognize that the Senator raises a valid point about the additional cost of this amendment and no provision for financing that cost, but Senators have done this before on the floor. It is a valid point to be raised, but this has been done before. Many Senators who are not on the Finance Committee who have offered amendments increasing the cost have not included in their amendments means for financing the cost.

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

Mr. ROBERT C. BYRD. I yield.

Mr. AIKEN. Suppose the beneficiary would receive Federal payments of $3,000 and earned $3,000 more. How much of that would be subject to income tax?

Mr. ROBERT C. BYRD. Would the Senator restate the question?

Mr. AIKEN. Suppose the beneficiary's income from Federal payments is $3,000 and he earns $3,000 more, as proposed by the Senator from West Virginia. How much of that would be liable to income tax?

Mr. ROBERT C. BYRD. I am advised that it would be very, very little.

Mr. AIKEN. It would be very little, I am sure.

Mr. ROBERT C. BYRD. Yes.

Mr. AIKEN. But suppose he is 70 years old and he gets $3,000 in Federal payments and he is a retired doctor or dentist or lawyer and earns $8,000 more, making a total income of $11,000. He would be subject to income tax on what part of that?

Mr. ROBERT C. BYRD. I am advised he would be subject to none on the $3,000 in social security benefits and the first $3,000 of earnings would not be subject to tax.

Mr. AIKEN. But if he earned——

Mr. ROBERT C. BYRD. An additional $5,000?

Mr. AIKEN. Say $9,000; that would make $12,000 in all. He would pay an income tax on how much of that?

Mr. ROBERT C. BYRD. I am advised that in the hypothetical case, he would pay it on about $6,000.

Mr. AIKEN. He would pay how much?

Mr. ROBERT C. BYRD. He would pay a tax on not more than about $6,000.

Mr. AIKEN. Not more than $6,000. So $6,000 would be deductible. I am assuming he would be single.

I was just wondering, with this additional cost that has been estimated, whether there would be any recompense from income tax receipts.

Mr. ROBERT C. BYRD. To some degree. Not a considerable degree. I am not prepared to be precise.

Mr. AIKEN. I am not, either. If I were, I would not ask the question.

Mr. CURTIS. Social security benefits are not taxable.

Mr. ROBERT C. BYRD. The social security benefit itself, as the distinguished ranking minority member of the committee has said, is not taxable; but after he has used his personal exemptions and standard deductions, there would then begin to be an income tax for him, as for anyone else.

Mr. AIKEN. I think that answers it as closely as we can get it.

Mr. ROBERT C. BYRD. I thank the Senator for his question.

Mr. President, would the Senator like to go to a vote now?

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

Mr. ROBERT C. BYRD. I yield.

Mr. TOWER. I would like to rise in support of the amendment offered by the Senator from West Virginia. It is similar, except in one respect, to an amendment I introduced in behalf of myself, and Senators DOMINICK, COOK, EASTLAND, PASTORE, and YOUNG.

Mr. President, I ask unanimous consent that Senators BARTLETT, BUCKLEY, and DOLE be added as cosponsors of my Amendment No. 639.

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

Mr. TOWER. Mr. President, what I would like to do is make a few remarks which I think address themselves primarily to my amendment, but which I think are applicable to the amendment of the Senator from West Virginia, and at the end of that see if the Senator from West Virginia would support an amendment to his amendment.

Mr. ROBERT C. BYRD. Very well.

Mr. TOWER. Mr. President, this amendment would increase the retirement test under social security from $2,400 to $3,000 and reduce the age of applicability under the test from age 72 to 70. The issue has been debated previously in the Congress and if my memory serves me correctly, the Senate has on two occasions recently approved the $3,000 level.

Mr. President, there is not one specific issue concerning social security legislation that is considered more important by my constituents than improvements in the social security earnings ceiling or retirement test. Every day my office receives correspondence from Texans complaining about the current provisions in the law and asking what could possibly be the rationale for the continuation of this test and the policy behind it. Quite frankly, I have no answer to these inquiries except to say that I intend to continue my efforts to liberalize the retirement test.

At a time when the gerontologists have made it more than clear that continued productive work by our senior citizens is directly related to continued good health, there is no rational basis for this type of provision in the law. Moreover, at the same time that we are penalizing senior citizens from continuing or regaining a position in the work force, there are Federal grant-in-aid programs that call for increased employment opportunities for senior citizens. This is an inconsistent Federal policy that requires reform.

I strongly believe that Americans who have contributed to the social security trust fund have a vested right to benefits commensurate to such contributions. This right becomes vested upon the making of contributions over a minimum eligibility period and the Government should not have the power to withhold such benefits because the individual is still engaged in gainful employment. Such criteria is totally unrelated to the contribution made.

I recognize that improvements have been made in recent years. The ceiling has been increased from $1,680 to $2,400, an automatic increase provision geared to the consumer price index has been enacted, and no longer can an individual lose a full dollar in benefits for every dollar he earns. Further liberalizations need to be made and the amendment I now offer is similar in substance to proposals the Senate has approved in the past.

Furthermore, reducing the age of applicability from 72 to 70 is not a new approach since up until 1954 the cutoff date was 75.

Mr. President, let me remind the Senate that I am not calling for the elimination of the test. If it were the practical thing to do, from both a fiscal and political standpoint, I might so move. The amendment is instead the most feasible approach available to obtain some equity for our senior citizens. We all realize that inflation hurts those the most that are living on fixed income; because millions of senior citizens live primarily on social security benefits many of them supplement these payments with part-time work, ranging from a few hours of work a week to 30 to 40 hours. This type of activity should not be discouraged.

Mr. President, at this time I ask unanimous consent to have inserted in the RECORD an editorial from the June 18 edition of the Dallas Times Herald endorsing this proposal.

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

ATTACK ON AN INJUSTICE

Not for the first time, we rise to the support of an effort to let Social Security recipients earn more money without forfeiting any of their benefits. The current ceiling on outside income a recipient can draw without penalty is $2,100. Sen. John Tower thinks it ought to be $3,000 and has offered a bill to that effect. Under the Tower bill, moreover, the recipient would escape altogether from that ceiling at age 70, instead of the present 72.

To us, the earnings test seems one of the really outrageous aspects of Social Security. The principle behind the thing is awry. If a man contributes for all his working life to Social Security, then he is entitled to Social Security benefits. Period.

It is for actuarial reasons that the very low earnings ceiling obtains. But that is insufficient justification, since the powers that be have seen fit to make Social Security compulsory. If we have no more choice about

joining than a steer has about journeying to the stockyards, then we have a right to expect that as few penalties as possible should attach to membership.

The $2,100 earnings ceiling—which, admittedly, is better than the pre-1973 ceiling of $1,680—is one of the tangible penalties. What it amounts to is a real disincentive to work beyond retirement age. One had thought that if an American wanted to make some extra cash it was not only his God-given right, but a boon to himself, his family, and his neighbors. We still think it is all of that, and no amount of flim-flammery about actuarial considerations can make it otherwise.

Ideally, no earnings test ought to be in the Social Security law at all. As the law was originally written, in 1935, there wasn't one. Still, Congress seems to buy the argument that, to some extent at least, Social Security is a contract to quit work. Tower's present objective seems about the most that can realistically be achieved, and we heartily endorse it.

Mr. TOWER. Mr. President, I wonder if the Senator from West Virginia would consider accepting an amendment, if he has a copy of my amendment 639 there, starting at the bottom line, line 8, to attempt to provide for the reduction of age from 72 to 70?

Mr. ROBERT C. BYRD. Mr. President, I think the suggested modification is a very good one. I would accept it. I do not know what the Senate will want to do. However, I would be glad to accept the modification.

The PRESIDING OFFICER. Would the Senator please send the modification to the desk?

Mr. CURTIS. Mr. President, has the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered on this amendment.

The amendment is so modified. Would the Senator please send the modification to the desk?

The modification is as follows:

(b) (1) Subsections (c) (1), (d) (1), (f) (1), and (j) of section 203 of the Social Security Act are each amended by striking out *"seventy-two"* and inserting in lieu thereof *"seventy"*.

(2) Subsection (h) (1) (A) of such section 203 is amended by striking out "the age of 72" and "age 72" and inserting in lieu thereof in each instance "age 70".

(3) The heading of subsection (j) of such section 203 is amended by striking out "Seventy-two" and inserting in lieu thereof "Seventy".

(c) The amendments made by the preceding provisions of this Act shall apply only with respect to taxable years beginning after December 31, 1973.

Mr. CURTIS. Mr. President, I would like to ask the sponsor of the amendment what the cost will be to lower that from the age of 72 to the age of 70.

Mr. TOWER. The estimate is around $150 million the first year.

Mr. CURTIS. How much thereafter?

Mr. TOWER. And that approximate amount in subsequent years.

Mr. CURTIS. And what is the cost of raising the present $2,400 to $3,000?

Mr. TOWER. Approximately $600 million.

Mr. CURTIS. Is there a provision in the amendment of the distinguished Senator from West Virginia, which has now been modified, for any increased taxes?

Mr. TOWER. There is no such provision. As a matter of fact, I think this has been covered in colloquy with the Senator from Nebraska.

Mr. CURTIS. But, of course, the bid has gone up since then. At that time we were talking about a proposal for $800 million. We have now added $150 million to that and other $600 million. That totals about $1.5 billion.

Mr. TOWER. No. We calculate that the cost of the amendment of the Senator from West Virginia prior to this amendment would be about $600 million, and my amendment would add about $150 million.

Mr. CURTIS. But the Senator has two amendments. He wants a vote on them back to back. They will cost $1.5 billion with no provision to recover a dime for the social security fund.

I am not quarreling with any Senator for his feeling that the work test ought to go to $3,000. I am not quarreling with any Senator who feels that the age of 72 as being the time when they can earn all they want should go to age 70. However, I am opposed to doing it on the floor because if the committee could do it, it could call in actuaries and experts and find out the cost. We could protect the social security fund.

It used to be that the fund had a sizable amount of money in it, enough to last for several years. Then under the premise followed by the Finance Committee, we determined that we ought to have at least a year. We may come to the time when the social security taxes coming in will drop down. If that happens, more people will take retirement and the outgo will increase. We have already dipped below the 1-year reserve. We are down to 70 percent of a year. And here on the Senate floor we have two amendments calling for an expenditure of more than $1.5 billion with no provision to recover the money for the fund.

There might be a very good reason for changing the age from 72 to 73 as being the age when people could earn all they wanted. However, because I am interested in the soundness and the stability of the system, I think it ought to be done in committe and not on the floor of the Senate.

There is another question that I think should be answered. It is already written into the law that the work test goes up automatically. It is $2,400 now. By 1975, it will be $2,520. By 1976, it will be $2,640. By 1977, it will be $2,880.

I wonder if the authors of the amendment are repealing this built-in increase of earnings or if they are proposing that we start at $3,000 and that then in the years ahead the escalator clause built in the law should take effect. If that is the case, we ought at least to know what the figures are for the escalation and the cost of it.

Mr. President, I am not being fooled. I have no hope of winning on these rollcall votes. However, if I were not concerned about the financial stability of our social security fund, I would not raise these points.

I think the time has come when we should return to the principle that if we increase social security benefits, we should increase the tax.

I do not think that any other course is a responsible course for the U.S. Senate to follow.

Mr. President, there is a lot to be said about social security financing. The Finance Committee itself has not done too well on that. The last two raises or so have been financed by taxing a part of the people only. There was a time when if we increased social security benefits, we raised the rate. The rate was raised and also the wage base. They both carried part of the load.

That was not a political thing to do. If we refrain from raising the rate and raise the base from $10,000 to $12,000 or from $12,000 to $14,000, then the politicians could go home and say to everybody who makes less than $10,000: "We have raised your social security under a scheme in which there will be no increase in your social security taxes."

I do not believe that all of these added costs should be raised by increasing the rate. However, I do say that part of it should be.

If we believe in our social security system, if we believe that increases in benefits are sound and justified, let us have the courage to say so and to say that it will increase the tax rate so much.

Mr. President, I want the record clear, I voice no criticism of anyone who feels that benefits should be raised, that rates should be lowered, and that beneficiaries should be allowed to earn more. I do say that should not be done on the floor of the Senate—not to protect the pride of position of the Finance Committee, but merely so that the cost could be explored, so that we could add up all of the proposals for increases, see what they do to our system, and then try to work out a method of financing.

Mr. President, I have no hopes of winning on this rollcall. I yield the floor.

Mr. TOWER. Mr. President, I recognize the cost of this amendment and, as one who is very concerned with the increasing burden which the social security system is having on lower- and middle-income people, that there is a definite need for the Congress to act with a sense of restraint on the pending measure. Nevertheless, this is the type of argument that is more appropriately raised against some of the other amendments to the bill, such as the amendment we approved yesterday on prescription drugs. While that amendment and others we will consider have merit, they are measures to expand an already threatened actuarial system.

On the other hand, the amendment I offer is not as vulnerable to such attack. This is so because the liberalization of retirement test is not really an action to expand the system as such; the retirement test is nothing more than a penalty provision—penalizing Americans for staying in the work force—penalizing Americans who already have a vested interest in retirement benefits. This cannot be said in the case of expanding eligibility in either the cash benefits area or medicare.

Mr. President, I have talked with a number of elderly people in my State. I will not say this is true for the majority of them, but a substantial minority of the elderly people feel that increasing the allowable income under the retirement test is actually more important to them than an increase in social security benefits themselves. So I hope the Senate will look favorably on the amendment offered by the Senator from West Virginia, as amended, and will adopt it.

Mr. PERCY. Mr. President, will the Senator yield for a question?

Mr. TOWER. I yield to the Senator from Illinois.

Mr. PERCY. I would like to address this question either to the distinguished Senator from West Virginia, the author of the amendment, or the distinguished Senator from Texas:

Even though the cost of this amendment has been outlined as some $800 million, plus $150 million because of lowering the age of applicability as suggested by the Senator from Texas, is it not true that if people are living below the poverty line, they then are eligible to apply for public assistance, and that these costs come out of the same pocket—the taxpayer's—in the long run? And is it not true, then, that it would be much more dignified for those people who have worked all their lives, or who are widows or spouses, of men who worked all their lives, to have assistance in the form of an increase in the earnings limitation under social security, rather than being forced to go the degrading route—which many of them refuse to do—of the welfare check?

Mr. TOWER. The Senator from Illinois is certainly correct. And as an added note to that, the gerontologists tell us that elderly people who are engaged in work are more likely to maintain good health. In that my mother is one of the healthiest women of her age I have ever seen, and has never stopped working, I think I can give first-hand attestation to that. I think it is a verity, and could be considered as something that might conceivably offset the additional cost to the Government, the fact that people who are engaged in employment, working at some constructive pursuit, are more likely to be in good health than those simply sitting around and not having that opportunity.

Mr. PERCY. I thank the distinguished Senator for his comment, and would simply like to state, as the ranking Republican member of the Senate Select Committee on Nutrition and Human Needs, that we have found a great many of the elderly who are malnourished. They are eligible for Federal assistance for hospital and medical costs, but the doctors tell us that one of the best ways to keep a person healthy later in life is for him to have adequate nutrition.

Mr. TOWER. That is right.

Mr. PERCY. It is only when they do not have adequate nutrition, many times, that they become sickly and weak, and must resort to expensive medical care.

It is perfectly all right for them to get their medical costs out of one hand, but we are reluctant to give the cost of preventive medicine—of adequate nutrition—out of the other, when it all comes from the same source anyway.

We have had many people testify before the committee that they will not go the degrading route of asking for public assistance, they simply make do with less resources; but, when you have fixed incomes and a constant increase in fixed costs, there is no place to make up the difference except in the flexible items such as food costs.

I think it is well for us to recognize that one cannot live on $2,400 a year, and that to take away a part of social security after a retired person earns that much, to me, is penny wise and pound foolish. I do not believe these are real, net costs. They may be gross costs, but not net costs, and for that reason I firmly support the principle of the amendment of the Senator from West Virginia, as modified by the Senator from Texas.

Mr. TOWER. I thank my colleague from Illinois, and would simply say I believe his logic is unassailable, and that it has contributed a great deal to this debate.

Mr. THURMOND. Mr. President, on October 30 of this year, I introduced S. 2637, a bill which would completely eliminate from title II of the Social Security Act the limitation upon the amount of outside income which an individual may earn while receiving social security benefits.

As the law now stands, social security beneficiaries under the age of 72 have their benefits reduced by $1 for every $2 they earn in excess of $2,100 per year. This is the so-called retirement test or earnings test.

Mr. President, the reasons which motivated the institution of this test in 1935 are not valid today. The policy of discouraging older workers from working past the arbitrary retirement age of 65 originated during the depression when it was necessary to increase job opportunities for younger workers. Such a restrictive measure is totally unnecessary in today's high-employment economy.

There can be no doubt as to the natural impact of this limitation. Many older persons are pressured into not working for fear of losing their benefits. As a result of this, a vast pool of valuable skills acquired through years and years of hard, honest work are totally lost to our country.

Mr. President, such a limitation flies in the face of a fact widely accepted by the Federal Government, gerontologists, and others concerned with the health of the elderly. That fact is that the hiring and retention of older workers in all aspects of the economy is very "good medicine" for the elderly. It should be encouraged in every way possible, and removing this limitation is one way to do precisely that.

In my opinion, this aspect of the social security program is illogical and inequitable. Income from investments is not counted in determining whether benefits shall be reduced. Thus, a rich man who has thousands of dollars in dividends and interest coming in every year can sit back and collect his full check every month. On the other hand, the poor man who never had the time, much less the money, to enter the world of investments, and who might need to continue working as a matter of economic survival for himself and his family, cannot work without being subject to this penalty. This is simply not right.

Mr. President, I still believe that the earned income limitation should be completely removed from the social security laws. However, I also realize, as a practical matter, that the Senate is not likely to take this action today. Under the present structure of the social security laws, such action would simply be too expensive. Nevertheless, I am committed to the principle that barriers to work should be removed, and thus it is my pleasure to endorse, and to join as a cosponsor of, the Robert Byrd amendment to accomplish this purpose.

I might say, Mr. President, that I have previously joined the Senator from Texas (Mr. TOWER) on an amendment similar to this one of Senator ROBERT C. BYRD.

The amendment is a step in the right direction and I urge all my colleagues to join in this effort to bring this meaningful reform to the social security system.

Mr. BUCKLEY. Mr. President, I subscribe wholeheartdly to the reasoning both of the Senator from Texas (Mr. TOWER) and the Senator from South Carolina (Mr. THURMOND). As a matter of fact, I had drafted and was prepared to offer an amendment to the Tower amendment that would have had the effect of gradually scaling down the age limit and increasing the ceiling on earnings, to the end that by 1980 there would be no restrictions whatever on the ability of social security recipients to continue to earn what they were capable of earning.

I believe the present system is arbitrary. I believe it is unfair. I believe it is destructive of the best interests of the aged.

I am, however, very much taken by the force of the arguments advanced by the Senator from Nebraska (Mr. CURTIS). We cannot operate in a fiscal vacuum. I share his concern over the possibility that we may bankrupt the social security system. I, therefore, will not offer my amendment No. 734. Although I will vote for the Tower amendment as signaling the direction in which we should move. I would like to take this occasion, Mr. President, to urge the Finance Committee to consider how best we can phase our way out of these restrictions in a minimum amount of time and with adequate financing.

I declare now that I will introduce my amendment in the form of a bill, independently of this debate, and will ask that it be considered seriously by the committee.

Another aspect that concerns me, and is relevant to the financing of social security, has to do with how one should treat social security income and how one should treat earned income.

I believe that if we were to consider classifying social security income as taxable while providing for an exemption equal to the higher amount of the social security receipts, or the personal income

tax exemption that is provided in the Internal Revenue Code; if we were to do that, then every dollar earned by the elderly over and above social security receipts would be taxable and therefore would go to the Federal Treasury.

In other words, such a system would impose no additional burden on those living wholly on social security, but it would accelerate the tradeoff between the expenses to the social security system caused by eliminating restrictions on earnings and the moneys flowing into the Treasury.

Mr. HELMS. Mr. President——

The PRESIDING OFFICER (Mr. PEARSON). The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, I think the most interesting aspect of this discussion this afternoon has been that everyone agrees with everyone else. Certainly, the Senator from Nebraska (Mr. CURTIS) is eminently correct in his warning that the social security system can easily be bankrupted.

On the other hand, the Senator from West Virginia (Mr. ROBERT C. BYRD) is right on target with his proposal, and the Senator from Texas (Mr. TOWER) is right on target with his proposal. I think that what we are doing is admitting that social security is in a mess and needs a complete overhaul. It has reached the point that it is regarded by many citizens as a boondoggle and a bleak heritage for the young people of today who will have to pay, throughout their lives, for our failure to do our duty. It is high time that Congress took a look at the whole system.

If these two amendments are agreed to, I intend to withdraw my amendment No. 740. I confess that I did not submit it with the idea that it would be approved by this Senate; I submitted it purely for the purpose of calling attention to the fact that we are imposing upon elderly citizens a burden that they should not bear; namely, the burden of idleness, particularly in a time when their services are needed, when they could legitimately and properly earn additional revenue to offset the ravages of inflation.

I have another amendment, which I shall call up presently. It relates to the whole problem of social security as it pertains to inflation. Inflation is the reason why we are having this difficulty. It is the reason why the political football called social security is being kicked around two or three times at every session of Congress. If we can somehow, bring inflation under control, then our problems with social security will also be brought under control. The only way we are going to bring inflation under control in this country is by balancing the Federal budget. And that is the purpose of the amendment which I shall call up in a few minutes.

Mr. TOWER. Mr. President, on this amendment, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent at this point that certain Senators be added as cosponsors of the amendment. They are Senators RANDOLPH, ALLEN, AIKEN, DOMINICK, THURMOND, HELMS, BIDEN, PERCY, STEVENS, CHURCH, TOWER, BARTLETT, BUCKLEY, DOLE, BAYH, GRAVEL, HARTKE, CANNON, SCHWEIKER, WILLIAMS, HUMPHREY, and RIBICOFF.

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

Mr. DOLE. Mr. President, I wish to express my support for the amendment offered by the distinguished Senator from West Virginia as amended by the Senator from Texas. The amendment would raise to $3,000 the amount of additional wages which can be gained by a social security recipient before he receives any reduction in his social security benefits. The amendment would also lower from 72 to 70 the age above which the income limitation has no impact.

I have joined as a sponsor of this amendment and feel that fairness dictates that the amendment be approved. It is unreasonable for the Social Security System to continue to penalize our older citizens merely because they wish to continue employment and maintain an earned income beyond the age of 65. If an individual has worked the required number of years to become eligible for social security benefits, he should be able to enjoy them in full even if he wishes to continue employment.

Social security payments are not gratuities made available by the Federal Government. They are simply a repayment of our own earnings which we have deposited in trust as a regular contribution from our salaries. They are payments we have contributed along with our employers.

The earnings ceiling logically makes no sense because the funds are our contribution in the first place. But even more shocking is the fact that the beneficiary most often penalized by the income limitation is the individual who has the greatest need for more income than his social security benefits can provide. Individuals who have had the good fortune of amassing some wealth prior to their retirement and who usually do not have a great need for additional income are not affected by the income limitation. As strange as it may seem, income from bonds, stocks, investments, copyrights, patents, rentals, dividends, and other pensions is not counted as income in determining whether the income limitation has been reached and social security benefits should be reduced by $1 for every $2 of additional income. It is only individuals who continue to work and earn wages who are penalized by the income limitation, and it is these individuals who unfortunately most often have the greatest need for the additional funds.

The impact of inflation on our older residents has made it necessary for them in many instances to obtain income from sources other than social security. This in itself is another reason for raising the income limitation. I am hopeful that the 11-percent social security increase authorized in this legislation will help relieve some of the financial pressures which have forced some of our older citizens back to work. But those social security eligibles who continue to be employed beyond age 65 merely because they enjoy the pleasures of their work and the additional income that they receive for it should be able to work without suffering a reduction in their social security benefits.

Therefore join in support of the amendment and am hopeful that as the Social Security Trust Fund is better able to bear the financial stress of additional payments, the income limitation can be raised even higher and eventually removed from the law.

Mr. THURMOND. Mr. President, I shall vote "present" on the amendment to lower the age from 72 to 70 for recipients of social security to begin receiving benefits, since I would be personally affected by the outcome of the vote.

For a long time I have favored allowing recipients of social security to earn up to $3,000 a year without having the social security benefits affected. No impediment should be allowed that will discourage people from working.

Mr. DOMENICI. Mr. President, I rise again today in support of Amendment No. 639, a separate bill, S. 1982, I had earlier cosponsored before it was offered as an amendment to H.R. 3153. This amendment would raise the ceiling on outside earnings to $3,000 before deductions in Social Security benefits are made and would also lower from 72 to 70 the age at which no deductions are made for outside earnings.

As the law now stands, social security beneficiaries under the age of 72 have their benefits reduced by $1 for every $2 they earn in excess of $2,100 per year.

It seems obvious to me that the reasons which motivated restrictions on outside earnings have their roots in the depression era. In fact there were the years in which this legislation was initiated. The idea was to force out older workers, leaving jobs open for younger wage earners supporting families.

The impact of this restriction in today's world has a most disadvantageous effect. Many older persons are pressured into not working for fear of losing their benefits. As a result, a vast pool of valuable skills acquired through years and years of hard work are totally lost to the country. This loss, however, is minuscule, when compared to the loss an older person feels when realizing his new status in our society is equivalent to the status of "noncontributor."

Mr. President, I have received many letters from elderly citizens in New Mexico carefully detailing the effect of the present very low outside earnings limitation. These are citizens who have worked all their lives and have contributed their share of social security taxes. They have placed a high value on the work ethic. They have been concerned with contributing rather than with taking.

Now that it is time to "take," the benefits are eliminated by unreasonably low restrictions on outside earnings.

Even beyond these obvious facts, it is obvious to me that it is the poor who suffer most from outside earnings limitations. If our senior citizens are willing and able to work, it seems to me that they should not be penalized for doing so.

I would even be willing to consider the removal of all earnings limitations. This amendment to raise the earnings limitation and to lower the age limit is certainly a step in the right direction. I urge my colleagues to support this proposal.

SENATOR RANDOLPH SUPPORTS EFFORT TO HELP ELDERLY CITIZENS

Mr. RANDOLPH. Mr. President, it is a privilege to cosponsor the amendment by my distinguished and able colleague from West Virginia (Mr. ROBERT C. BYRD) to raise the outside income limitation to $3,000 for America's social security beneficiaries. The cruel vice of limited income and soaring inflation has squeezed our Nation's elderly citizens beyond endurance. Too many who have worked for most of their lifetimes suddenly discover the retirement dream turned into a nightmare of sacrifice and deprivation. The shining vision of the so-called golden years is not fulfilled. Witnesses before the Senate Special Subcommittee on Aging, of which I am a member, have repeated stories of desperate struggle and near starvation.

Mr. President, the present limitation of $2,400 of income earned outside of social security benefits is totally unrealistic in these inflationary times. Rising food, shelter, and medical costs leave a major segment of our elderly population defenseless and helpless. It is our responsibility, indeed our duty, as a humane nation to work for programs to assure worthy older Americans the dignity, decency, and security of a full life. They must have sufficient income support and adequate health care. To do less would be to say to the nearly 29 million older Americans who have endured wars, depression and now runaway inflation: "We appreciate your sacrifices, your faith in the fairness of our system of government, and the promises we made, but we doubt that we can help you now."

Mr. President, I urge my fellow Senators to turn momentarily from the many problems and crises being thrust on us, and look into the puzzled and pleading eyes of this legion of needy Americans. I urge support of the amendment. In approving this proposal we will be telling our older citizens: "We do not forget."

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote on the pending amendment occur immediately following the vote on the amendment lowering to age 55, the term at which widows would be eligible to receive benefits.

The PRESIDING OFFICER. Is there objection, The Chair hears none, and it is so ordered.

The question now is on agreeing to Amendment No. 728. The yeas and nays have been ordered.

Mr. ROBERT C. BYRD. Mr. President, this is the amendment which would allow widows to elect to receive actuarially reduced benefits at age 55 rather than at age 60, as under present law.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Wyoming (Mr. MCGEE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Mexico (Mr. MONTOYA), the Senator from Texas (Mr. BENTSEN), the Senator from Iowa (Mr. HUGHES), and the Senator from Iowa (Mr. CLARK) are necessarily absent.

I also announce that the Senator from Missouri (Mr. SYMINGTON), is absent because of illness.

I further announce that, if present and voting, the Senator from Wyoming (Mr. MCGEE) and the Senator from Iowa (Mr. CLARK) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Virginia (Mr. WILLIAM L. SCOTT), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The Senator from Idaho (Mr. MCCLURE) and the Senator from Oregon (Mr. PACKWOOD) are absent on official business.

The Senator from Wyoming (Mr. HANSEN) is detained on official business.

The result was announced—yeas 74, nays 13, as follows:

[No. 527 Leg.]

YEAS—74

Abourezk	Griffin	Muskie
Aiken	Gurney	Nelson
Allen	Hart	Nunn
Bayh	Hartke	Pastore
Beall	Haskell	Pearson
Bible	Hatfield	Pell
Biden	Hathaway	Percy
Brock	Helms	Proxmire
Brooke	Hollings	Randolph
Buckley	Huddleston	Ribicoff
Burdick	Humphrey	Saxbe
Byrd, Robert C.	Inouye	Schweiker
Cannon	Jackson	Scott, Hugh
Case	Javits	Sparkman
Church	Johnston	Stafford
Cook	Kennedy	Stennis
Cotton	Long	Stevens
Cranston	Magnuson	Stevenson
Dole	Mansfield	Taft
Domenici	Mathias	Talmadge
Dominick	McClellan	Thurmond
Eagleton	McIntyre	Tower
Eastland	Metcalf	Weicker
Fulbright	Mondale	Williams
Gravel	Moss	

NAYS—13

Bartlett	Chiles	Goldwater
Bellmon	Curtis	Hruska
Bennett	Ervin	Roth
Byrd, Harry F., Jr.	Fannin	Tunney
	Fong	

NOT VOTING—13

Baker	McClure	Scott, William L.
Bentsen	McGee	Symington
Clark	McGovern	Young
Hansen	Montoya	
Hughes	Packwood	

So Mr. ROBERT C. BYRD's amendment was agreed to.

The PRESIDING OFFICER. The issue now before the Senate is the unprinted amendment of the Senator from West Virginia (Mr. ROBERT C. BYRD), as modified. The yeas and nays have been ordered.

Mr. ROBERT C. BYRD. Mr. President, for the information of Senators, this amendment raises the income-earning level from the current $2,400 a year to $3,000 a year, and carries with it a modification by the Senator from Texas (Mr. TOWER) lowering the age from 72 to 70, at which there is no limit.

Mr. BAYH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAYH. Is this an appropriate time to add the names of cosponsors?

The PRESIDING OFFICER. It is. The Chair will advise that it is proper by unanimous consent.

Mr. BAYH. Mr. President, I ask unanimous consent that the names of the following Senators may be added as cosponsors of amendment No. 728 and the pending amendment: Senators BAYH, HARTKE, CANNON, SCHWEIKER, RIBICOFF, HUMPHREY, and GRAVEL; and that the name of Senator CHILES be added as a cosponsor of the pending amendment.

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

On this amendment, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. THURMOND (when his name was called). Present.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Iowa (Mr. CLARK), the Senator from Iowa (Mr. HUGHES), the Senator from Wyoming (Mr. MCGEE), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from New Mexico (Mr. MONTOYA) are necessarily absent.

I also announce that the Senator from Missouri (Mr. SYMINGTON) is absent because of illness.

I further announce that, if present and voting, the Senator from Iowa (Mr. CLARK), and the Senator from Wyoming (Mr. MCGEE) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Utah (Mr. BENNETT), the Senator from Virginia (Mr. WILLIAM L. SCOTT), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The Senator from Idaho (Mr. MCCLURE) and the Senator from Oregon (Mr. PACKWOOD) are absent on official business.

The Senator from Wyoming (Mr. HANSEN) and the Senator from Ohio (Mr. SAXBE) are detained on official business.

The result was announced—yeas 83, nays 1, as follows:

[No. 528 Leg.]

YEAS—83

Abourezk	Cotton	Hollings
Aiken	Cranston	Hruska
Allen	Dole	Huddleston
Bartlett	Domenici	Humphrey
Bayh	Dominick	Inouye
Beall	Eagleton	Jackson
Bellmon	Eastland	Javits
Bible	Ervin	Johnston
Biden	Fannin	Kennedy
Brock	Fong	Long
Brooke	Fulbright	Magnuson
Buckley	Goldwater	Mansfield
Burdick	Gravel	Mathias
Byrd, Harry F., Jr.	Griffin	McClellan
Byrd, Robert C.	Gurney	McIntyre
Cannon	Hart	Metcalf
Case	Hartke	Mondale
Chiles	Haskell	Moss
Church	Hatfield	Muskie
Cook	Hathaway	Nelson
	Helms	Nunn

Pastore	Roth	Stevenson
Pearson	Schweiker	Taft
Pell	Scott, Hugh	Talmadge
Percy	Sparkman	Tower
Proxmire	Stafford	Tunney
Randolph	Stennis	Weicker
Ribicoff	Stevens	Williams

NAYS—1

Curtis

ANSWERED "PRESENT"—1

Thurmond

NOT VOTING—15

Baker	McClure	Scott,
Bennett	McGee	William L.
Bentsen	McGovern	Symington
Clark	Montoya	Young
Hansen	Packwood	
Hughes	Saxbe	

So Mr. ROBERT C. BYRD's amendment, as modified, was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. EAGLETON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the previous amendment was agreed to.

Mr. EAGLETON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 11104) to provide for a temporary increase of $10,700,000,000 in the public debt limit and to extend the period to which this temporary limit applies to June 30, 1974."

AMENDMENT OF THE SOCIAL SECURITY ACT

The Senate continued with the consideration of the bill (H.R. 3153) to amend the Social Security Act to make certain technical and conforming changes.

AMENDMENT NO. 732

Mr. HELMS. Mr. President, I call up my amendment No. 732 and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The second assistant legislative clerk read as follows:

At the end of the bill add a new title as follows:

SECTION 1. Beginning with the fiscal year 1975, the non-trust-fund expenditures of the Government of the United States during each fiscal year shall not exceed its revenues from all nontrust sources for such year.

SEC. 2. (a) Beginning with the fiscal year 1975, the President shall submit a budget pursuant to the Budget and Accounting Act of 1921, as amended, in which non-trust-fund expenditures do not exceed non-trust-fund revenues for each fiscal year.

(b) The provisions of this section may be adjusted to reflect any additional revenues of the Government received during a fiscal year resulting from tax legislation enacted after the submission of the budget for such fiscal year.

The PRESIDING OFFICER (Mr. DOMENICI). The Senate will be in order.

The Senator from North Carolina may proceed.

Mr. HELMS. Mr. President, I do not propose to take more than 5 minutes because the amendment is so clear that it does not need much discussion.

Mr. President, we are today considering a piece of legislation of astronomical proportions. Despite the rhetoric we might engage in on this floor and despite all the press releases we may issue to our constituents, the real nitty-gritty of the problem of social security lies in the inflation that is paralyzing the future of our young people, and frustrating the lives of senior citizens who are left helpless in trying to exist amidst constantly rising living costs.

I simply say that if we do not balance the Federal budget and thereby curb inflation, we will continue to invoke the inequities and unfairness of the Social Security System.

As matters now stand, the dog is chasing its tail, and the young people of this country in future years will have to pay the price for our failure to face up to our duty.

I point out again that the Federal debt limit was raised by the Senate by another $10.7 billion on Tuesday of this week. I am advised that the interest alone on the Federal debt already in existence will be $27.5 billion for the current year.

Mr. President, to reiterate what I have said many times before, this $27.5 billion tab that the American taxpayers pay—in interest alone on the existing Federal debt—each year amounts to $52,000 a minute. Or $878, Mr. President, every time the clock ticks, and this, mind you, is for interest alone on the existing Federal debt.

I say that a remedy such as this amendment sponsored by the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.), the distinguished Senator from South Carolina (Mr. THURMOND), and me is absolutely essential if we are really serious about doing something for the older people of this country. And the way to do it is not merely through adjusting the social security law, and increasing the tax burden, but by changing the way of fiscal life in the United States. Our present way of doing things, Mr. President, is simply irresponsible.

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

Mr. HELMS. I yield to the distinguished Senator from Arizona.

Mr. GOLDWATER. Mr. President, I compliment the Senator from North Carolina for his amendment and for his remarks. I would like to be associated with him.

I am reminded in 1973 of the year 1928 when the country of Austria was going through the welfare statism that we are going through at the present time. They were spending money that they did not have. The Austrian mark was regarded as the cornerstone of world currency.

I remember the warning that came from other countries to Austria at that time. Austria paid no heed to them. The Austrian mark went bankrupt, and the world depression started.

Mr. President, we are operating with dynamite when we spend money that we do not have. I do not care how nice it sounds to the recipient of social security, it will not do him any good if the dollar goes down the tube. The entire social security system is in danger of collapsing I do not think that it can withstand the type of abuses we are heaping on it today.

I take this opportunity to thank the Senator from North Carolina for pointing out the dangers to the American people. We will do a great disservice to the American people and to the entire world if we risk bankruptcy and spend money that we do not have.

Mr. HELMS. Mr. President, I thank the Senator from Arizona for his remarks.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina.

Mr. HELMS. Mr. President, I yield to my friend, the distinguished Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, I think that the amendment of the distinguished Senator from North Carolina, the pending amendment, would help to balance the budget if agreed to. It does not help balance the budget that we are now working on. It would become effective for the budget which will be submitted to Congress next January.

It is long past time, Mr. President, it seems to me, when the Government of the United States should get back to balancing its budget. The amendment offered by the distinguished Senator from North Carolina requires that this be done on the new budget to be submitted to the Congress in January.

I emphasize that this measure would not affect the existing budget. It does not affect the budget which Congress is now considering. It would become effective for the budget to be submitted for the new fiscal year.

Mr. President, the American people are being subjected to very severe inflation. These huge budget deficits are the major cause of the inflation.

When Mr. William McChesney Martin, the former chairman of the Federal Reserve Board—who is, I think, one of the ablest financial experts in the world—testified before the Senate Finance Committee about this question, I asked, "How can the average citizen—not the wealthy who can protect themselves one way or the other—but how can the average man or woman in this country protect himself or herself against this very severe inflation which is continuing and which, I think, will continue to accelerate?"

Mr. Martin said:

It is very difficult to do. But I think it is important, if inflation is to be controlled that the Federal spending be controlled.

I said: "Would it be accurate to say that perhaps the best way in which the average citizens of our country can protect themselves against inflation would

be to demand of the Members of the Congress, their elected representatives, that they get back to balancing the budget and eliminate these smashing deficits."

Mr. Martin replied that that was the purport of his testimony, that we eliminate these huge deficits and get back to balancing the budget.

The able Senator from North Carolina is seeking to do just that with his amendment. I am pleased to support him.

Mr. HELMS. Mr. President, let me say that I am always encouraged by the remarks of my friend, the distinguished Senator from Virginia, who has been a leader in the fight for fiscal sanity, as was his distinguished father before him.

I am proud at all times to be associated with him.

Mr. LONG. Mr. President, on a consolidated budget basis, which is the way economists, Democrats and Republicans alike, say that we ought to keep the budget, the administration projects that in this fiscal year Federal Government will take in as much money in taxes as it spends.

Admittedly we will have a deficit on a Federal funds basis, which was the old-fashioned away to keep the budget. However, if we consider the surpluses we build up in our trust funds, we will have a balanced budget. However, we would have a deficit on a Federal funds basis. The pending amendment would require a big cutback in spending, even though we really have a balanced budget overall.

It is the point of view of the overwhelming majority of the economists that we are in good shape and have a balanced budget, but under the Senator's amendment we are now required to cut back on Federal spending. From the point of view of the liberals and moderates in this body that is sort of ridiculous on the face of it: a great big cutback in spending even though we have a balanced budget.

Furthermore, Mr. President, because of the energy crisis, we are in grave danger of a recession. This amendment would mean we could not step up Government spending to keep the recession from becoming a depression. This is Herbert Hoover economics reincarnated. To cut spending if we go into a recession will guarantee the deepest depression since 1929, or one deeper than 1929. That is stone age economics.

Mr. President, quite the opposite of this proposal, I have urged that the administration get their plans ready so that, in the event that this energy crisis, with all the layoffs that are occurring in the airlines, the transportation industry, and elsewhere, becomes worse, it can be offset, if need be, by Government spending to keep this country from being in a deep depression as well as keeping people from freezing around the country. I have some hope that they might do something along that line, to be ready in case we do run into that type of emergency.

What kind of sense would it make if we say another Herbert Hoover program of 1929 must be used in the event this energy crisis puts us into a recession? This will only guarantee that the recession goes deeper than the depression of 1929.

That is what we would be asking for by voting for this amendment. If we go into a recession and Government revenues fall off, we cut spending. As we go farther down, we cut spending some more and, as we go farther down, we continue to cut spending, so that Government revenue outweighs every other consideration on the way down. That makes about as much sense as some other things I have seen in Government, Mr. President, but we ought to know better by now, having learned a hard lesson from what happened in 1929 and what happened when unwise fiscal and tax policies and unwise monetary policies put this country in deep trouble.

I would hope we had learned something about this kind of thing, and that other factors are sometimes more important than just stacking up dollars to see which pile is higher than the other. There are better ways to approach some of these problems.

This amendment does not belong on this bill. It is irrelevant to the bill. It is an entirely different matter, Mr. President. If it is to be offered at all, it would seem to me it should have been offered on the debt limit bill, or should be offered on the budget control bill that will be coming along later on, and at an appropriate time I shall move to table the amendment, but I shall withhold that motion now in the event that someone cares to discuss the matter further.

Mr. PERCY. Mr. President, I certainly would not quarrel with the attempt of the distinguished Senator from North Carolina to try to put fiscal responsibility back into the Federal budget. I think we all share that desire, and are trying to work toward that end in different ways.

The objection I would have to this amendment is that it would remove the flexibility we may need in periods of economic recession. The Federal budget is an instrument which has an impact on the economy, and I would respectfully suggest that the distinguished Senator carefully study the work of the Government Operations Committee in the budget reform bill that has now been unanimously reported out, of which I am a cosponsor together with Senator SAM ERVIN.

I think that bill, and procedures that we have established which, first of all, put backdoor spending under the control of the Appropriations Committee, where it does not now lie, and would also require that Congress establish a ceiling on its budget overall before we proceed to expend money—right now our budget ends up being the total of all of our subtotal expenditures that we appropriate through the course of the year, and that is what leaves us in this deplorable condition where, in heights of prosperity such as the past 4 years, we have run up another $100 billion in deficits—if we would start out at the other end of the spectrum, and take a look at the economy and see what fiscal impact we want on the economy, then establish a ceiling, and then work with the subceiling arrangement that has been worked out by the distinguished Senator from Maine (Mr. MUSKIE), with which we now totally concur, to give us goals where we weigh one priority against another, and then make it exceedingly difficult, once we establish that overall ceiling, to break the ceiling—it could only be done in two ways, either by a two-thirds vote to set aside the rules, or by putting in a new concurrent resolution which requires us to take an overall, entire look at the picture again—I think that would be a more flexible way, but a reasonable way to approach it.

I would hate to see us put ourselves in a straitjacket at a time of economic recession when we had large scale unemployment, when welfare costs were high, and we needed to use the fiscal policy of the Federal budget to stimulate the economy, rather than depress it, to have us in a straitjacket at that time and unable to move.

But again I say I concur with the overall objectives, and I share the frustration, of the Senator from North Carolina. I would have to, regretfully, vote against this amendment, but would do so in the hope that we will move toward adoption of the budget reform bill, which will get at the same kind of problem and stop this endless deficit spending, particularly in boom periods.

Mr. FONG. Mr. President, may I ask the distinguished Senator from North Carolina a question?

Mr. HELMS. I yield.

Mr. FONG. What is the purpose of the amendment before the Senate?

Mr. HELMS. The purpose of the amendment is to put the Senate on record one way or the other. I have accomplished an ancillary purpose here; I have got the adrenalin of my friend from Louisiana stirred up a little bit. But at least we are thinking about a balanced budget and fiscal responsibility in the United States of America.

Mr. FONG. Is the Senator referring to trust fund money?

Mr. HELMS. I am referring to nontrust fund money.

Mr. FONG. What is the Senator's position in reference to trust funds?

Mr. HELMS. We address ourselves only to nontrust fund expenditures, I would say to the Senator.

Mr. FONG. Mr. President, as I understand the present budget system, we are under a unified budget system. Prior to the administration of President Lyndon Johnson, we were on a general funds budget, but the Vietnam situation escalated expenditures so much that a tremendous deficit was created, and the administration was forced, more or less, to achieve a lower deficit. So it called upon all the money in the trust funds, and collected all this money into what we call a unified budget. By putting all this money into a fund known as a unified budget, President Johnson cut down his deficit by $4 billion to $7 billion, as I understand.

So, today, we are following a budgetary program which carries a budget deficit of, probably, another $4 to $5 billion more than the deficit that has been shown to the public. Thus, when we talk about a budget deficit of $12 billion, we

are actually talking about a budget deficit of $17 billion.

Mr. HELMS. That is correct.

Mr. FONG. Because we have to add another $5 billion more, for the money that we receive from our trust funds, like money that goes into the social security program and money that goes into the highway program. By spending that money as it comes in, and saying it is part of the general fund, we are just deceiving ourselves.

Mr. President, the program which we are not trying to amend is known as the social security program. It was based on the theory that this was an insurance program and that the premiums paid in by the workingman would some day be used so that he would be able to receive benefits when he retired.

If we were running an insurance company and were running it the way we ask Members of Congress to run it, we would all be in jail [laughter] because the premiums that come into the program are now being used for the present recipients of the program, and when those people, now paying in presently, come to receive their benefits, there will be no more money in the program.

Let me explain.

If we were running a private insurance company, all of us would be paying premiums, and when we arrived at age 65, we would expect to receive a certain amount of money because of the premiums we had paid in.

What we are saying now, in the way we are working out this program, is that all the premiums that come in—say it is $1 million, and only $900,000 goes out—because our recipients are now receiving $900,000, we say we have $100,000 in surplus.

Actually, we do not have $100,000 in surplus. We do not have any money in surplus because we have used up all the money that should have been placed in the reserve fund, in a surplus fund, to take care of the anticipated costs for those arriving at that certain age at which they receive their benefits.

So, when we talk about having a surplus in the social security program, we are just fooling ourselves, because we do not have a surplus in the social security program.

If we were to stop the social security program as of today and say that everyone now in the social security program can continue to pay premiums into the social security program, but we would not admit any more new members, when we would reach the age of 65, that fund which has accumulated because of our premiums, would be broke.

As I understand it, we are now approximately $300 billion to $400 billion in the hole, if we were to carry out the Social Security program as any other insurance company would be called upon to do so by State insurance examiners.

So, Mr. President, finding ourselves in this situation, we should not be too generous here in giving all the various benefits which have been asked by the various segments of the community. We must look at the program from the standpoint that this is an insurance program, that the premiums we have been paying into the program will be called upon to be used to pay the benefits.

What we are really trying to do today is to put the load on our children and our grandchildren. They will be the ones who will be called upon to pay the benefits when we are ready to receive our benefits, when we reach the age of retirement.

Thus, I thank the distinguished Senator from North Carolina (Mr. HELMS). He has really given us something to think about. We should be looking at this from a sound fiscal standpoint. We cannot continue to eat into this money, which should be set aside as a reserve fund for future use, so that by the time we get to that age there will be no money in the program left and we will be bankrupt.

I applaud and commend the distinguished Senator from North Carolina for presenting this amendment to the Senate.

Mr. HELMS. I thank the distinguished Senator from Hawaii. I have often wondered what would be the reaction of the young people of this country if they could have an explanation such as the Senate has just heard from the Senator from Hawaii, with his lucid explanation relating to what is being done to their future.

Mr. President, I may be accused of being a mossback. I may be said to be fossilized. I may be categorized as archaic, as my good friend from Louisiana has said, but 2 and 2 still make 4. Simple arithmetic still shows that to be true. Let us not play games. A balanced budget is a balanced budget—and Senators today have an opportunity to demonstrate where they stand.

No, Mr. President, we cannot make anything of it except that this is a Government of profligacy. This Congress—this Senate—is where the fault lies. We can change our way of living—if we have the courage to do so.

This amendment may be tabled, but let the record be clear, gentlemen, that any Senator voting to table will be saying to that people of the United States, "I am not willing to stand for a balanced budget."

Now, Mr. President, table the amendment, if you will. I have become somewhat accustomed to having amendments tabled——

Mr. CHURCH. Mr. President, will the Senator from North Carolina yield——

Mr. HELMS. I will be through in a minute.

Mr. CHURCH. For a question?

Mr. HELMS. Just 1 minute.

Mr. President, I have become accustomed to having my amendment tabled but, nevertheless, the people of this country will get the message. We will be voting, whether on a tabling motion or on an up-and-down vote on the amendment, the question of whether we are willing to adopt the concept of a balanced budget.

If an emergency arises, this Senate can undo anything it has done, as there is nothing permanent here, and every Senator knows that.

But the question is: Are we willing, this day, to put ourselves on record as being in favor of a balanced budget? This Senator from North Carolina is.

Mr. CHURCH. Mr. President, will the Senator from North Carolina yield?

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

Mr. CHURCH. Mr. President, the distinguished Senator from North Carolina is——

Mr. HELMS. I am sorry, but I cannot hear the Senator.

Mr. CHURCH. The Senator from North Carolina has made a very persuasive argument for his amendment—can the Senator hear me now?

Mr. HELMS. Yes, and I like what I hear.

Mr. CHURCH. I am inclined to support it, but I want to make sure I understand it.

As I read the amendment, section 2 states:

> Beginning with the fiscal year 1975, the President shall submit a budget pursuant to the Budget and Accounting Act of 1921, as amended, in which non-trust-fund expenditures do not exceed non-trust-fund revenues for each fiscal year.

As I read that language, if it became law, Congress would merely be instructing the President to submit to Congress a budget in balance. Congress could then consider what parts of that budget it might want to decrease, and what parts it might want to increase. Congress cannot be bound by the President's budget. It would simply receive from the President a budget which was in balance, and then Congress could pass judgment on it. Is that not the effect of the amendment?

Mr. HELMS. The Senator from Idaho is eminently correct.

Mr. CHURCH. I think it is a good amendment. The arguments addressed against it do not seem to me to be convincing. Congress has demonstrated its incapacity to balance the budget when the President's budget calls for deficit spending. I have not seen that done yet. It will be difficult enough for Congress to vote a balanced budget, if the President were to submit one; but, for years the President has submitted budgets badly out of balance. It has been quite impossible for Congress to effect reductions of a sufficient magnitude to bring those budgets into balance.

So, I believe that, since we are pretty much all agreed that the state of the economy today calls for a balanced budget, Congress would be well advised to instruct the President to submit one at the opening of each new session.

For these reasons, I find the amendment sound and I intend to support it.

Mr. HELMS. I thank the Senator from Idaho very much. The most we are doing is to put ourselves on record. We are saying to the President, "Send us a balanced budget," and then we must overtly violate what we have said to him. I think this is a responsibility we should take.

Mr. LONG. Mr. President, let me read the Senator's amendment.

Section 1 begins:

> SECTION 1. Beginning with the fiscal year 1975, the non-trust-fund expenditures of the Government of the United States during each fiscal year shall not exceed its revenues from all nontrust sources for such year.

Mr. President, that is as clear as anything I have ever seen, that under the amendment we could not spend $1 more than we take in on a Federal funds basis. According to the current administration budget projections, in fiscal year 1974 we will have a surplus of $15 billion in trust fund items. They project a deficit of $15 billion on a Federal funds basis. This means that if this amendment were in effect at this time—as written, it goes into effect next year—the President would have to make a $15 billion cut in the budget. The amendment does not talk about just submitting a plan or going through the intellectual exercise, but about actually spending no more than is taken in—which this year would mean cutting out $15 billion of spending.

We have heard people complaining about some irresponsible cutbacks, particularly those involving expenditures in their States. But they have not seen anything yet, compared to what this amendment would mean—if it were effective this year, a $15 billion cut in addition to things that have been cut already. The amendment is not talking about an intellectual exercise. You have to cut the budget down, and you cannot spend one dollar more than you take in. The amendment does not even tell the President how or what to cut, by the way—just take that meat ax and slash away.

Those who complain about some irresponsible cutbacks in their States, such as cutbacks of certain defense installations and defense contractors, just have not seen anything, compared to what this would mean.

Section 1 reads:

SECTION 1. Beginning with the fiscal year 1975, the non-trust-fund expenditures of the Government of the United States during each fiscal year shall not exeed its revenues from all nontrust sources for such year.

The President would not have to consult Congress, but just to take that meat ax and go to work on the budget. That would be a very foolish thing to do now, and it would be foolish to do next year.

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

Mr. LONG. I yield.

Mr. BEALL. I do not quite understand the Senator. I get the same reading out of section 1 that he does, that the expenditures have to equal the revenues. But the Senator is implying that the only way to make this happen is through reduction of expenditures. You could also increase revenues, could you not, to take care of expenditures?

Mr. LONG. Yes, you could increase taxes.

Mr. BEALL. All the President has to do, then, is to submit a budget that is in balance. He does not necessarily have to cut. He could keep everything we have but show us the revenue that will pay the bill. Is that not correct? And Congress could do the same thing.

Mr. LONG. If the legislation raising the taxes is passed and the money comes in; yes. That is what you could do.

But here we have a situation in which committees set up by Presidents—Democrat and Republican—have recommended that the budget be kept on a consolidated, overall basis; and that we take the view that if we have a balanced budget on that basis, as long as we are taking in as much money as we are spending, we can safely do business in that fashion. One committee was headed by a very distinguished banker and outstanding Republican, Mr. David Kennedy, a subsequent Secretary of the Treasury.

Mr. BROOKE. Mr. President, will the Senator yield for a question?

Mr. LONG. I yield.

Mr. BROOKE. As I read the amendment, it requires that the nontrust fund expenditures of the Federal Government each fiscal year shall not exceed its revenue, beginning in fiscal 1975.

As I understand it, the information that the distinguished Senator from North Carolina gave to the distinguished Senator from Idaho was that the intent of this amendment is merely to instruct the President to submit a balanced budget. I do not get that meaning from the language of this amendment.

Could the Senator clarify whether we are merely instructing the President to submit a balanced budget or requiring, as the amendment says—and I think I am reading it correctly—that the nontrust fund expenditures of the Federal Government each fiscal year shall not exceed its revenues? Which is it?

Mr. LONG. If the Senator will read section 1, it says that you cannot spend any more than you take in on a nontrust fund basis. That is what the language clearly says.

Mr. President, I ask unanimous consent that the text of section 1 be printed at this point in the RECORD.

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

SECTION 1. Beginning with the fiscal year 1975, the non-trust-fund expenditures of the Government of the United States during each fiscal year shall not exceed its revenues from all nontrust sources for such year.

Section 2 says that the President shall submit a balanced budget on that basis.

Mr. BROOKE. Yes; but one cannot read section 2 without reading section 1. Section 1 is an essential requirement. It would appear to me it is a definite requirement.

Mr. LONG. What the amendment provides is two things. I cannot see whether it makes any difference whether the first part is first or the second part is first. What it says is that the President shall submit a balanced budget on a nontrust fund basis, and we will not spend any more than is in that balanced budget. That is on a non-trust-fund basis.

Mr. BROOKE. That is my interpretation. I thought we had a check on it until the question was asked by the Senator from Idaho (Mr. CHURCH). When the Senator from North Carolina (Mr. HELMS) responded, he seemed to be saying that the intent was merely to instruct the President to submit a balanced budget.

Is that as far as the Senator from North Carolina intends the amendment to go?

Mr. HELMS. No, indeed; it is not as far as I intend that it shall go. I intend that the Senate be on record as to a balanced budget. On any occasion that we stray from it, we do so overtly, so that the people can see what we have done.

Mr. LONG. Mr. President, I decline to yield for speeches. I will yield for one or two more questions.

Mr. BROOKE. The Senator has answered the question.

Mr. LONG. It seems to me that the point the Senator insists upon—for a balanced budget, on an old-fashioned basis, such as when I came here 25 years ago—I think I have demonstrated what that means.

I move to lay the amendment on the table.

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

The PRESIDING OFFICER. The question is on agreeing to the motion to lay the amendment on the table.

Mr. LONG. Mr. President, if the Senator wants to ask a question——

The PRESIDING OFFICER. The motion to lay on the table is not debatable.

Mr. LONG. Mr. President, I shall withhold my motion, to allow the able Senator to ask a question. I yield for a question.

Mr. CHURCH. I think that, in a way, we have been chasing our tails in this argument. Section 1, it is true, does call for non-trust fund expenditures to be held in line with non-trust fund revenues. But the effect of the amendment would be to instruct the President, first of all, to send to Congress a budget that conformed to this standard. It is always open to Congress, then, in the exercise of its privilege, to increase the budget, if it chooses. Section 1 is not binding—and could not be—on a future Congress. But we can instruct the President to help by sending us a balanced budget, accepting full responsibility for any changes we make thereafter. So I think the essence of the amendment is as I have discussed it heretofore.

Mr. LONG. There, again, the Senator complains that he would not put us into this trap; and then he tries to find a way out. I have been in those traps before. The former Senator from Delaware, Mr. Williams, used to set such traps, and I would spend my time trying to get out of them.

I would not worry about that, because we have a Republican President, and I am a Democrat. Usually I can blame all these tricks on the Republicans. But I have found that they often spill over onto Democrats.

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

Mr. LONG. I yield.

Mr. PASTORE. I am sure the Senator knows what would happen as a practical proposition. The President of the United States would submit a budget. He would put a lot of tidbits in it and say, "I suggest a tax increase of 50 percent. The revenue from that would be billions of dollars. Therefore, I am balancing the budget. The cat is right on your back. You go ahead and raise taxes by 50 percent. Otherwise, you will have to begin to chop out all the tidbits I have put in."

Mr. LONG. Otherwise, the ones who stand well with the President will not be cut with a meat ax, while those who do

not stand well with the President, will be cut with the meat ax.

I move to table the amendment. I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from North Carolina. The yeas and nays have been ordered, and the clerk will call the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Iowa (Mr. HUGHES), the Senator from Wyoming (Mr. MCGEE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Mexico (Mr. MONTOYA), and the Senator from South Dakota (Mr. ABOUREZK) are necessarily absent.

I also announce that the Senator from Missouri (Mr. SYMINGTON) is absent because of illness.

I further announce that, if present and voting, the Senator from Wyoming (Mr. MCGEE) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Utah (Mr. BENNETT), the Senator from North Dakota (Mr. YOUNG), and the Senator from Virginia (Mr. WILLIAM L. SCOTT) are necessarily absent.

The Senator from Idaho (Mr. MCCLURE) and the Senator from Oregon (Mr. PACKWOOD) are absent on official business.

The result was announced—yeas 46, nays 42, as follows:

[No. 529 Leg.]

YEAS—46

Aiken	Haskell	Muskie
Bayh	Hathaway	Nelson
Bentsen	Huddleston	Pastore
Bible	Humphrey	Pell
Biden	Inouye	Percy
Brooke	Jackson	Proxmire
Burdick	Javits	Ribicoff
Cannon	Johnston	Schweiker
Case	Kennedy	Sparkman
Clark	Long	Stafford
Cranston	Magnuson	Stevenson
Eagleton	Mansfield	Taft
Fulbright	Mathias	Tunney
Gravel	McIntyre	Williams
Hart	Mondale	
Hartke	Moss	

NAYS—42

Allen	Domenici	Metcalf
Bartlett	Dominick	Nunn
Beall	Eastland	Pearson
Bellmon	Ervin	Randolph
Brock	Fannin	Roth
Buckley	Fong	Saxbe
Byrd, Harry F., Jr.	Goldwater	Scott, Hugh
Byrd, Robert C.	Griffin	Stennis
Chiles	Gurney	Stevens
Church	Hansen	Talmadge
Cook	Hatfield	Thurmond
Cotton	Helms	Tower
Curtis	Hollings	Weicker
Dole	Hruska	
	McClellan	

NOT VOTING—12

Abourezk	McGee	Scott, William L.
Baker	McGovern	Symington
Bennett	Montoya	Young
Hughes	Packwood	
McClure		

So Mr. LONG's motion to table Mr. HELM'S amendment (No. 732) was agreed to.

Mr. HELMS. Mr. President, while preserving my right to the floor, I have agreed to yield to the distinguished Senator from Oklahoma, if I may do so under unanimous consent.

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

Mr. BELLMON. Mr. President, I have an amendment at the desk. I ask that it be reported.

The PRESIDING OFFICER. The Senator has two amendments. Will the Senator give the number, please?

Mr. BELLMON. Amendment No. 736, as modified.

The PRESIDING OFFICER. The clerk will read the amendment.

The second assistant legislative clerk proceeded to read amendment No. 736, as modified.

Mr. BELLMON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

Amendment No. 736, as modified, is as follows:

On page 122 of the bill, after line 24 insert the following new section:

SEC. 165. The Secretary of Health, Education, and Welfare shall conduct a study of and submit to the Congress not later than one year after the date of enactment of this section a report containing his findings and recommendations with respect to the appropriateness of establishing nationwide rates of ineligibility and overpayment in the Aid to Families with Dependent Children program under Part A of Title IV of the Social Security Act which may be reasonably expected to occur in the administration of such program when the eligibility determination processes and procedures are implemented in a prudent manner exercising reasonable diligence to avoid erroneous payment.

Mr. BELLMON. Mr. President, this amendment is very simple. It simply takes note of the fact that perfection in the administration of these programs is impossible and instructs the Secretary of HEW to study the programs and to recognize that we are always going to have a certain amount of ineligibility and to establish acceptable standards for programs which the States are administering.

I have discussed the amendment with the author of the bill. It was my understanding that he would accept the amendment.

Mr. LONG. Mr. President, I agree with that amendment. I think it is all right. I am willing to accept it.

Mr. BELLMON. Mr. President, I yield back the floor.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 736 of the Senator from Oklahoma, as modified.

The amendment, as modified, was agreed to.

Mr. HELMS. Mr. President, I call up my amendment No. 741 and ask that it be stated.

The PRESIDING OFFICER. The clerk will read the amendment.

The second assistant legislative clerk read amendment No. 741, offered by Mr. HELMS for himself and Mr. THURMOND, as follows:

SEC. . Not later than fifteen days after the date of enactment of this Act, the President shall promulgate a plan for a nationwide energy conservation program which shall include measures capable of reducing energy consumption by no less than 10 per centum within ten days, and by no less than 25 per centum within four weeks after implementation, through the imposition of limitations on the transportation of students in schools operated by local or State educational agencies, as defined in sections 801(f) and 801(k) of the Elementary and Secondary Education Act of 1965, in order that students may walk to school insofar as possible without public transportation, or be transported through public means of conveyance no further than to the appropriate school nearest their residence.

Mr. HELMS. Mr. President, this amendment was before the Senate not long ago. It was tabled, and I imagine that a motion to table this amendment will be made this afternoon.

I would simply reiterate that a vote to table this amendment is a vote to continue to waste millions of gallons of gasoline for the unnecessary, unwise and disruptive purpose of the forced busing of schoolchildren.

I have offered this amendment this afternoon because Senators have told me if they had it to do over again, they would support the amendment this afternoon. I am giving them that chance. If this amendment is rejected today, I intend to submit it again.

Mr. ALLEN. Mr. President, would the distinguished Senator from North Carolina yield to me?

Mr. HELMS. Mr. President, I yield to the distinguished and able Senator from Alabama.

Mr. ALLEN. Mr. President, I ask the Senator from North Carolina if he will agree to listing my name as a cosponsor of the amendment?

Mr. HELMS. Mr. President, I ask unanimous consent that, at the next printing of the amendment, the names of the Senator from Alabama (Mr. ALLEN) and the Senator from Florida (Mr. GURNEY) be listed as a cosponsor. I am delighted to have them join in its sponsorship.

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

(Several Senators addressed the Chair.)

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. ALLEN. Mr. President, may I have the floor in my own right? Did the Senator yield the floor?

Mr. HELMS. I did not yield the floor. I yield to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, I thank the distinguished Senator from North Carolina.

Mr. President, our people are face to face with the prospect of gasoline rationing. I am confident that the average citizen is willing to assume inconveniences and even hardships if necessity compels us to such drastic action. However, it will be a mistake to discount the commonsense of reasoning which governs their reactions to crises of this nature. They are going to insist that rationing of gasoline or other fuels must conform to standards of basic fairness and reasonableness.

Mr. President, fairness and reasonableness demand that gasoline supplies be conserved by the elimination of wasteful and unnecessary consumption. Each of us can identify separate prime targets

of unnecessary consumption. However, no example of waste in the consumption of gasoline is more blatant than the artificial demand resulting from arbitrary, unreasonable, and irrational forced busing plans for racial balance which have been imposed by Federal court judges. This waste must stop.

Mr. President, in Alabama the annual consumption of gasoline for operating schoolbuses has increased tremendously in the last 5 years.

Mr. President, much of this increase is attributable to decrees of U.S. district court judges based on what I am convinced is a mistaken conception of constitutional requirements. For example, some Alabama city school systems have been ordered to bus children for the sole purpose of achieving an arbitrary racial mix in the schools, even though such city school systems had never before operated buses to transport children.

To contend that the U.S. Constitution requires school systems to purchase buses, employ and train bus drivers, establish maintenance shops, and assume the cost of operating, maintenance and obsolescence of busing equipment for no other purpose than to achieve and maintain a racial ratio in public schools is a palpable absurdity. The American people will not buy it.

At a time when the American people are called upon to tighten their belts to make sacrifices in the interest of conserving energy resources, it is incomprehensible that Federal judges should persist in pursuing a course which can lead only to massive discontent, and increased hostility to the judicial oligarchy which has assumed power over the lives of the citizens to order busing of their children in accordance with revealed truth of a bankrupt social science.

Mr. President, commonsense and reasoning must prevail over the judicial oligarchy. Nothing would be more reasonable and rational than to restore the law of the Constitution which protects the right of every school child to attend the school closest to his place of residence, without regard to race, creed, color or national origin. The American people are not going to tolerate busing plans which deny children their inherent right to attend a neighborhood school. They will not tolerate judicial edicts that require children to be forcibly and needlessly transported to a school across town at the cost of millions of gallons of gasoline.

Mr. President, I commend the distinguished Senator from North Carolina.

Mr. ERVIN. Mr. President, would the Senator from Alabama yield for a question?

Mr. ALLEN. Mr. President, I yield for a question to the Senator from North Carolina.

Mr. ERVIN. Mr. President, I would like to ask the distinguished Senator from Alabama whether he agrees with the Senator from North Carolina that busing under a judicial order for integration purposes is not only not required by the Constitution, but is also directly in conflict with the equal protection clause of the 14th amendment.

Mr. ALLEN. It certainly is. I agree with the Senator.

Mr. ERVIN. Mr. President, I would like to ask the Senator from Alabama if the equal protection clause does not clearly prohibit a State from treating in a different manner persons similarly situated.

Mr. ALLEN. That is certainly true. And that was the reasoning of the original Brown decision, from which the Supreme Court has now veered 180 degrees away.

Mr. ERVIN. Mr. President, I will ask the Senator from Alabama if it is not true that when a Federal court says to a school board, "You may permit some of the children residing in your zone or district to attend neighborhood schools. However, you must deny to other children residing in your zone or district the right to attend their neighborhood schools," that requires the school board to treat children similarly situated in a different manner, and therefore clearly violates the equal protection clause.

Mr. ALLEN. I certainly agree with the Senator from North Carolina.

Mr. ERVIN. Mr. President, I ask the Senator from Alabama if, when a Federal court hands down a decree requiring the busing of children for the purposes of integration, it does not say to the school board, in addition to what I have already mentioned about treating children differently, "You must take these children whom you denied the privilege of exercising their constitutional rights to attend their neighborhood schools along with others similarly situated, and place them in a bus and transport them to schools located elsewhere either for the purpose of decreasing the number of children of their race in the neighborhood school or increasing the number of children of their race elsewhere." I ask the Senator from Alabama if that does not violate the equal protection clause as interpreted in the Brown case a second time in that it denies the children who are required to be bused to other schools admission to their neighborhood schools solely on account of their race.

Mr. ALLEN. It certainly does. I agree with the Senator from North Carolina.

Mr. ERVIN. We are not only confronted by decisions of courts, which are repugnant to the constitutional provision they profess to interpret, but in this time of a shortage in energy we are also engaging in wasting a scarce commodity which is absolutely essential to the welfare of the country, for a purpose which is absolutely inconsistent with any proper interpretation of the equal protection clause.

Mr. ALLEN. I agree with the Senator from North Carolina. I thank the Senator from North Carolina for his remarks.

Mr. HELMS. Mr. President, I thank the Senator from North Carolina and the Senator from Alabama for their remarks.

I yield now to the Senator from Colorado.

Mr. DOMINICK. Mr. President, for a long time I have been an opponent of the forced busing situation to overcome racial imbalance. However, there are a great number of schools in the West and also in the East which are in many cases countywide. Now, without discussing the racial situation at all, they rely on busing in order to get to their school. If we were to eliminate busing, then we would have the very difficult problem of, maybe, having an increase in the use of gasoline by parents bringing their kids to school if, as, and when they could find the time to do so.

I do not see any reference to racial imbalance in the amendment. It bothers me because in many towns in Colorado there would be no way to get to school most of the time if it were not for the busing system.

Mr. HELMS. Mr. President, I would say that the intent of the amendment rests on the words "insofar as possible." Of course, the judgment would be left to the school boards in the districts as to what is best for the children. Specifically, we are addressing ourselves to the forced busing of school children against their will.

Mr. DOMINICK. And that is the Senator's intent in the amendment?

Mr. HELMS. That is the intent of the amendment.

Mr. DOMINICK. Mr. President, I thank the Senator from North Carolina.

Mr. HELMS. I am ready to vote, Mr. President.

Mr. NELSON. Mr. President, I am a bit puzzled by the amendment, because it directs the President to design an energy conservation program which shall include measures capable of reducing energy consumption by no less than 10 percent within 10 days and no less than 25 percent within 4 weeks after implementation through the imposition of limitations on the transportation of students in schools operated by local or State educational agencies.

I do not have a chart here. I have one in my office that delineates rather carefully the energy consumption of the country by industry and occupation, and I believe it shows that if you closed every grade school in America and kept the children home, and if you closed every high school in America and kept the children home, I doubt very much whether we could save 1 percent of the total energy consumption of America, which includes all the energy from coal for running factories and power plants, all the energy from the major water resources of the country, all the energy from oil, from gasoline, and from nuclear power.

We have an amendment here that would purport to solve all the problems in the country without really accomplishing anything, because it could not save that much energy in any conceivable way.

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

Mr. NELSON. I yield for a question.

Mr. HELMS. I would attempt to answer the question the Senator has raised, if the Senator desires.

Mr. NELSON. Yes, I am glad to yield for that purpose.

Mr. HELMS. The language in the first seven lines I propose refers to the entire package of various remedies contained in the energy bill which has already been passed by the Senate, and is drawn to make it consistent therewith. The discontinuance of forced busing would be only one of the many proposed remedies.

Mr. NELSON. If there is any such language in there, I do not read it. All it says, as I read it, is that the President is going to save 25 percent of the energy consumption in America by limiting the transportation of students in school buses. That is the way the plain language reads to me. I just say it cannot be done, apart from the fact that I do not agree with its purpose.

Mr. President, I am prepared to make a motion to table the amendment.

Mr. JAVITS. Mr. President, if the Senator will yield to me, this is the second time this matter has been up within a very short time. The Senator from Wisconsin has already pointed out the basic imperfection in the amendment in terms of its drafting. I would also like to point out another imperfection in terms of its drafting. It has been stated in answer to a question by the Senator from Colorado (Mr. DOMINICK) that the limitations on busing should only be insofar as possible. Again, I do not find that in the amendment. The "insofar as possible" relates to students walking to school, and then with the further qualification that even if they were conveyed they should be conveyed no farther than to the appropriate school nearest their residence.

That is the traditional neighborhood school idea, which would not answer this question either, because county central schools are not necessarily nearest the child's residence. But assuming all this would be perfected, Mr. President, and Mr. HELMS makes the differences by changing the language, the substance of the amendment is to use the energy emergency truly to pour gasoline on the flames of racial differences in the United States. The idea that they have all been dispelled and gone away we all know not to be true. Fortunately for us, at a time when we have deep troubles of many other kinds, there is some feeling of stability in the country upon this issue. Mr. President, I would say an American, let alone a Senator, should thank God for us that it is not the issue that it was but a very short time ago and may unhappily be again.

But if we want one way to create such an issue, this is it. All we have to do is undo court decrees and engage in the busing battle all over again, and we will really be pouring gasoline on that fire.

I think each Senator should vote to table this amendment without regard to the details precisely for that reason, because this is something we ought not to be dealing with right now. As long as it is not hitting us, let us not hit it.

Second, Mr. President, we did our utmost to resolve the problem by establishing criteria in the higher education bill, where this matter was wrestled with and fought over and finally written into some kind of law, which was of such a nature that although I was one of those who had a great deal to do with fashioning the final higher education bill, I, with others like Senator MONDALE, found it in conscience necessary to vote against the conference report, because we were deeply concerned about the effect of these very amendments, or amendments dealing with this very question, which were incorporated in that bill.

I say that only to indicate that though I am by no means satisfied, I think existing conditions have reduced tensions, unlike the mover of the amendment, and I think it would be unwise, in the interests of our Nation, to bring this issue to the fore by a positive act of denial of the kind which this represents.

If we want to maintain employment with respect of energy conservation, which we do, and if we want to retain egalitarianism—and that is why so many of us favor rationing as the most egalitarian way in which to meet the problem—we certainly do not wish to give new cause for profound public tension in an area which has been tension-ridden enough, and in which we need invite no more.

So I hope very much that Sentor NELSON's motion, which will imminently be made, to lay the amendment on the table will prevail.

Mr. HELMS. Mr. President, I would simply emphasize again, just before the motion to table, that Senators who vote to table will be voting to continue to waste millions of gallons of gasoline each year for an unwise, unworthy, destructive purpose.

The distinguished Senator from New York, who knows of my admiration for him. He is a gentleman. He made the same eloquent argument on the previous occasion when I submitted this amendment. He says that we should not throw gasoline on the fires of racial misunderstanding, or words to that effect.

I do not know how to square his appraisal of that situation with various polls which have been made available to me, polls showing, as I recall, that over 80 percent of the parents of black children of this country resent just as deeply as anyone else the forced busing of their children across the county for no purpose at all except to satisfy the whim of some Federal judge or Federal bureaucrat.

So I simply say, just prior to the motion to table which I understand is coming, that any Senator who votes to table the amendment will be voting to continue to waste millions of gallons of gasoline on forced busing of students.

Mr. THURMOND. Mr. President, I rise in support of this amendment.

In the first place, the amendment is so drawn that it would encourage school children to walk to school if possible without any public transportation, thereby saving fuel, where they live close enough to the school. In the next place, if they are transported, it provides through public means no further than the appropriate school nearest their residence. It simply means that a child can attend the school nearest his home.

Now the polls which have been taken all over the country show clearly that members of the white race and members of the black race oppose the busing of schoolchildren so as to bring about a racial balance.

This amendment is predicated on the theory of saving gasoline and it should save millions of gallons of gas and, at the same time would accomplish the purpose—certainly partly so—of transporting children in order to bring about a racial balance.

The Supreme Court decision of 1954 held clearly that no child could be deprived of entering any school because of his race or color. But, since that time, some Federal judges have taken different constructions and have made a 180-degree turn away from that decision, in holding that a child of one race can be transported to a school of another race simply to bring about a racial balance.

Mr. President, I understand that in the home State of my distinguished friend from North Carolina (Mr. HELMS), there is one child being transported on a schoolbus for miles and miles just because of a racial balance. That does not make any sense. It is a waste of fuel. It is an imposition on the child.

I think the time is not far off when the people of this country will realize that this asinine policy must be changed.

I realize that some of the leaders of some groups have taken another position and have gotten concrete on it, in that they hesitate to withdraw from their position.

Mr. President, this is not the kind of legislation to discriminate against anyone. This is the kind of legislation that will help children, and will help parents. It is unfair to the child, especially, to keep him on a schoolbus riding around for several hours a day just to bring about a racial balance, when he could go to school maybe within a block of his home, or nearer his home, and save his time.

Mr. President, I do not believe there is any use taking up a lot of time to discuss this issue. We are all familiar with it.

I hope that the Senate will see fit to adopt the amendment.

Mr. NELSON. Mr. President, I move to table the pending amendment.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment (No. 741) of the Senator from North Carolina (Mr. HELMS).

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Iowa (Mr. HUGHES), the Senator from South Dakota (Mr. MCGOVERN), the Senator from South Dakota (Mr. ABOUREZK), the Senator from Wyoming (Mr. MCGEE), and the Senator from New Mexico (Mr. MONTOYA) are necessarily absent.

I also announce that the Senator from Missouri (Mr. SYMINGTON) is absent because of illness.

I further announce that, if present and voting, the Senator from Wyoming (Mr. MCGEE) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Utah (Mr. BENNETT), the Senator from Virginia (Mr. WILLIAM L. SCOTT), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The Senator from Idaho (Mr. Mc-

CLURE) and the Senator from Oregon (Mr. PACKWOOD) are absent on official business.

The result was announced—yeas 48, nays 40, as follows:

[No. 530 Leg.]

YEAS—48

Aiken	Hatfield	Pastore
Bayh	Hathaway	Pearson
Bellmon	Huddleston	Pell
Biden	Humphrey	Percy
Brooke	Inouye	Proxmire
Burdick	Jackson	Ribicoff
Cannon	Javits	Saxbe
Case	Kennedy	Schweiker
Church	Magnuson	Scott, Hugh
Clark	Mansfield	Stafford
Cranston	Mathias	Stevens
Eagleton	McIntyre	Stevenson
Gravel	Mondale	Taft
Hart	Moss	Tunney
Hartke	Muskie	Weicker
Haskell	Nelson	Williams

NAYS—40

Allen	Dole	Hruska
Bartlett	Domenici	Johnston
Beall	Dominick	Long
Bentsen	Eastland	McClellan
Bible	Ervin	Metcalf
Brock	Fannin	Nunn
Buckley	Fong	Randolph
Byrd, Harry F., Jr.	Fulbright	Roth
	Goldwater	Sparkman
Byrd, Robert C.	Griffin	Stennis
Chiles	Gurney	Talmadge
Cook	Hansen	Thurmond
Cotton	Helms	Tower
Curtis	Hollings	

NOT VOTING—12

Abourezk	McGee	Scott, William L.
Baker	McGovern	Symington
Bennett	Montoya	Young
Hughes	Packwood	
McClure		

So the motion to table Mr. HELMS' amendment (No. 741) was agreed to.

Mr. MAGNUSON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

At the appropriate place in the bill add a new section as follows:

SEC. —(a) Section 1631 (a) of the Social Security Act is amended by adding the following new subsection (G), "The Secretary may enter into arrangements with States under which such States will in emergency circumstances act as the Secretary's agent in making benefit payments under this Title. The cost of any such payments made by States under such arrangements shall be reimbursed by the Secretary."

(b) Subsection (a) of this section shall be effective January 1, 1974.

Mr. MAGNUSON. Mr. President, I can explain the amendment very briefly. The new supplemental security income program will be administered by the Federal Government and will replace the present State-administered programs of assistance to the aged, blind, and disabled. This new Federal program begins January 1. Under the old State-administered program, the States had the authority to make emergency payments to the aged, blind, and disabled when their checks were stolen or lost in the mails. My amendment will permit the States to make arrangements with HEW so that they can continue to make such emergency payments under the new Federal SSI program. Additionally, of course, it would authorize the Secretary to reimburse the States for such payments.

The need for this amendment is, I think, quite clear. For example, because of their low incomes, many of the aged, blind, and disabled live in areas characterized by high crime rates. Consequently, there is a very real problem with these persons' checks being stolen from their mailboxes.

When this occurs or when a check is delayed in the mail it is often nothing less than a catastrophe for many of these people who are completely dependent upon their Government checks to buy their groceries, pay their rent, and take care of the other basic necessities. In the past it has been possible for the States to make emergency payments to an aged, blind, or disabled person in these circumstances because the old assistance program was administered by the States.

It is important, I think, in launching this new federally administered program of assistance to the aged, blind, and disabled, that we continue to make it possible for the States in such emergency situations to immediately pay these people the money they must have to live. The bureaucracy can afford to wait while the stolen or lost checks are recovered or otherwise accounted for. But the aged, blind, or disabled recipient cannot wait.

I have been told by the Governor of my State that if this amendment becomes law he will immediately move to implement within Washington State the arrangements it authorizes for emergency payments. He also informs me that in his discussions with other Governors he has learned that the need for such a provision in the law is widely recognized and that he is confident it would be quickly implemented in other States as well.

Mr. President, in closing, I would note that this is a very simple way to make Government more responsive to the needs of its citizens and strongly urge its adoption by the Senate. I think this is an amendment that the Senator from Wisconsin and the Senator from Louisiana will accept.

Mr. NELSON. Mr. President, I think that this is a perfectly sound and needed amendment, and I am willing, therefore, to accept it.

Mr. CURTIS. Mr. President, it seems to me the amendment has merit. I have no objection to it. I would ask one question. The whole procedure is subject to the discretion of the Secretary, and he could work it out. Is that correct?

Mr. MAGNUSON. Yes.

Mr. CURTIS. In a way that will protect them.

Mr. MAGNUSON. Yes; all this does is to allow the Secretary to work this problem out with the States so that the aged, blind, or disabled recipient will not suffer if his check is lost or stolen.

Mr. CURTIS. And it has only to do with those people who are on the rolls to get a check and something happens to the check.

Mr. MAGNUSON. That is correct.

Mr. CURTIS. It does not affect the ability to place people on the rolls.

Mr. MAGNUSON. No.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Washington.

The amendment was agreed to.

AMENDMENT NO. 742

Mr. HELMS. Mr. President, I send to the desk an amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

AMENDMENT NO. 742

At the end of the bill add a new title as follows:

SEC. —. (a) The Food Stamp Act of 1964, as amended, is amended by inserting in section 5 thereof the following:

"(e) Notwithstanding any other provision of law, a household shall not participate in the food stamp program while its principal wage earner is, on account of a labor dispute to which he is a party or to which a labor organization of which he is a member is a party, on strike: *Provided*, That such ineligibility shall not apply to any household that was eligible for and participating in the food stamp program immediately prior to the start of such strike, dispute, or other similar action in which any member of such household engages: *Provided further*, That such ineligibility shall not apply to any household if any of its members is subject to an employer's lockout.".

(b) Section 3 of such Act is further amended by adding at the end thereof the following new subsections:

"(o) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"(p) The term 'strike' includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective-bargaining agreement).".

Mr. HELMS. Mr. President, I am going to be brief in discussing this amendment. Any delay in the vote will not be the responsibility of the Senator from North Carolina.

Here again we have a matter of policy which I think the Senate should confront. It is a matter of U.S. Government participation in labor strikes. I do not think the taxpayers should subsidize either side in a labor dispute.

This amendment simply provides that food stamps should not be made available to those who walk out willingly on their jobs.

I see my distinguished friend, the junior Senator from Minnesota, across the aisle. I anticipate a motion to table. I will simply say that any Senator who votes to table this amendment will, in effect, be voting to use tax funds for the provision of food stamps to people who deliberately and willingly walk out on their jobs, thereby requiring the taxpayers to finance, in part, a strike.

Mr. THURMOND. Mr. President, three times in the past 4 years I have introduced a bill which would prohibit food stamp distribution to a household where

the head of the household is engaged in a labor strike.

This bill was referred to committee, and the full Senate has not yet had an opportunity to vote on it.

Today I am pleased by the fact that Senator HELMS is offering an amendment, of which I am a cosponsor, to the social security amendments with the same objective in mind.

Mr. President, I do not believe that the majority of the people know that striking workers can receive food stamps. When our taxpayers realize this fact, they are outraged because their tax dollars are being used to help one side in a labor dispute.

To provide strikers with food stamps is to allow the Government to take sides in the dispute. This is not the purpose of the food stamp program. The purpose of the food stamp program is to assist those who are unable to work or to find employment and, therefore, cannot support their families. It should not be the purpose of the program to subsidize those who have jobs and are able to support their families.

The taxpayers bear the ultimate burden of financing this program. Tax dollars should not be spent on food stamps for those who voluntarily refuse to work, but should be used to help those who are genuinely in need.

Mr. President, the time has come to reevaluate our priorities in regard to the food stamp program. It is time that we in the Senate take a stand on this issue and I urge my colleagues to vote favorably on this long overdue measure.

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

Mr. THURMOND. I yield.

Mr. AIKEN. I was just wondering whether, if 52 percent of union members had voted to go on strike, and if 48 percent voted against going on strike, would that 48 percent be entitled to food stamps?

Mr. THURMOND. A man does not have to go out on strike unless he wants to. If he goes out on strike, he has a right to do so. If he does, I do not think he is entitled to food stamps.

Mr. AIKEN. Does the Senator mean that those who are opposed to the strike should not be entitled to food stamps?

Mr. THURMOND. If they participate in the strike.

Mr. HELMS. Mr. President, I ask unanimous consent that the distinguished Senators from Arizona (Mr. GOLDWATER and Mr. FANNIN) be added as cosponsors of my amendment.

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

Mr. HUMPHREY. Mr. President, since the distinguished Senator from North Carolina has mentioned my name, I may say that I am opposed to the amendment.

Mr. LONG. Mr. President, I have a great deal of sympathy for the amendment. I have voted for it on occasion. At a point where it appears that we have a chance to do something along the line the Senator is advocating, I expect to vote for it again.

But we have before us a bill that has a very decided prospect of a Presidential veto, as the bill now stands. I hope that we can lay before the President a bill that will contain items which have been agreed to by the Senate and the House by a vote of 70 or 80 percent, including a social security increase to help the poor beyond the point where the President is willing to go. So if we have to make efforts to override a veto, we will have a bill which we will be able to pass even over that veto.

With all of the things that are in the bill now, it would not take a great deal of dilatory tactics to prevent the bill from becoming law.

When we have a chance to pass a bill on the basis where we might get a clean vote on this issue, up or down, and where we may have some prospect of getting something, I will be willing to cooperate to help the Senate provide an answer, but for now we just would not achieve it. All we would do is defeat good provisions in the bill which deserve to become law between now and January 1.

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

Mr. LONG. I yield.

Mr. HUMPHREY. I think another point needs to be made, which the Senator from Vermont was attempting to make, and which he made very well; namely, that in some of these strike situations there are workers who are, in a sense, innocent victims. It is wrong to deny them, if want is there, of some provision for their care. After all, many times strikes take place when the vote to strike is not unanimous, but by the nature of the established labor law, those people have to go out on strike.

There are honest differences of opinion on this matter. I do not question anybody's motives. It just seems to me this question deserves special consideration and should not be attached to a bill which, as the Senator has said, is going to have as much trouble getting by as this.

Mr. LONG. If we resolve this issue, it will not be by the language of this amendment. It will be by something that will say that those who are actively engaged in a strike will be denied food stamps, but not those who are not crossing picket lines or those persons who, as the Senator suggests, have no involvement in the strike but are merely denied the opportunity to work because one union in an assembly line walks out on strike, with the result that, because one particular function is not being performed, there is no other work for anybody else.

This, in my judgment, is not the best amendment along that line. Even if it were. I would not be in a position to support it at this time. I would have to ask to keep it out of the bill, because I am satisfied that if we had the amendment in the best possible form the Senate could put it in after a great deal of consideration and modifications, we would still have an issue that would, in my judgment, make it impossible to take this bill to the President and make it law.

Knowing that we are being threatened by a veto because of some provisions in this bill which have passed the Senate by a vote of more than 90 percent from time to time, and which are likely to reach the President's desk, I do not want to see a lot of good things in this bill fail of enactment because we insist on adding to the bill an item that the President favors, but which would dictate that we could not override the President's veto.

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

Mr. LONG, I yield.

Mr. AIKEN. I would think that anything affecting food stamps would go before the Committee on Agriculture and Forestry. It has, anyway, in the last generation or so.

Mr. LONG. That is another problem we would have to contend with.

Mr. AIKEN. If it got to the House, it would be held to be nongermane. If we had anything in a bill affecting the food stamp law and it went to the House, it would be held to be nongermane over there and might be disastrous to the entire bill.

Mr. LONG. I thank the Senator. I think it might lead to the Agriculture Committee members in the House objecting to the bill going to conference, and, therefor, impeding the bill.

For those reasons, Mr. President, I move to lay the amendment on the table.

I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Louisiana to lay on the table the amendment of the Senator from North Carolina (No. 742). The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Iowa (Mr. HUGHES), the Senator from Wyoming (Mr. MCGEE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Mexico (Mr. MONTOYA), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I also announce that the Senator from Missouri (Mr. SYMINGTON) is absent because of illness.

I further announce that, if present and voting, the Senator from Wyoming (Mr. MCGEE) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Utah (Mr. BENNETT), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The Senator from Idaho (Mr. MCCLURE) and the Senator from Oregon (Mr. PACKWOOD) are absent on official business.

The result was announced—yeas 56, nays 32, as follows:

[No. 531 Leg.]

YEAS—56

Aiken	Hartke	Nelson
Bayh	Haskell	Pastore
Beall	Hatfield	Pearson
Bentsen	Hathaway	Pell
Bible	Huddleston	Percy
Biden	Humphrey	Proxmire
Brooke	Inouye	Randolph
Burdick	Jackson	Ribicoff
Byrd, Robert C.	Javits	Saxbe
Cannon	Johnston	Schweiker
Case	Kennedy	Scott, Hugh
Clark	Long	Sparkman
Cook	Magnuson	Stafford
Cranston	Mansfield	Stevens
Eagleton	Mathias	Stevenson
Fong	McIntyre	Taft
Fulbright	Mondale	Tunney
Gravel	Moss	Weicker
Hart	Muskie	

NAYS—32

Allen	Domenici	McClellan
Bartlett	Dominick	Metcalf
Bellmon	Eastland	Nunn
Brock	Ervin	Roth
Buckley	Fannin	Scott, William L.
Byrd, Harry F., Jr.	Goldwater	Stennis
Chiles	Griffin	Talmadge
Church	Gurney	Thurmond
Cotton	Hansen	Tower
Curtis	Helms	
Dole	Hollings	
	Hruska	

NOT VOTING—12

Abourezk	McClure	Packwood
Baker	McGee	Symington
Bennett	McGovern	Williams
Hughes	Montoya	Young

So the motion to table Mr. HELMS' amendment was agreed to.

AMENDMENT NO. 664

Mr. CHURCH. Mr. President, I call up amendment No. 664, and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The second assistant legislative clerk proceeded to read the amendment.

Mr. CHURCH. Mr. President, I ask unanimous consent that the clerk refrain from further reading of the amendment, and I shall explain it to the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment will be printed in the RECORD in full.

Mr. CHURCH's amendment (No. 664) is as follows:

On page 9 add the following at the end thereof:

SEC. . (a) Title XVIII of the Social Security Act is amended by adding at the end thereof the following new section:

"SEC. 1880. (a) Nothing in this title shall be construed to require—

"(1) any individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions; or

"(2) any provider of services to—

"(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or

"(B) provide any personnel for the performance of assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedure or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

"(b) No provider of services which receives any payment under this title may—

"(1) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

"(2) discriminate in the extension of staff or other privileges to any physician or other health care personnel, because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.

"(c) The amendments made by this section shall be effective on the first day of the month following the month in which this Act is enacted.".

(b) Title XIX of the Social Security Act is amended by adding at the end thereof the following new section:

"SEC. 1911. (a) Nothing in this title shall be construed to require—

"(1) any individual to perform or assist in the performance of any sterilization procedure or abortion in his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions; or

"(2) any agency, institution, or facility to—

"(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or

"(B) provide any personnel for the performance or assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedure or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

"(b) No agency, institution, or facility which receives any payment under this title may—

"(1) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

"(2) discriminate in the extension of staff or other privileges to any physician or other health care personnel, because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.

"(c) The amendments made by this section shall be effective on the first day of the month following the month in which this Act is enacted.".

Mr. CHURCH. Mr. President, earlier this month I announced my intention to offer this amendment to the pending bill. It would provide that medical personnel, who by participation in the medicare and medicaid programs are recipients of Federal funds, shall not be required, on the basis of this aid, to participate in the performance of sterilization or abortion procedures if such procedures are in violation of that individual's religious beliefs or moral convictions.

With only technical modifications, this is the same provision adopted overwhelmingly by Congress as title IV of S. 1136, the omnibus health bill, subsequently signed into law—Public Law 93-45. When I originally authored the "conscience clause," the language was such that it applied to recipients of aid under all Federal health programs. It was in this form that it originally passed the Senate last March. However, the germaneness rules in the House of Representatives dictated that this provision could only apply to those programs specifically authorized by S. 1136—the Public Health Service Act, and the Community Mental Health Centers Act—and today these are the only programs which fall within the reach of the law.

I indicated at the time of final passage of the omnibus health bill my intentions to find an appropriate vehicle for the extension of similar protection to doctors and other medical personnel who receive Federal assistance through their participation in medicare and medicaid programs. Because of its technical nature, H.R. 3153 is the most appropriate vehicle to accomplish this purpose. I think it is the general consensus of the Members of Congress that this recent enactment of law was not intended to be discriminatory, and that this protection should be extended to providers of medicare and medicaid services.

When I initially authored the "conscience clause" last spring, I cited a case, Taylor against St. Vincent's Hospital, whereby a Federal district court in Montana had issued a temporary injuction compelling a Catholic hospital, contrary to Catholic beliefs, to allow its facilities to be used for a sterilization operation. The district court based its jurisdiction upon the fact that the hospital had received Hill-Burton funds. On October 26, 1973, the Federal district court reversed their previous decision and ordered that the preliminary injunctive relief issued by the court be dissolved. In this decision, the court based ther decision on the provisions of Public Law 93-45, 87 statute 91, section 401(b)—the conscience clause provision of the Public Health Service Act.

Mr. President, I ask unanimous consent that the court opinion and order be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. CHURCH. I also call to the attention of my colleagues the case of Watkins against Mercy Medical Center, and ask unanimous consent that the court's memorandum in that case be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. CHURCH. In this case, a U.S. district judge for the State of Idaho, ruled, partially on the provisions of Public Law 93-45, 87 statute 91, section 401(b), that a hospital did not have to reinstate the staff privileges of a doctor who refused to comply with the medical code of a Catholic hospital which had in previous years received Federal aid. It was the consensus of the court that this statute prohibits any court from finding State action on the part of a hospital which receives Hill-Burton funds and using that finding as a basis for requiring the hospital to make its facilities available for the performance of sterilization procedures or abortions.

I am pleased that Senators DOMENICI, EASTLAND, BUCKLEY, EAGLETON, BIBLE and PROXMIRE have asked to join as cosponsors of my amendment, No. 664, to the social security amendments, and I ask that the record so indicate. This amendment is necessary if we are to protect the religious beliefs of all health care personnel who receive Federal assistance, and I urge my colleagues to act favorably to extend this protection to those personnel who receive Federal assistance through their participation in medicare and medicaid programs.

Mr. President, I hope the distinguished

manager of the bill will see fit to accept the amendment. In view of the fact that it is with a few technical changes identical to the earlier amendment that was overwhelmingly passed by the Senate and is now the law, and consistent with that earlier judgment reached by the Senate, I would hope the distinguished Senator from Wisconsin would find it possible to accept the amendment.

Mr. NELSON. Mr. President, we are prepared to accept the amendment.

Mr. CHURCH. Mr. President, the distinguished senior Senator from Delaware (Mr. ROTH) has asked that his name also be added as a cosponsor of this amendment.

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

The question is on agreeing to the amendment (No. 664) of the Senator from Idaho.

The amendment was agreed to.

EXHIBIT 1

[In the U.S. District Court for the District of Montana, Civil No. 1090]

OPINION AND ORDER

(James Michael Taylor and Gloria Jeane Taylor, husband and wife, on Behalf of themselves, individually, and on behalf of others who may be members of a class of persons similarly situated, Plaintiffs, versus St. Vincent's Hospital, a Montana Corporation, Defendant)

The parties have agreed that the court may render a decision in this cause without a trial, based upon the stipulated facts which appear in the court's final pre-trial order. Those pertinent facts may be summarized as follows:

St. Vincent's Hospital is a private corporation which operates a hospital facility in Billings, Montana, known as St. Vincent's Hospital. It has done so since May 1, 1972, when it took over the operation of the hospital from the Sisters of Charity of Leavenworth, also a private corporation, whose members are all members of a religious order of that name. The physical facilities of St. Vincent's Hospital are now and at all times material in this case have been owned by the Sisters of Charity of Leavenworth, a corporation.

As a private, charitable, non-profit corporation, St. Vincent's Hospital received certain tax benefits from the State of Montana. The Sisters of Charity of Leavenworth, a corporation, when it operated St. Vincent's Hospital, also applied for and received funds under the Hill-Burton Act (42 U.S.C. §§ 291–291(c)) during the years 1956 through 1963.

Tubal ligation as a sterilization procedure had not, prior to the preliminary injunction issued by this court in this cause, been performed at St. Vincent's Hospital because of the interpretation placed upon the publication entitled "Ethical and Religious Directives for Catholic Hospitals" which is incorporated by reference in the By-laws of the medical staff of St. Vincent's Hospital. The Bishop of Eastern Montana of the Roman Catholic Church has the responsibility to interpret the directives for members of the Church of Eastern Montana, including members of the congregation of the Sisters of Charity of Leavenworth who are on the Board of Directors or are employed at St. Vincent's Hospital. The preamble in the "Ethical and Religious Directives" makes it clear that they are based upon moral convictions.

St. Vincent's Hospital and Billings Deaconess Hospital are the only hospitals in Billings, Montana. In June, 1972, the maternity departments of the two hospitals were combined in St. Vincent's Hospital, and an intensive care nursery was constructed in St. Vincent's Hospital in order to reduce infant mortality in the community and to reduce the cost to the community of duplicated maternity services. Prior to approving consolidation of maternity services at St. Vincent's Hospital, the Trustees of Sisters of Charity of Leavenworth advised local obstetricians and trustees of the Billings Deaconess Hospital that surgical sterilizations would not be allowed at St. Vincent's Hospital. The consolidations was completed and the combined maternity department with intensive care facilities opened in June, 1972.

The plaintiffs, James and Gloria Taylor, are a married couple who were expecting a second child to be delivered by Caesarian section on October 31, 1972. The couple decided that they wished Mrs. Taylor to be sterilized by tubal ligation at the time of the Caesarian section and requested permission of St. Vincent's Hospital for the procedure. Permission was denied.

Plaintiffs allege in their complaint that the defendant in refusing to permit Mrs. Taylor to undergo a tubal ligation at the time of her Caesarian delivery infringed certain rights guaranteed to the plaintiff by the United States Constitution. The plaintiffs further allege that the infringement was committed under color of state law. The prayer asked for injunctive relief, not only for the Taylors, but also for "other persons similiarly situated in the State of Montana."

The plaintiffs seek to invoke the jurisdiction of this court under the provisions of 42 U.S.C. § 1983 and 28 U.S.C. § 1343. 42 U.S.C. § 1983 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."

28 U.S.C. § 1343 reads in pertinent part:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: * * *

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; * * *."

Essential to the plaintiffs' invocation of jurisdiction in this cause is that the defendant, in its alleged violation of the plaintiffs' constitutional rights, acted under color of state law. The plaintiffs' assertion that the defendant is acting under the color of state law is grounded primarily on the fact that Hill-Burton grants have been used to defray a portion of the cost of hospital remodeling and construction over the years. In fact, this court, in its order dated October 27, 1972, found jurisdiction in this cause because of the receipt of such funds by the defendant.

However, on June 18, 1973, the President signed into law the Health Programs Extension Act of 1973. Title IV, Section 401, of that Act, provides in part:

"(b) The receipt of any grant, contract, loan or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act, by any individual or entity does not authorize any court or any public official or other public authority to require— * * *

"(2) such entity to—

"(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facility is prohibited by the entity on the basis of religious beliefs or moral conviction. . . ."

Public Law 93–45, 87 Stat. 91, Section 401(b). By its plain language, this Act prohibits any court from finding that a hospital which receives Hill-Burton funds, is acting under color of state law. The above sections were specifically aimed at such a result as evidenced by the legislative history.[1]

In a recent memorandum filed in this action, the plaintiffs attack the Constitutionality of Section 401(b). Specifically, the plaintiffs launch a direct attack upon this section as being contrary to the establishment clause of the First Amendment. However, the question of the Constitutionality of that section is not before this court. Furthermore, the case law relied upon by plaintiffs relates to parochial schools and is distinguishable from the instant case.

Nor does Section 401(b) present any question of retroactive application. It simply limits the remedies the court may grant. It can only affect pending and future court proceedings and does not purport to affect cases in which judgments have become final. Moreover, there is nothing in Section 401(b) to suggest that it applies only in situations where receipt of the public fund occurred after the effective date of the Act. To apply Section 401(b) in such a way would produce the bizarre result that hospitals which have received Hill-Burton funds prior to June 18, 1973, could be forced to permit sterilizations, while those which received such funds after June 18, 1973, could not. This was not the Congressional intent.

Furthermore, there can be no doubt that

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[1] See H.R. No. 93–227; 1973 U.S.C.C. & A.N. 1553. The latter includes the following language:

"The background for subsection (b) of section 401 of the bill is an injunction issued in November 1972 by the United States District Court for the District of Montana in *Taylor* v. *St. Vincents Hospital*. The court enjoined St. Vincents Hospital, located in Billings, Montana, from prohibiting Mrs. Taylor's physician from performing in that hospital a sterilization procedure on her during the delivery of her baby by Caesarian section.

"The suit to enjoin the hospital was brought under 42 U.S.C. 1983 (which authorizes civil actions for redress of deprivation of civil rights by a person acting under color of law) and 28 U.S.C. 1343 (which grants United States district courts jurisdiction of actions (authorized by another law) to redress deprivation, under color of any State law, of a Constitutional right). In ruling on a motion to dismiss for lack of jurisdiction, the court stated that 'the fact that the defendant [St. Vincents Hospital] is the beneficiary of the receipt of Hill-Burton Act [title VI of the Public Health Service Act] funds is alone sufficient to support an assumption of jurisdiction. . . .' The court also found two other factors (state licensing and tax immunity) that established a connection between the hospital and the State sufficient to support jurisdiction.

"Subsection (b) of 401 would prohibit a court or a public official, such as the Secretary of Health, Education, and Welfare, from using receipt of assistance under the three laws amended by the bill (the Public Health Service Act, the Community Mental Health Centers Act, and the Developmental Disabilities Services and Facilities Construction Act) as a basis for requiring an individual or institution to perform or assist in the performance of sterilization procedures or abortions, if such action would be contrary to religious beliefs or moral conviction.

"In recommending the enactment of this provision, the Committee expresses no opinion as to the validity of the *Taylor* decision."

Section 401(b) which restricts the course and power of inferior federal courts is a valid exercise of Congressional power. Under Article III of the Constitution, Congress can establish such inferior courts as it chooses. Its power to create those courts includes the power to invest them with such jurisdiction as it deems appropriate for the public. *Lockerty* v. *Phillips*, 319 U.S. 182, 187 (1943). Further, Congress is free to legislate with respect to remedies the inferior Federal courts may grant. *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 240 (1937).

For the foregoing reasons, it is hereby ordered that the plaintiffs be denied all relief.

It is further ordered that the preliminary injunctive relief issued by this court on October 27, 1972, is dissolved.

The Clerk of this court is directed to enter judgment accordingly.

Done and dated this 26th day of October, 1973.

EXHIBIT 2

[In the U.S. District Court for the District of Idaho, Civil No. 1-73-17]

MEMORANDUM DECISION AND ORDER

(Wilfred E. Watkins, M.D., plaintiff, versus Mercy Medical Center, et al., defendants)

The plaintiff brought this action for injunctive and compensatory relief against the defendant hospital and its Board of Directors, contending that he had been denied medical staff privileges for failure to agree to, or abide by, the ethical or religious directives under the Code of Ethics for Catholic Hospitals as required by the application of any physician for staff privileges within the hospital, and that such a denial was a violation of his right to freedom of religion and due process of law. Recent congressional action concerning the subject matter of this suit and review of the evidence herein viewed in the light thereof convinces the Court that the plaintiff's claim is without merit.

Briefly, the facts as stipulated are that Dr. Watkins was denied reappointment to the medical staff at Mercy Hospital Center for failure to submit a proper application, reappointment to the staff coming on an annual basis. In his application of December 1, 1973, Dr. Watkins wrote an exclusion to his agreement to abide by the By-Laws of the Medical Staff of Mercy Medical Center so as to exclude the Ethical and Religious Directives for Catholic Health Care Facilities. Upon review by the Credentials Committee and the Executive Committee of the Medical Staff and the hospital Board of Directors, his application was rejected.

Dr. Watkins resubmitted an identical application which was also rejected for his refusal to comply with the Ethical and Religious Directives. His staff privileges thereafter expired on February 1, 1973. Dr. Watkins refused to comply with or agree to the Ethical and Religious Directives because they prohibit staff physicians from performing voluntary or involuntary vasectomies or other sterilization or abortion operations in a hospital setting. These procedures are prohibited solely for religious reasons as the hospital is financed and operated almost entirely by the Catholic Church.

On the record it is admitted that Dr. Watkins is in all other respects, training, experience and ethically, qualified for staff priviliges. It should be noted that there are approximately 5 hospitals within 50 miles of the Mercy Hospital which do permit all of the procedures under discussion here. Dr. Watkins, therefore, submits that his dismissal for failure to agree to or comply with the directives denies him of his own religious beliefs and his right to practice medicine without due process of law and he requests injunctive relief reinstating his staff privileges, as well as praying for general damages of $100,000.00.

The meagre evidence adduced by Dr. Watkins would not support any monetary relief against defandants.

Dr. Watkins has alleged jurisdiction in this Court to hear this matter on the basis of 28 U.S.C. § 1343(3),[1] contending defendants have deprived him of his constitutional rights in violation of 42 U.S.C. § 1983,[2] and also alleged jurisdiction under 28 U.S.C. § 1331[3] and 42 U.S.C. § 2000d.[4] For reasons more fully developed in this opinion, this Court feels Dr. Watkins is not entitled to the relief which he requests.

In order to state a claim for relief under 42 U.S.C. § 1983, it must be shown that Mercy Medical Center and its Board of Directors were acting under color of State law when they denied Dr. Watkins staff privileges. In other words, it must be determined that the enforcement of the hospital's rule requiring conformity by the medical staff to the directives which prohibit contraceptive procedures was an act done under color of State law. Since the hospital itself is otherwise a private hospital and not owned or operated by any arm of the state, the only means by which it could be said to act under color of law is if the hospital is sufficiently affected by state law and regulation and administration of federal funds by the state as to be considered acting under color of law.

Mercy Medical Center was constructed with the help of Federal Hill-Burton Act funds.[5] It has been held that hospitals which receive Hill-Burton funds are affected with state action. *Sams v. Ohio Valley General Hospital Association*, 413 F. 2d 826 (4th Cir. 1969); *Citta v. Delaware Valley Hospital*, 313 F. Supp. 301 (D.C. Penn. 1970); *Taylor v. St. Vincent's Hospital*, Civ. No. 1090, D.C. Mont., Oct. 31, 1972. However, recent congressional action has effectively revoked the ability of a court to find state action on the part of a hospital which receives Hill-Burton Act funds.

On June 18, 1973, the President signed into law the Health Programs Extension Act of 1973. Title IV, Sec. 401 of that Act, provides in part:

"(b) The receipt of any grant, contract, loan or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act by any individual or entity does not authorize any court or any public official or other public authority to require—

"(2) such entity to—

"(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions. . . ." P.L. 93-45; 87 Stat. 91, § 401(b).

By its plain language this Act prohibits any court from finding state action on the part of a hospital which receives Hill-Burton funds and using that finding as a basis for requiring the hospital to make its facilities available for the performance of sterilization procedures or abortions. The above sections were specifically aimed at such a result as evidenced by the legislative history. See H.R. No. 93-227; 1973 U.S. Code Congressional and Administrative News, 1553 and 1557.[6]

In essence, what Dr. Watkins has asked this Court to do is require Mercy Medical Center to make its facilities available for the performance of sterilization procedures by way of requiring his reinstatement to the medical staff. The above language of the Health Programs Extension Act of 1973 clearly prohibits such a course of action.

Neither does the fact that Mercy Medical Center receives tax exempt status from the state, is licensed by the state and applies for and receives state and federal monies under the Medicare and Medicaid programs, support a finding that the hospital is sufficiently clothed with state control so as to be acting under color of state law. The state has exacted no conditions upon the hospital concerning sterilization or abortion in order to receive tax benefits or state or federal money.

The state regulations which the hospital must conform to in no way relate to its policy concerning sterilization or abortions. Since hospital policy is not and has not been affected by the benefits bestowed upon it by the state, defendants were not acting under color of state law when the policy was formulated or enforced. *Doe v. Bellin*, F. 2d (9th Cir. 1973); *Ham v. Holy Rosary Hospital*, U.S.D.C., Mont. Dec. 20, 1972, No. 1103, There-

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[1] "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

[2] "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."

[3] (a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

[4] No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

[5] Title IV of the Public Health Services Act; 42 U.S.C. § 291 et seq.

[6] The "Purpose of Proposed Legislation." p. 1553, dealing with the "conscience amendment" to the Health Programs Extension Act of 1973, speaks directly to the point:

"The background for subsection (b) of section 401 of the bill is an injunction issued in November 1972 by the United States District Court for the District of Montana in *Taylor* v. *St. Vincents Hospital*. The court enjoined St. Vincents Hospital, located in Billings, Montana, from prohibiting Mrs. Taylor's physician from performing in that hospital a sterilization procedure on her during the delivery of her baby by Caesarian section.

"The suit to enjoin the hospital was brought under 42 U.S.C. 1983 (which authorizes civil actions for redress of deprivation of civil rights by a person acting under color of law) and 28 U.S.C. 1343 (which grants United States district courts jurisdiction of actions (authorized by another law) to redress deprivation, under color of any State law, of a Constitutional right). In ruling on a motion to dismiss for lack of jurisdiction, the court stated that 'the fact that the defendant [St. Vincents Hospital] is the beneficiary of the receipt of Hill-Burton Act [title VI of the Public Health Service Act] funds is alone sufficient to support an assumption of jurisdiction. . . .' The court also found two other factors (state licensing and tax immunity) that established a connection

fore, Dr. Watkins has not stated a claim for relief under 42 U.S.C. § 1983. *Chism v. Price*, 457 F. 2d 1037 (9th Cir. 1972).

However, despite supporting a finding that defendants were not acting under color of state law, the Health Programs Extension Act is not without the characteristics of a double-edged sword. Title IV of the Act further provides that:

"(c) No entity which receives a grant, contract, loan or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Services and Facilities Construction Act after the date of enactment of this Act may— . . .

"(2) discriminate in the extension of staff or other privileges to any physician or other health care personnel, because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions respecting sterilization procedures or abortions." P.L. 93–45; 87 Stat. 91, § 401 (c).

Congress has taken the position that the fact a hospital receives Hill-Burton funds does not authorize a finding that the hospital acts under color of state law as a basis for requiring it to make its facilities available for the performance of sterilization procedures or abortions if the hospital declines for religious or moral reasons. But, at the same time, the hospital cannot discharge a staff member who religiously or morally believes that such services should be performed. The legislation is aimed at protecting the religious rights of both the hospital and the individual. The hospital can prohibit its staff from performing sterilization procedures or abortions in the hospital, but it cannot require its staff to adhere to the religious or moral beliefs which support the hospital's policy as a condition of employment or extension of privileges.

In this case Mercy Medical Center, by way of its application for staff privileges, was requiring Dr. Watkins to agree not to perform sterilization services in the hospital. The hospital was not trying to require Dr. Watkins to adopt their religious beliefs, for he is free to believe that sterilization services should be offered and performed, but the hospital also has the right to believe that such services should not be performed and the right to prohibit the use of its facilities for those purposes.

By similar analysis, Dr. Watkins' general constitutional claim that defendants have violated his First and Fourteenth Amendment rights is without merit. It is unquestioned that the prohibition against the establishment of, or prevention of, the free exercise of religion is wholly applicable to the states through the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U.S. 296, 84 L. Ed. 1213, 60 S. Ct. 900 (1940); *Cruz v. Beto*, 405 U.S. 319, 31 L. Ed. 2d 263, 92 S. Ct. 1079 (1972).

But in order to support a claim that Dr. Watkins has been denied the right to freely exercise his religious beliefs or that he had been denied due process of law, he must show some significant state involvement in the activity that allegedly has violated his rights. *U.S. v. Price*, 383 U.S. 787, 16 L. Ed 2d 267, 86 S. Ct. 1152 (1966); *Martin v. Pacific Northwest Bell Tel. Co.*, 441 F. 2d 1116 (9th Cir. 1971). For the reasons previously stated in this opinion, the Court is of the belief that there was not state action in this matter.

Plaintiff's claim under 42 U.S.C. § 2000d is without merit also. Assuming that Dr. Watkins was discriminated against on the basis of his religious beliefs, that section speaks only in terms of racial discrimination.

In conclusion, even assuming the requisite state action in this matter to support a claim for relief under 42 U.S.C. § 1983 or the Fourteenth Amendment, the Court feels it must emphasize that Mercy Medical Center has the right to adhere to its own religious beliefs and not be forced to make its facilities available for services which it finds repugnant to those beliefs. The hospital cannot discriminate against those who believe otherwise, but it can set up reasonable safeguards to insure that others do not use their facilities for services which the hospital does not religiously believe should be offered. Dr. Watkins is free to believe that sterilization services should be provided for the public and to perform them anywhere he is able. However, he cannot force Mercy Medical Center to allow him to perform them in its hospital. To hold otherwise would violate the religious rights of the hospital.

It is, therefore, ordered that the plaintiff's request for both preliminary and permanent injunction against defendants be, and the same is hereby, DENIED, and that the plaintiff take nothing by his complaint against the defendants. No costs are allowed.

If counsel so stipulate in writing filed with the Clerk, this Memorandum shall constitute the Findings of Fact and Conclusions of Law and defendants' counsel will submit an appropriate proposed judgment. If not so agreed, defendants' counsel will make the submissions required by Local Rule 18.

Dated this 30th day of July, 1973.

J. BLAINE ANDERSON,
U.S. District Judge.

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between the hospital and the State sufficient to support jurisdiction.

"Subsection (b) of 401 would prohibit a court or a public official, such as the Secretary of Health, Education, and Welfare, from using receipt of assistance under the three laws amended by the bill (the Public Health Service Act, the Community Mental Health Centers Act, and the Developmental Disabilities Services and Facilities Construction Act) as a basis for requiring an individual or institution to perform or assist in the performance of sterilization procedures or abortions, if such action would be contrary to religious beliefs or moral conviction.

"In recommending the enactment of this provision, the Committee expresses no opinion as to the validity of the *Taylor* decision."

The "Section-by-Section Analysis" under the item "Miscellaneous, p. 1557–58, succinctly states congressional purpose as follows:

"In addition, section 401 of the bill provides that receipt of financial assistance under any of the aforementioned Acts does not constitute legal basis for a judicial or administrative order requiring an individual to aid in performing a sterilization or abortion, if such activity is contrary to the individual's religious or moral beliefs. Nor does receipt of financial assistance provide legal authority for a judicial or administrative order requiring the provision of personnel or facilities by any entity for the performance of sterilization or abortion, if such activity is contrary to the religious or moral beliefs of the personnel or prohibited by the entity for religious or moral reasons."

AMENDMENT NO. 701

Mr. CHURCH. Mr. President, I call up my Amendment No. 701 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk proceeded to read the amendment.

Mr. CHURCH. Mr. President, I ask unanimous consent that the clerk be permitted not to read the entire text of the amendment, and I shall explain its purpose to the Senate.

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

Mr. CHURCH's amendment (No. 701) is as follows:

At the appropriate place in the bill, insert the following new section:

LIBERALIZATION OF MEDICARE LIFETIME RESERVE

SEC. . (A) Section 1812 of the Social Security Act is amended—

(1) by striking out "150" in subsection (a)(1) and inserting in lieu thereof "210";

(2) by striking out "150" in subsection (b)(1) and inserting in lieu thereof "210"; and

(3) by striking out "150-day" in subsection (c) and inserting in lieu thereof "210-day".

(b) The last sentence of section 1813 (a)(1) of the Social Security Act is amended to read as follows: "Such amount shall be further reduced by a coinsurance amount equal to one-fourth of the inpatient hospital deductible for each day (before the day following the last day for which such individual is entitled under section 1812(a)(1) to have payment made on his behalf for inpatient hospital services during such spell of illness) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 60 days during such spell, except that the reduction under this sentence for any day shall not exceed the charges imposed for that day with respect to such individual for such services (and for this purpose, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed).".

(c) The changes made by this section shall become effective January 1, 1974.

Mr. CHURCH. Mr. President, in connection with this amendment, I ask unanimous consent that Mr. David Affeldt, the Chief Counsel for the Select Committee on Aging, and Mr. Glenn Markus of the Congressional Research Service, be permitted to be present on the floor to provide technical assistance during the consideration of the amendment.

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

Mr. CHURCH. Mr. President, this amendment is designed to accomplish two objectives. First, it would increase the medicare lifetime reserve from 60 to 120 days.

Second, it would reduce the daily rate of coinsurance now applicable to medicare lifetime reserve days to one-fourth—rather than one-half as under present law—of the inpatient hospital deductible. As things now stand, the daily coinsurance charge is $36 for individuals who must draw upon their lifetime reserve. For 1974 this amount is scheduled to increase to $42. If my amendment is adopted, the daily coinsurance rate would be reduced to $21.

My amendment is based upon the recommendations of the highly respected 1971 Advisory Council on Social Security.

Under present law, medicare pays for up to 90 days of hospitalization during each benefit period. For the first 60 days, the hospital insurance part of the program pays for all covered services, except for the initial $72 which is charged to the patient. From the 61st through the 90th day, the medicare beneficiary has a daily coinsurance charge equal to one-fourth of the inpatient hospital deducti-

ble. At present, this amounts to $18 per day.

In addition, there is a 60-day lifetime reserve for individuals who require more than 90 days of hospitalization in a particular benefit period. As I indicated earlier, this daily coinsurance amount is equivalent to one-half of the part A deductible.

These measures undoubtedly will provide valuable protection for the 5.5 million medicare beneficiaries who are expected to be hospitalized in 1974. But I strongly believe that further improvements are essential to guard against the ruinous cost of an illness requiring prolonged institutionalization.

To my way of thinking, the aged and disabled—as well as their families—deserve strengthened protection against these potentially catastrophic expenditures, which can in a matter of weeks or months obliterate a lifetime of savings, hard work, and diligence.

Unfortunately illness strikes with far greater frequency and severity at a time in life when those affected can least afford it.

This is especially true in the case of hospitalization. As of 1972 there were nearly 12 million medicare beneficiaries who had been hospitalized since the program began. More than 130,000 of these individuals were forced to draw upon their lifetime reserve after exhausting the 90 days of covered care regularly available during a benefit period. Of this total, 25,000—or 19 percent— exhausted their lifetime reserve.

These individuals, it should be pointed out, have typically incurred several thousand dollars in hospital bills, much of which has been paid from their own resources. The harsh reality is that the threat of bankruptcy by hospitalization is all too real for aged and disabled Americans confronted with lengthy institutionalization. And all too often, these are the individuals who can least afford it.

But my amendment would provide a constructive means for improving medicare coverage for these persons. First, it would increase from 150 to 210 days the number of covered hospital days under medicare for individuals who are determined to require this care. Second, by reducing the coinsurance charge from one-half to one-fourth of the hospital deductible, major savings could be provided for persons who must utilize their lifetime reserve. In some cases, this amount could exceed $1,000.

During the past Congress, the House and Senate approved a portion of my amendment. For example, the House-passed version of H.R. 1—which ultimately became the 1972 Social Security Amendments—would have increased the medicare lifetime reserve from 60 to 120 days. Moreover, the House bill would have established a daily coinsurance amount equal to one-eighth of the inpatient hospital deductible for persons hospitalized from 31 to 60 days.

This latter provision was later deleted by the Finance Committee. But on the other hand, the Finance Committee proposed to reduce the coinsurance amount applicable to the lifetime reserve from one-half to one-fourth of the hospitalization deductible.

In conference committee, all three provisions were eliminated.

So, in one form or another, either the Senate or the House has put its stamp of approval on the provisions of this amendment.

Today many Americans believe that medicare pays for almost all of the hospital and medical bills of the aged and disabled. But they should know better.

In fact, medicare covers only about 42 percent of their health care expenditures. Major gaps in coverage still exist, and must be closed.

Quite clearly, economic security in retirement can never be fully attained until we come to grips with some of the costly drains upon their limited incomes, such as the high and potentially ruinous cost of hospitalization for extended periods.

Mr. President, I urge adoption of my amendment.

In that connection, I ask that, in addition to the names of Senators CLARK, WILLIAMS, MCGOVERN, ABOUREZK, RIBICOFF, HART, MCGEE, HUMPHREY, MOSS, BAYH, and PELL, Senators METCALF, TUNNEY, and JAVITS be added as cosponsors of this amendment.

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

Mr. NELSON. Mr. President, one-half of the proposal just made by the Senator from Idaho was passed last year. The House conference, as the Senator may recall, declined to accept it.

I think it is a meritorious proposal, although I understand it will cost about $75 million, but I am prepared to accept the amendment.

Mr. CHURCH. I thank the Senator very much. I just point out that though the cost would be approximately $75 million, it is also true that the present hospital insurance trust fund is sufficiently large to accommodate the increased costs without any addition to the tax. That is still another good reason that this amendment should be retained in the final version of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Idaho.

The amendment was agreed to.

AMENDMENT NO. 727

Mr. EAGLETON. Mr. President, I call up my amendment No. 727 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

At the end of part H of title 5 of the bill, insert the following new section:

DEFINITION OF "SPELL OF ILLNESS" UNDER MEDICARE

SEC. . (a) Section 1861(a)(2) of the Social Security Act is amended to read as follows:

"(2) ending with the close of—

"(A) the first period of sixty consecutive days thereafter on each of which he is neither (i) an inpatient of a hospital nor (ii) an inpatient of a skilled nursing facility, or

"(B) in the case such individual meets the condition imposed by subparagraph (A)(i) but does not meet the condition imposed by subparagraph (A)(ii), the first period of one hundred and eighty consecutive days thereafter on each of which—

"(i) he is an inpatient of a skilled nursing facility,

"(ii) receives neither (I) skilled nursing care and related services (as described in subsection (j)(1)(A)), nor (II) rehabilitation services (as described in subsection (j)(1)(B)), and

"(iii) such facility is not receiving payment for skilled nursing services provided to such individual under a State plan approved under title XIX.".

(b) The amendments made by this section shall be applicable in the case of determinations under title XVIII of the Social Security Act, with respect to the ending of any spell of illness, made after the date of enactment of this Act; except that no spell of illness shall, by reason of such amendments, be determined to have ended prior to the date of enactment of this Act.

Mr. EAGLETON. Mr. President, this amendment is designed to enable elderly persons residing in nursing homes to break the medicare "spell of illness" or benefit period and renew their eligibility for hospital insurance benefits.

Under the part A hospital insurance program, limited hospital, extended care, and home health benefits are available during a single "spell of illness." When those benefits are exhausted, no further benefits are available until there is a new benefit period. The "spell of illness" concept springs from the basic intent of medicare to provide protection against health care costs associated with relatively short-term acute illnesses.

Under current law, a benefit period is ended with the close of the first period of 60 consecutive days on each of which the individual "is neither an inpatient of a hospital nor an inpatient of a skilled nursing facility."

For purposes of this section of the law, a skilled nursing facility is defined as an institution which "is primarily engaged in providing to inpatients (A) skilled nursing care and related services for patients who require medical or nursing care, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons."

The result of the law is that a person who resides in a skilled nursing facility, even though he or she is receiving a level of care lower than skilled nursing, is unable to break a benefit period.

The situation was summarized very succinctly in a letter to me of April 20, 1972, from then Commissioner of Social Security Ball:

> Once a person has used up his benefit days, he cannot begin a new benefit period until he has not been an inpatient of any hospital or any institution that is primarily engaged in providing skilled nursing care for 60 consecutive days—whether or not the institution is participating in the Medicare program and regardless of the level of care he is receiving.

As we all know, many elderly people must spend their last years in a nursing home, not because they require skilled nursing care, but simply because they are no longer able to care for themselves in their own homes and a nursing home is the only available alternative. For these people the nursing home is not a medical institution but a substitute home.

Yet if the institution in which they

reside is determined to be a skilled nursing facility, they are denied the medicare benefits available to persons fortunate enough to be able to remain in their own homes.

When this matter came to the attention of the Congress in 1967, it was thought that the provision of 60 lifetime reserve hospital benefit days would solve the problem.

However, in my judgment this has not proved to be an adequate and equitable solution.

In the first place, the copayment for lifetime reserve days is now $36 per day—a considerable burden on many elderly people. If the proposal by the Senator from Maine (Mr. MUSKIE) to freeze the hospital deductible for 1 year is not enacted into law, that copayment will rise to $42 per day in 1974.

Second, even those lifetime reserve days may be exhausted. In the last year, at least two instances have come to my attention of nursing home residents who have used both the hospital care available during a single benefit period and the 60 lifetime reserve days. These people, who will be confined to nursing homes for the remainder of their days, will have no further hospital insurance benefits under medicare.

It is my understanding that the law is written as it is because there is concern that if a benefit period could be broken in the case of a nursing home resident by a 60-day period during which he or she was certified as receiving a level of care lower than skilled nursing the result would be an artificial shifting of patients back and forth between levels of care for the purpose of qualifying them for additional medicare benefits.

Whether or not this could or would happen, I do not know. But I believe the answer is not to deny all nursing home residents the opportunity to renew their eligibility for hospital insurance benefits but to devise an adequate test for determining whether a person is actually receiving long-term personal or custodial care as opposed to skilled nursing care.

Therefore, my amendment provides that a person residing in a skilled nursing facility may end a spell of illness with the close of the first period of 180 consecutive days on each of which he was receiving neither skilled nursing care nor rehabilitation services and the nursing home was not receiving payment for skilled nursing services provided him under the State's medicaid program.

My amendment, I want to make clear, is not designed to provide medicare coverage for long-term custodial care. Under current law reimbursement for such care is specifically excluded.

My amendment is designed simply to enable persons who require personal or custodial care to have the same medicare benefits that are available to others.

I urge the adoption of this amendment.

Mr. NELSON. Mr. President, I do not have any objection to the amendment. The objective is sound. I am prepared to accept it.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 727 of the Senator from Missouri.

The amendment was agreed to.

AMENDMENT NO. 722 AS MODIFIED

Mr. EAGLETON. Mr. President, I call up an additional amendment No. 722, and ask that it be stated.

The PRESIDING OFFICER. The amendment (No. 722) of the Senator from Missouri will be stated.

The legislative clerk read as follows:

At the end of part C of title I of the bill, insert the following new section:

DISREGARD, UNDER MANDATORY MINIMUM STATE SUPPLEMENTATION OF SOCIAL SECURITY INSURANCE BENEFITS PROGRAM OF SOCIAL SECURITY INSURANCE INCREASES AND OF OLD-AGE SURVIVORS, AND DISABILITY INSURANCE INCREASES

SEC. 128. For purposes of determining, under section 212(a)(3)(C)(iii) of Public Law 93-66, the amount of any income of any individual for any month referred to in such section, there shall be disregarded (1) in the case of any individual, so much of any supplemental security income benefit payable under title XVI of the Social Security Act to such individual for such month as is attributable to any increase in supplemental security income benefits payable under such title resulting from the enactment of section 210 of Public Law 93-66 (or any provision contained in the preceding provisions of this title), and (2) in the case of any individual who for such month receives a monthly insurance benefit to which he is entitled under title II of such Act, so much of such monthly benefit as is attributable to any increase in social security benefits resulting from the enactment of section 201 of Public Law 93-66 (or any provision contained in the preceding provisions of this title), and (3) in the case of any individual who is entitled to annuity or pension under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1935, so much of the regular monthly payment to which such individual is entitled as annuity or pension thereunder by reason of the first proviso in section 3(e) of the Railroad Retirement Act of 1937 which results from the enactment of section 201 of Public Law 93-66 (or any provision contained in the preceding provisions of this title).

Mr. EAGLETON. Mr. President, because amendment No. 722 as printed contains certain technical and printing errors, I ask unanimous consent that a copy of amendment No. 722 as modified to correct those errors may be sent to the desk.

The PRESIDING OFFICER. The amendment will be so modified.

The text of the amendment (No. 722), as modified, is as follows:

At the end of part C of title I of the bill, insert the following new section:

DISREGARD, UNDER MANDATORY MINIMUM STATE SUPPLEMENTATION OF SSI BENEFITS PROGRAM, OF SUPPLEMENTAL SECURITY INCOME INCREASES AND OF OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE INCREASES

SEC. 128. For purposes of determining, under section 212(a)(3)(C) of Public Law 93-66, the amount of any income of any individual for any month referred to in such section, there shall be disregarded (1) in the case of any individual so much of any supplemental security income benefit payable under title XVI of the Social Security Act of such individual for such month as is attributable to any increase in supplemental security income benefits payable under such title resulting from the enactment of section 210 of Public Law 93-66 (or any provision contained in the preceding provisions of this title), and (2) in the case of any individual who for such month receives a monthly insurance benefit to which he is entitled under title II of such Act, so much of such monthly benefit as is attributable to any increase in social security benefits resulting from the enactment of section 201 of Public Law 93-66 (or any provision contained in the preceding provisions of this title), and (3) in the case of any individual who is entitled to annuity or pension under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1935, so much of the regular monthly payment to which such individual is entitled as annuity or pension thereunder by reason of the first proviso in section 3(e) of the Railroad Retirement Act of 1937 which results from the enactment of section 201 of Public Law 93-66 (or any provision contained in the preceding provisions of this title).

Mr. EAGLETON. Mr. President, I ask unanimous consent, in addition to the original cosponsors as listed on the amendment, Senators RIBICOFF, HATHAWAY, BROOKE, STEVENS, CRANSTON, and HUMPHREY be added as cosponsors of this amendment.

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

Mr. EAGLETON. Mr. President, the purpose of my amendment is to assure that those aged, blind, and disabled persons who will be receiving mandatory State supplementary payments under the supplemental security income program will receive the cost-of-living increases proposed in this bill without having those increases deducted from their State supplementary payments.

H.R. 3153, the bill before us, provides two increases in social security benefits and supplemental security income payment levels during 1974 to help the aged and disabled living on fixed incomes cope with the ever-increasing cost of purchasing the essentials of life.

Social security beneficiaries would, under this bill, receive a 7-percent increase in benefits for the month during which the bill is enacted. A second 4-percent increase would be effective for the month of June 1974.

Where SSI payment levels were to have been $130 for an individual and $195 for a couple beginning in January, these initial payment levels would be $140 for an individual and $210 for a couple. In July 1974 payment levels would be increased to $146 for an individual and $219 for a couple.

Under these provisions of the bill, those persons who receive only a social security benefit, those persons who will receive only an SSI payment, and those persons who will receive a combination of social security and SSI will have cost-of-living increases in 1974.

But, Mr. President, we must not overlook the fact that there is a third group of aged, blind, and disabled persons who may be denied any increase in income in 1974. I refer to those persons who will be receiving State supplementary payments under the SSI program.

This group itself is composed of two categories.

First, there are those aged, blind, and disabled persons who are now receiving assistance through State public assistance programs and who will be transferred to SSI in January.

Second, there are those persons who will be newly eligible for assistance under SSI.

For the latter group, a supplementary payment by their State is strictly optional. A State may choose whether or

not to supplement the basic SSI payment and the amount of any payment to be provided. Those States providing optional supplementary payments also obviously have the option of "passing-thru" the social security/SSI increases next year or of declining to do so.

At the time the original SSI legislation was enacted in 1972, all supplementation by the States was left optional even though it was clear that approximately one-half of current recipients—or about 1.7 million people—would lose income without State supplementation. The operational theory was that the States would voluntarily do what was necessary to prevent a loss of income by any of their aged, blind, and disabled recipients.

However, by June of this year there was sufficient concern that all States would not act voluntarily that Congress enacted section 212 of Public Law 93-66.

This section requires the States—if they wish to continue receiving Federal matching funds for medicaid—to make such supplementary payments to current aged, blind, and disabled recipients as are necessary to assure that their total income in January 1974 and succeeding months is no less than their total income in December 1973.

In other words, the States are required to maintain the income of these persons at a level prior to the receipt of the cost-of-living increases proposed for 1974.

If we do not require the States to disregard the social security/SSI increases in computing the amount of their supplementary payments, many States may simply reduce their payments by the amount of these increases, thus effectively denying these people any increase in income in 1974.

Mr. President, we have the authority to assure that this does not happen; I believe we also have that responsibility.

My amendment would merely require the States to make the same supplementary payments to these people that they would have made if the social security/SSI increases had not occurred.

I ask unanimous consent that a State-by-State estimate of the numbers of persons who will be receiving mandatory State supplements be printed at this point in the RECORD.

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

TABLE 1.—SUPPLEMENTAL SECURITY INCOME PROGRAM: ESTIMATED NUMBER OF RECIPIENTS RECEIVING BENEFITS UNDER MANDATORY STATE SUPPLEMENTATION, FISCAL YEAR 1974

[In thousands]

	Recipients affected by mandatory State supplementation	Affected recipients with total mandatory supplements below States' optional payment level	Recipients receiving benefits under mandatory State supplementation
United States	1,724	507	1,217
Alabama	62	----------	52
Alaska	2	----------	2
Arizona [1]	----------	----------	----------
Arkansas	39	----------	39
California	462	250	212
Colorado	28	----------	28
Connecticut	15	----------	15
Delaware	4	----------	4
District of Columbia	9	----------	9
Florida	43	----------	43
Georgia	30	----------	30
Hawaii	4	1	3
Idaho	4	----------	4
Illinois	58	----------	58
Indiana	10	----------	10
Iowa	10	1	9
Kansas	3	----------	3
Kentucky	21	----------	21
Louisiana	58	----------	58
Maine	14	----------	14
Maryland	9	----------	9
Massachusetts	76	42	34
Michigan	63	21	42
Minnesota	15	----------	15
Mississippi	18	----------	18
Missouri	73	----------	73
Montana	4	----------	4
Nebraska	8	----------	8
Nevada	3	1	2
New Hampshire	2	----------	2
New Jersey	31	17	14
New Mexico	3	----------	3
New York	216	138	78
North Carolina	16	----------	16
North Dakota	5	----------	5
Ohio	36	----------	36
Oklahoma	49	----------	49
Oregon	11	----------	11
Pennsylvania	51	23	28
Rhode Island	7	----------	7
South Carolina	3	----------	3
South Dakota	2	----------	2
Tennessee	17	----------	17
Texas	59	----------	59
Utah	1	----------	1
Vermont	6	----------	6
Virginia	13	----------	13
Washington	25	7	18
West Virginia	6	----------	6
Wisconsin	19	6	13
Wyoming	1	----------	1

[1] Survey data not available.

Mr. EAGLETON. As this table indicates, some persons in every State and the District of Columbia will be receiving mandatory State supplementary payments. Naturally, this matter looms larger in some States than in others because of the proportion of aged, blind, and disabled recipients affected. I certainly make no bones about the fact that I am offering this amendment today primarily because of its import in Missouri.

The Social Security Administration estimates that 73,000 persons will receive mandatory State supplements in Missouri. Whatever the reason for the discrepancy, the Missouri Division of Welfare puts that number at 85,000—or about 70 percent of current adult assistance recipients in Missouri.

Sixty-one thousand of these people will receive a State supplement in addition to a small social security benefit and an SSI payment. An additional 24,000 people will have a social security benefit too high to qualify them for SSI, but they will still be eligible for a State supplementary payment.

If there is an increase in social security benefits and SSI payments in January, under the Missouri authorizing supplementary payments, those payments will be reduced from what they otherwise would have been by the amount of the social security and SSI increases.

The result: 85,000 aged, blind, and disabled persons in Missouri will be deprived of any increase in income in January.

I want to make it clear that this indicates no particular perversity on the part of the State of Missouri. It is simply what will happen under the State law which is in compliance with the requirements of section 212 of Public Law 93-66. And it will result in an automatic savings of several million dollars in State funds. There is every reason to believe that the same thing will occur in most, if not all, States.

The only way to guarantee that it does not happen is to include in this bill a provision requiring the States to disregard these cost-of-living increases.

Mr. President, when we consider people who will be receiving State supplementary payments we are not talking about people with lavish incomes.

Of the 85,000 in Missouri who will receive State supplements, roughly half have incomes at or below the official poverty level. They are certainly among those people who have been most devastated by the inflation of recent months. They, as much as anyone, deserve a cost-of-living increase next year.

I also want to emphasize the fact that I am not proposing something unprecedented. In the past, we have often provided for the "pass-thru" of at least some part of a social security increase to persons on State public assistance rolls.

In fact, H.R. 3153 provides for a "pass-thru" to recipients of aid to families with dependent children—AFDC—by requiring the States to disregard 5 percent of social security income effective with the month in which the social security increase is received.

My amendment simply provides, through a different mechanism, a "pass-thru" for persons currently receiving old age assistance, aid to the blind, and aid to the permanently and totally disabled.

Mr. President, we are now taking the unusual step of reconsidering our previous decision on a social security increase next year. We have been moved, by evidence of the severe impact of inflation on the elderly and the disabled, to provide a larger and an earlier increase than was authorized last summer.

We have the authority, and I believe we have the responsibility, to guarantee that 85,000 people in my State and 1.7 million people nationwide are not denied this cost-of-living increase in 1974.

I urge the adoption of this amendment.

Mr. JAVITS. Mr. President, will the Senator yield for a question?

Mr. EAGLETON. I yield.

Mr. JAVITS. Mr. President, the Senator's amendment has not been available to me and I do not think it has been available to anybody else, because he sent it to the desk as modified. I am not trying to impede him on that score. We will get it promptly. But I believe that we understand it, and I should like to ask him this question with respect to New York and 9 other States—10 all together—of the so-called high benefit level States: Is it true that, though the passthrough would be compelled even in the high-payment States, the Eagleton amendment would not give us the Fed-

eral money with which to do it? It would just make my State pay money, even though it cannot afford it, in order to meet that benefit level.

Mr. EAGLETON. That is the case under my amendment with respect to nine States, including New York and California.

Mr. JAVITS. I ask the Senator whether it would not be fairer to let his amendment wait on the amendment of Senator CRANSTON, which will endeavor to correct that inequity, which was an inequity inflicted upon us on the floor of the House, rather than make many of us who would favor the Eagleton amendment vote against it because it is simply unfair to our States. It makes us pay money, without giving us any Federal support for it. Hence, at least in my judgment, we should have the option not to pay it if we do not feel we should, without Federal reimbursement.

Mr. EAGLETON. The Senator makes a good point.

My amendment creates no problem in 41 States. The Senator from New York has pointed out the problem it creates in nine other States.

I take it that, were my amendment to be adopted, the proposal suggested by the Senator from New York, which I am sure the Senator from California intends to pursue, would still be in order, and I would support it.

But I am hopeful that even if the Cranston amendment does not float, my amendment will.

Mr. JAVITS. I appreciate the Senator's situation. But is it not true that from a practical voting standpoint the Senator might find he might lose something he ought to win?

Mr. EAGLETON. I did not assume the Senator from New York would vote against my amendment since it does not preclude going further with the concept espoused by the Senator from California.

Mr. JAVITS. I realize that. Because it precedes the action on the Cranston amendment we have to pay out of the State treasury, no matter what happens to the Cranston amendment.

Mr. EAGLETON. If the Cranston amendment is offered as an amendment to the Eagleton amendment I will vote for it and we will see how that goes. If it goes as I hope we would not have to say anything more today.

Mr. CRANSTON. Mr. President, I would like to offer this amendment as an amendment to the Eagleton amendment.

Mr. JAVITS. That is fine.

Mr. CRANSTON. Mr. President, I offer it as a perfecting amendment. The Senator can accept it.

Mr. EAGLETON. First, let me propound a parliamentary inquiry. I think I know the answer.

The PRESIDING OFFICER. The Senator will state it.

Mr. EAGLETON. If the perfecting amendment of the Senator from California is incorporated in my amendment and then my amendment is rejected, from a parliamentary point of view would I be permitted to reoffer my original amendment as unperfected?

The PRESIDING OFFICER. Either amendment could be offered separately.

Mr. EAGLETON. Did I state my question to the Chair in a clear way? Perhaps I did not. I wish to repeat my question.

We have before us amendment No. 722. It is the intention of the Senator from California to offer a perfecting amendment to that amendment and I am about to accept it. If that total amendment is rejected, am I free, from a parliamentary point of view, to reoffer my original amendment, without the Cranston perfecting amendment?

The PRESIDING OFFICER. The Senator can offer his amendment.

Mr. EAGLETON. The Senator offered a perfecting amendment and I am willing to accept that amendment to my amendment.

Mr. LONG. Mr. President, have the yeas and nays been ordered?

Mr. EAGLETON. No; they have not.

The PRESIDING OFFICER. The Senator from Missouri has a right to modify his amendment. Is that what the Senator is doing?

Mr. EAGLETON. Mr. President, I will send to the desk a modification of my amendment as suggested by the Senator from California (Mr. CRANSTON) and others.

The PRESIDING OFFICER. The amendment will be so modified. The modification is as follows:

LIMITATION ON FISCAL LIABILITY OF STATES FOR OPTIONAL STATE SUPPLEMENTATION OF SSI BENEFITS

SEC. —. Section 401 (b)(1) of the Social Security Amendments of 1972 is amended—

(a) by striking out "and" at the end of clause (A);

(b) by striking out the period at the end of clause (B) and inserting in lieu thereof ", and"; and

(c) by adding immediately after clause (B) the following new clause:

"(C) in the case of any month, the amount by which supplemental security income benefits of the type involved were increased by section 210 of Public Law 93-66, as amended by section 121 of the Social Security Amendments of 1973.".

Mr. EAGLETON. Mr. President, without losing my right to the floor, I yield to the Senator from California such time as he may desire to explain the modification.

Mr. CRANSTON. Mr. President, I think all I need to say is that the original form of the Eagleton amendment federally mandated that nine States, from their already strained resources, would have to pay to all present adult recipients the cost of the federally mandated cost-of-living increase. My amendment corrects that obvious inequity. It seems eminently appropriate that the Federal Government pay for Federal generosity with Federal money. That is what my amendment would do.

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

Mr. CRANSTON. I am delighted to yield.

Mr. CURTIS. What we are talking about here is the SSI benefit. Is that not true?

Mr. CRANSTON. I beg the Senator's pardon.

Mr. CURTIS. We are talking about the SSI benefit for the aged, blind, and disabled. Is that correct?

Mr. CRANSTON. That is correct.

Mr. CURTIS. That program goes in on January 1.

Mr. CRANSTON. That is correct.

Mr. CURTIS. And it is a program that heretofore has had Federal and State matching. Is that not correct?

Mr. CRANSTON. That is correct.

Mr. CURTIS. And under the new program the Federal Government pays the entire check.

Mr. CRANSTON. Yes; except for the federally mandated supplementation the States must pay to all present recipients if the present benefit levels exceed the SSI payment level—which is the case in the nine States that my amendment covers.

Mr. CURTIS. Well, they pay the entire check according to the schedule set forth in the Federal statute, but because that would mean a reduction in payment to some individuals, the Federal Government has demanded as a quid pro quo for taking over the whole load that the States make a mandatory supplemental payment so that no one gets less than they got this year. Is that correct?

Mr. CRANSTON. Yes; that is the intent.

Mr. CURTIS. Now, as a matter of fact, the nine States the Senator is talking about are still coming off better than they were before the SSI program was enacted. Is that correct?

Mr. CRANSTON. No; that is not true.

Mr. CURTIS. Well, I think it is.

Mr. CRANSTON. The responsibility of the States and the numbers of recipients under the new program will extend beyond what is now covered, and that responsibility to meet that situation—for a number of reasons—will fall upon the State rather than the Federal Government.

Mr. CURTIS. I am afraid my question was misunderstood. At the present time those States are paying certain sums to the blind, disabled, and the aged, and they are going to be relieved of that. Is that correct?

Mr. CRANSTON. In part, but not wholly.

Mr. CURTIS. The part they are relieved of they will end up spending less money for these three programs than they are spending now.

Mr. CRANSTON. The Federal Government is mandating an increase in the number of people covered, it has not extended hold harmless to cover benefit increases since 1972, and yet it has mandated that the States, in supplementing SSI, do so up to December 1973 levels—no; in many States we will not be spending less.

Mr. CURTIS. I am talking about the whole expenditure, not just the mandated part; the total expenditures made for these programs by the State of California will be less than it is now.

Mr. CRANSTON. That is not true because the Federal Government is mandating who is eligible. There is a vast expansion of adult recipient eligibility;

and that, combined with other factors, will increase the cost to the State of California and to many other States.

Mr. CURTIS. I do not believe that is a correct statement of the situation. What is happening at the present time is that every check that people in these three categories get is part State money and part Federal money; and up to the limit of the Federal new program it is all Federal money. Now, even though you do have to make a supplement, I think you are coming out ahead.

Mr. CRANSTON. Mr. President, what we have here is a federally financed cost-of-living increase for all States except nine, including California.

This amendment, cosponsored by Senators KENNEDY, JAVITS, BROOKE, and CASE, is designed to insure that certain SSI recipients are not denied the benefit of the Finance Committee provision which provides that the new supplemental security income program guaranteed income levels for the aged, blind, and disabled—originally scheduled to be $130 for an individual and $195 for a couple—be increased to $140 for an individual and $210 for a couple when the program begins in January. As Senators are aware, the committee included a further provision which, beginning July 1974, would increase the guaranteed income level to $146 for an individual and $219 for a couple.

This committee provision, which I very strongly support, is an attempt by the committee to reflect for SSI recipients the benefit increases which are contained in H.R. 3153 for social security recipients. However, as the committee bill is now constituted, in some nine States—California, New York, New Jersey, Wisconsin, Massachusetts, Nevada, Hawaii, Michigan, and possibly Rhode Island—SSI recipients will not receive the benefit of this increase because there is no provision to "pass-along" increases without creating significant extra costs to the affected States.

Very simply put, the amendment I propose would provide that these nine States be held-harmless for these SSI increases, so the States will pass these increases along to recipients in those States.

The House Ways and Means Committee did include such a provision, though only effective for 1 year, but it was deleted from the House bill during extensive and rather confusing floor debate.

As the distinguished chairman of the Finance Committee so well knows, this entire issue is very, very complicated, and I will try, for the benefit of my colleagues to put it as simply as possible.

The key issue during the debate surrounding the passage of the Social Security Amendments of 1972—H.R. 1 in the last Congress—was the conceptual and practical difficulty of reconciling the wide disparities of 50 State welfare programs into a single national program. We all felt at the time, I believe, that while solidifying 50 distinct adult welfare programs into one equitable and uniform bill was going to be almost impossible, it was time to take the first big step forward.

Nearly everyone agreed that a national "minimum income floor" was needed in lieu of the varying percentage matching arrangements already in existence. The primary question was how to establish such a floor without hurting recipients who were receiving more than that income floor—such as in the nine States I mentioned above. This then led to the related issue of Federal fiscal responsibility for such recipients once the States were "out of the picture"—that is, responsibility for setting eligibility requirements, Federal/State cost sharing, and administration of the new program.

The present hold harmless provision added by H.R. 1 then became the vehicle for reconciling all of these issues. Hold harmless was clearly a key provision of the legislation, without which there would very likely be no SSI program today.

It was never intended that the hold harmless provision would be a means of freezing payment increases by the Federal Government for those recipients in those States who, in good faith, supported H.R. 1. Rather, hold harmless was, as I understood it, designed to provide States with protection against cost increases which were expected to be incurred in the newly Federalized program because of the expanded Federal eligibility. Hold harmless also was to serve as an incentive for States to turn over their programs to the Federal Government for administration not only of the Federal floor but also the State supplementation under rules set by the Federal Government.

I should add here, parenthetically, that my own State, because of certain legal difficulties, will not be able to turn State supplementation over to the Federal Government until sometime this January after legislative action. At any rate, the incentive for this turn-over was, of course, the Federal Government's fiscal responsibility under the present "hold harmless" provision to underwrite future increased caseload costs that were incurred as the result of the new Federal program.

The bill before us today, without the House Ways and Means Committee provision, changes the rules of the game. The whole question of the Federal/State relationship is clouded with regard to the responsibility for recipients in the future.

If the nine States effected are simply to be told that they may spend State money to increase SSI payments—and if the Eagleton amendment is adopted, they will have to spend it—then the overall uniformity and equity purpose of SSI as a national program will have been subverted.

What will occur is that a federally funded cost-of-living increase for SSI recipients will be approved—in all but nine States, nine States in which something like 40 percent of the SSI population resides.

Mr. President, I do not believe that 40 percent is a parochial, "my State" issue. What we have here is a situation wherein those States which in the past have made the greatest fiscal effort on behalf of the poor, there will be no 100-percent federally financed cost-of-living increase.

I would most strongly urge my colleagues to join in supporting this amendment I am now offering as a perfecting amendment to the pending amendment No. 722. It is, I believe, absolutely essential if we are to insure that the SSI program does not work against the concepts which it was originally conceived to reflect.

Mr. LONG. Mr. President——

The PRESIDING OFFICER. The Senator from California has the floor.

Mr. EAGLETON. Mr. President, I believe I have the floor. I yielded to the Senator from California with the right to control the floor.

Mr. LONG. Mr. President, I demand the regular order.

The PRESIDING OFFICER. The regular order is demanded.

Mr. LONG. I would like to say something about the amendment.

Mr. EAGLETON. I yield the floor.

Mr. LONG. Mr. President, here is what Mrs. GRIFFITHS said about a similar amendment on the House side:

> The provision would allow California to raise its payment amount for an aged couple from $394—about 176 percent of the poverty line—to $409 a month. It will allow Massachusetts to go from $340.30—about 152 percent of the poverty line—to $355.50; Wisconsin from $329—about 147 percent of the poverty line—to $344; and New York from $294.51—about 132 percent of the poverty line—$309.51."

Mr. President, mind you, this amendment would permit the States of New York, California, Wisconsin, New Jersey, Michigan and Massachusetts, all relatively wealthy States, to raise the amount of money their people would get far beyond what the rest of us would get, and leave all of us poor States out.

Ohio would not get anything. All it would get is the privilege of helping pay for all this. This is strictly on the principle of "The rich get richer and the poor get poorer." For years I have tried to understand the biblical injunction,

> To him who has, it shall be given, and to him who has not, it shall be taken away.

That is the logic of the amendment, inasmuch as it provides that those that have so much more ought to get still more. We others will pay for it but will not share in any of the benefits.

Anyone who wants to vote for that, go ahead, but I challenge you to explain to your constituents why you are such a complete sap or why you think these other States ought to get more than yours merely because they have more money to begin with.

I say to those Senators, if they cannot find some way to modify the amendment so that those in the poorer States can get in on the act, then obviously it has not been adequately considered. I am anxious to see how many Senators will come up here and say they cannot do anything for their people but can join in concert to help the rich get richer while they see their people in the poorer States get poorer. I will say it will be a political miracle when, with that kind of legislative proposal, there are enough votes in the Senate to get it through.

I suggest, after this proposal has been voted down, that its sponsors go back and try to find some way where they can benefit their people and where the ma-

jority of the people can be benefited, particularly those of us who are in the poorer States, who need the money as much as they do. If they can do that, maybe we will vote with them. But it absolutely insults the intelligence of people who come from 40 States to think that we would vote for something of this sort. It is fine if you can get away with it, but you ought to try to do it when there are less people around.

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

Mr. LONG. I yield.

Mr. JAVITS. Does the Senator include in his stringent indictment—and something which violates the Senate rules when he says a Senator who would be voting for this amendment would be a sap; but, be that as it may, we are not children; nobody is going to call the Senator for that violation—does the Senator include the House Ways and Means Committee, bearing in mind that the House Ways and Means Committee included this amendment in its report, and Mrs. GRIFFITHS, of the House, changed her position? Do I understand the Senator includes in his indictment the House Ways and Means Committee, or was it reserved exclusively for Senators?

Mr. LONG. Do not have me say something I did not say. Going down this list of States—New York, California, Michigan, Wisconsin, New Jersey, Massachusetts, and others—they have more Representatives than Senators. They may have put this in a bill in the House Ways and Means Committee, but when they voted on the House floor they still did not have a majority. That is why they voted it down.

I am not accusing anybody of being a sap. But I wonder if there is one Senator who comes from any State other than these six States who is going to vote for this amendment. If he does, I will amend my statement to call him something other than a sap.

Mr. EAGLETON. Mr. President, I ask unanimous consent that the Senator include me in that category, because I am going to vote for it, and I am not in the top nine.

Mr. LONG. Well, the Senator had not heard the explanation prior to this time. I feel when one understands what this amendment does he might feel differently about it. But the Senator is accepting an amendment to an amendment offered by him. I assume the amendment he offered would be a good thing for the State of Missouri, so there should be enough of a sweetener in the Eagleton amendment to justify agreeing to accept the Cranston amendment as a modification of his amendment.

I would say to those of us who do not see anything in it for our States that we would be very ill-advised to vote for the amendment. I personally think, speaking for myself—I think I can speak for myself—I would be a sap to vote for the amendment. Maybe somebody else would find some good reason to vote for it.

Mr. President, I am led to believe that we will have the Eagleton amendment offered in its other form in the event that it is not agreed to in this form. I would hope that we can vote on it. If there is no objection, I am going to move that this amendment be laid on the table. If a Senator wants to make a speech, I am willing to wait and let him speak, but I think we will vote this amendment down.

Mr. CRANSTON. I have one comment to make. The Senator from California would consider himself a sap if he did not seek to have his amendment agreed to.

Mr. LONG. I would say that the Senator is a genius if he can put this amendment over. He would be one of the most effective statesmen we have had in this body for a long time.

Mr. President, I move to table the amendment.

Mr. JAVITS. Mr. President, will the Senator withhold that motion at this time? Any of us can move to table lots of things. Does the Senator mind?

Mr. LONG. I withhold my motion.

Mr. JAVITS. Mr. President, before we table this amendment, or try to table it, I think it ought to be understood; and with all respect, I do not think it is understood.

I support the amendment offered by the Senator from California. I support it in the interest of my own State. With 18½ million people in New York and 20 million in California, we do not have to apologize for belonging to the United States.

I must say that there rings in my ears a strange note from another day to hear the fact that because only nine States are involved means that it has got to be turned down. If we start to legislate that way in the U.S. Senate, we can kiss the United States, its form of government, and its Constitution goodbye.

I have seen lots of people passionately defended—individuals, or even one corporation, or even one big corporation, notwithstanding that that is not supposed to be very popular. I am all for it. The day we stop legislating that way, and the day we start legislating by how many States are going to be benefited, it is going to be a very sad day for the United States of America.

Let us find out what this is all about. Let us not be in such a hurry to cry, "Hey, Rube," and get rid of it. That is what this sounds like.

What is at stake here? What has happened?

A year or so ago we passed a law in which the United States took all this program over. That is not this bill. That is not really what is being objected to. That bill was passed a year ago.

We are now proposing to increase the benefits. Everybody cheers. There are many States—and they have been named—that pay benefits above what the United States supports, and for many reasons. In the industrial States, the cost of living is higher. They have higher living conditions. Everybody is going to be raised in this country. In this instance, the Federal Government is going to pay the tab. But because these States have had the humanity and the decency to support their people properly, they are going to be penalized. Their people are not going to get the increase that everybody else is going to get—everybody—but they will get it only if the State pays for it out of its own resources.

Everybody else will be funded by the United States. But those nine States, because they have had the decency and the humanity to maintain excellent income levels, what the Senator from California (Mr. CRANSTON) and I, and other Senators, are arguing is the fear that precisely because of the argument that the Senator from Louisiana (Mr. LONG) has used is exactly why we should win and not lose.

It is precisely for that reason that we ought to be fair. We have the intelligence to see that if somebody else has been wanting to adhere to a standard, which is a decent standard, as far as their people are concerned, we are not going to be unfair to them when it comes to increasing benefits all along the line. We are not going to deny it to them because their States have proceeded in a better way.

That is what it comes down to. I have very grave doubts as to whether New York State can scratch up $48 million for this. We are in lots of trouble in my State, and many other States in the list are in essentially the same position.

What will happen? Our beneficiaries will not get the increase that the Americans in the other 49 States get. And if that is the way the United States wants to operate, that is all right. These are facts and not hyperbole. I do believe that the Senate ought to understand the facts before it votes.

I appreciate very much the Senator from Louisiana (Mr. LONG) affording me the courtesy of allowing me to express my views, because the Senator could have cut us off.

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

Mr. JAVITS. I yield.

Mr. CRANSTON. Mr. President, is it not true that while we may be talking about nine States, I believe that we are talking about something like 40 percent of all of the welfare recipients, since they live in these nine States. It is a far broader thing than to say simply that nine States are involved.

Mr. JAVITS. And, while I have not toted it up, I have little doubt that the inhabitants of the nine States, between them, pay at least half of the income taxes in the United States.

I am aware that we cannot get parochial about this matter. New York is the seat of the stock exchange. California is the seat of many industries, and so forth. We are all interconnected. That is why we should do our utmost to understand the other fellow's problems, and we should not try to act any other way.

Every once in awhile on an issue a Senator will get up and say, "You can't win, because nine States are involved." Suppose we say that about every issue on the calendar. Suppose that we say, "You are only one man. You cannot win. Forget it."

We should not operate in that way. All we are trying to do is to have our States receive what they should receive.

Should that be the only criteria, how many States will get the benefit and how many will not, and that therefore, that we should vote it down?

Mr. LONG. Mr. President, in addition to favoring just six wealthy States of the Union, the amendment does not do any justice. It has no equity. And it really does not make good sense. For example, the way things would stand in these wealthy States that we are talking about, the people under present law will get $130 a month under SSI. If a State adds $50, their people would get $180. Now, when the $130 is raised to $140, all the States have to do is to continue to put up their $50, and those people would get $190.

What these States would like to do is save the money while they still give their people more than everyone else gets. They want it on both ends, a double dip that no one else gets.

It is unfair. And it only benefits six States.

Mr. President, I move that the amendment be laid on the table.

Mr. JAVITS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Missouri. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Wyoming (Mr. MCGEE), the Senator from New Mexico (Mr. MONTOYA), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Iowa (Mr. HUGHES), the Senator from Colorado (Mr. HASKELL), the Senator from Hawaii (Mr. INOUYE) the Senator from Alabama (Mr. SPARKMAN), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I also announce that the Senator from Missouri (Mr. SYMINGTON) is absent because of illness.

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Utah (Mr. BENNETT), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The Senator from Idaho (Mr. MCCLURE) and the Senator from Oregon (Mr. PACKWOOD) are absent on official business.

The result was announced—yeas 57, nays 27, as follows:

[No. 532 Leg.]

YEAS—57

Aiken	Church	Gravel
Allen	Cook	Gurney
Bartlett	Cotton	Hansen
Bayh	Curtis	Hatfield
Beall	Dole	Hathaway
Bellmon	Domenici	Helms
Bentsen	Dominick	Hollings
Bible	Eastland	Hruska
Brock	Ervin	Humphrey
Burdick	Fannin	Jackson
Byrd, Harry F., Jr.	Fong	Johnston
Byrd, Robert C.	Fulbright	Long
	Goldwater	Magnuson
Mansfield	Pearson	Stevens
McClellan	Randolph	Taft
McIntyre	Roth	Talmadge
Mondale	Saxbe	Thurmond
Moss	Scott, William L.	Tower
Muskie	Stafford	Weicker
Nunn		

NAYS—27

Biden	Griffin	Pastore
Brooke	Hart	Pell
Buckley	Hartke	Percy
Cannon	Huddleston	Proxmire
Case	Javits	Ribicoff
Chiles	Kennedy	Schweiker
Clark	Mathias	Scott, Hugh
Cranston	Metcalf	Stevenson
Eagleton	Nelson	Tunney

NOT VOTING—16

Abourezk	McClure	Stennis
Baker	McGee	Symington
Bennett	McGovern	Williams
Haskell	Montoya	Young
Hughes	Packwood	
Inouye	Sparkman	

So the motion to table the Eagleton amendment was agreed to.

Mr. JAVITS and Mr. EAGLETON addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. EAGLETON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. EAGLETON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

Mr. EAGLETON'S amendment is as follows:

At the end of part C of title I of the bill, insert the following new section:

DISREGARD, UNDER MANDATORY MINIMUM STATE SUPPLEMENTATION OF SSI BENEFITS PROGRAM, OF SUPPLEMENTAL SECURITY INCOME INCREASES AND OF OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE INCREASES

SEC. 128. For purposes of determining, under section 212(a)(3)(C) of Public Law 93-66, the amount of any income of any individual for any month referred to in such section, there shall be disregarded (1) in the case of any individual, so much of any supplemental security income benefit payable under title XVI of the Social Security Act to such individual for such month as is attributable to any increase in supplemental security income benefits payable under such title resulting from the enactment of section 210 of Public Law 93-66 (or any provision contained in the preceding provisions of this title), and (2) in the case of any individual who for such month receives a monthly insurance benefit to which he is entitled under title II of such Act, so much of such monthly benefit as is attributable to any increase in social security benefits resulting from the enactment of section 201 of Public Law 93-66 (or any provision contained in the preceding provisions of this title), and (3) in the case of any individual who is entitled to annuity or pension under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1935, so much of the regular monthly payment to which such individual is entitled as annuity or pension thereunder by reason of the first proviso in section 3(e) of the Railroad Retirement Act of 1937 which results from the enactment of section 201 of Public Law 93-66 (or any provision contained in the preceding provisions of this title).

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

Mr. EAGLETON. I yield to the Senator from Montana.

Mr. PASTORE. May we have order now, Mr. President?

The PRESIDING OFFICER (Mr. HART). The Senate will be in order.

Mr. MANSFIELD. Mr. President, what I would like at this time is to get an idea as to how many more amendments will be offered to the pending legislation.

First, I understand that the distinguished Senator from New York (Mr. JAVITS) will have an amendment on which I intend to suggest to the Senate that a time limitation of 1 hour, to be equally divided, be subscribed to. Then the Senator from Missouri (Mr. EAGLETON) has an amendment now pending—

Mr. EAGLETON. Fifteen minutes.

Mr. MANSFIELD. I ask unanimous consent, Mr. President, on that amendment, that there be a time limitation of 15 minutes, to be equally divided between the sponsor of the amendment and the manager of the bill.

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

Mr. MANSFIELD. Then there is the Senator from Connecticut—the Senator from Connecticut, the Senator from Delaware, the Senator from California——

Mr. PASTORE. The Senator from Rhode Island.

Mr. MANSFIELD. The Senator from Rhode Island. Well, anyway, there are many of them. Then the Senator from Alabama.

Mr. ALLEN. Mr. President, if the distinguished majority leader will yield briefly, the amendment of the Senator from Alabama is unique. It would take something away from the bill rather than add more to it. I should like to make that clear. [Laughter.]

Mr. MANSFIELD. Then, Mr. President, I ask unanimous consent that when the amendment of the Senator from New York (Mr. JAVITS) is called up, there be a time limitation of 1 hour with the time to be equally divided between the Senator from New York (Mr. JAVITS) and the Senator from Louisiana (Mr. LONG), the manager of the bill.

Mr. JAVITS. Mr. President, reserving the right to object—and I hope not to object—I have one or two stipulations to make in that regard. One is that I wish to understand that a motion will not be made, at least by anyone here—we cannot control others—to table the amendment. I said I would agree to a 1-hour limitation if I felt there was going to be no motion to table, so that Senators would not be buying a pig in a poke.

This is an effort to deal with the unemployment compensation trigger which has affected many States. It is the one opportunity we have to deal with a bill which originates with the Finance Committee and then goes to the Ways and Means Committee in the other body.

Mr. LONG. Mr. President, I am not planning on a motion to table, but I do not want to agree to that, as I do not want to start that kind of precedent. If we can agree to a limited time, when

the time for debate is over, Senators can do whatever they want to. The Senator from New York can talk as long as he wants to on his amendment. At the moment, I am not saying that I will make a motion to table, but I do not like to start that kind of precedent on unanimous-consent agreements.

Mr. JAVITS. I can appreciate that. In view of the fact that I agreed to a unanimous-consent request on that ground, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. PASTORE. Mr. President, I realize that the attempt here is to help the elderly of our country. We are talking here about an 11-percent increase. I realize the nobility of many of these amendments which are being proposed here, but I question whether, in the conference, any one of them will survive.

I am wondering whether, therefore, instead of trying to do justice, we are not doing a grave injustice here. I realize that many issues raised here today have been raised before. We have taken votes on them. I am perfectly willing to stay here until midnight, or all night, if we have to, but if we go by 8 o'clock tonight, I believe we should stay here all night and finish this bill.

I should like to inquire of the distinguished majority leader, how long are we going to stay here tonight, so that we can call up our families to turn the oven jet on or forget it.

Mr. MANSFIELD. Well, I would say—a jet?—where is the Senator going to get the fuel?

Mr. PASTORE. Well, for the time being, it is there. [Laughter.] Later on, according to Senator JACKSON, it may not be there, but the fact is, United will be there.

ORDER FOR ADJOURNMENT

Mr. MANSFIELD. Mr. President, first, I ask unanimous consent that, when the Senate completes its business tonight, it stand in adjournment until 10:30 a.m. tomorrow.

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

(Later this order was changed to provide for the Senate to convene at 10 a.m.)

AMENDMENT OF THE SOCIAL SECURITY ACT

The Senate continued with the consideration of the bill (H.R. 3153) to amend the Social Security Act to make certain technical and conforming changes.

Mr. MANSFIELD. Mr. President, I would suggest to the Senate that when we dispose of the Eagleton amendment we call it a night, go home, and have dinner with our families.

Mr. PASTORE. I want to thank the distinguished majority leader. [Laughter.]

Mr. EAGLETON. Mr. President, this amendment has a 15-minute time limitation on it. It is not my intention to consume the 7½ minutes allotted to me.

This amendment is the Eagleton amendment once again, but this time not perfected by the Senators from California and New York.

This amendment is in its pristine, original beauty and, in the words of the Senator from Alabama a few moments ago, this amendment is also unique. It does not add 10 cents of Federal money to the bill. It does not cost the U.S. Treasury one dime.

All this amendment does is this, with respect to the aged, blind, and disabled, if these fine increases already in the bill go into effect, initially the 7 percent increase and later on the 4 percent increase, the Eagleton amendment provides that the States cannot cut back their payments so as to absorb the increases which we have decided as a matter of national policy are vitally necessary.

What this amendment prevents is a windfall profit to State treasuries so that "When the Lord giveth"—and in this case it is the U.S. Congress—the 50 State Capitols do not take it away. That is about all this amendment does. It says that the benefits we think are just and to which the aged, blind, and disabled are entitled shall go forward, and that the States shall not sabotage the benefits by a pro rata cut in benefits at the State level, so that the individual is no better off tomorrow than he is today.

Mr. President, I reserve the remainder of my time.

Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. LONG. Mr. President, this amendment works in exactly the opposite direction to that in which the committee sought to move. The amendment is on the wrong basis. In the first place, it would treat those already on the rolls in December 1973 more favorably than those who are newly eligible. There is no justification why those previously on the rolls should be better off than those who later on come onto the rolls.

This amendment would also penalize the States which have been generous in their assistance level for the aged, blind, and disabled, by making them spend additional funds over and above present expenditures, while the States which have had low assistance payments are not so penalized and, in fact, would probably be relieved of most of their current costs.

Moreover, this amendment would be contrary to the basic concept of the SSI program, in which the Federal Government establishes a nationally uniform minimum income level for the aged, blind, and disabled, which is fully Federal in funding and leaves the States free to supplement this level as they see fit, and with fully State funds.

In other words, Mr. President, as the bill states, the committee fully anticipates that in January, when the SSI program goes into effect with a Federal funding program, the States will have a windfall in almost every State in the Union unless those States want to use that money to advance the income of their aged people well beyond that which their aged people have had prior to this time.

I know that in the State of Louisiana, practically all the aged people, for example, would receive a very large increase in their payments. Thus the State of Louisiana, looking at that situation could say, "We expect to save about $30 million here. That $30 million can best be spent to help the little children, because what we have provided for them is so little compared with the very generous benefits we would now be paying to our aged. We would think it would be an unfair double standard to take that $30 million and put it in the program for the aged, rather than putting it in the program for the little children, where there is more need." So Louisiana would put its money into helping the children. If it did not, its second priority would be the health program.

The Eagleton amendment would require that there be a windfall, we might say, for the aged. So even though the State did not think it was a good idea to continue to supplement to the same extent that it had supplemented before in order to raise the income of each of these people already on the rolls, it would have to do so.

In effect, it would compel us, and would compel the States, to spend the money in the way they do not think is wise, in the way that, frankly, we on the committee do not think is wise.

That being the case, we think this is not a very wise amendment. It is a windfall. It is a discriminatory windfall, because it would discriminate in favor of those who are presently on the rolls and against the great number of people—in most States, an equal number of people—who will be added to the rolls. Their needs should be considered on the same basis. But this amendment would compel you to consider those already on the rolls in a far more favorable fashion than the others.

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

Mr. LONG. I yield.

Mr. CHILES. Does the Senator believe it would be discriminatory to the blind, to the aged, to the disabled?

Mr. LONG. What we are talking about is this: Let us say that at a level of $200, the State is paying $100 in State funds for a blind person or for an aged person. We come in with the new Federal program and say we are going to guarantee that person under the SSI, a monthly income of $130. This bill now makes it go up to $140. So we are going to guarantee $140 in Federal funds and the State will provide $60 more to keep him at his previous level of $200.

In addition to all that, this amendment would require the State to add $10 on top of that, to make it $210. But this would apply only to people already on the rolls. Under the amendment, new people coming onto the SSI rolls could be left at the $200 level or even less. The changes made by the SSI program will make many new people eligible. So in most States, including my own, which is a very generous State, it would just about double the number of people on the rolls. Their needs should be considered on the same

basis as all the other people on the rolls. So as between two old people, they should be considered on the same basis.

Mr. CHILES. Has the Senator seen how a blind person lives on $210 a month?

Mr. LONG. I am talking about the point that we should not discriminate between two blind people.

Mr. CHILES. Is the Senator talking about one blind person who has outside income and plenty of funds but still, because he is blind, is getting some help, and talking about another blind person with no assets, no help, getting a little pittance from the State, a few dollars from the State, and is the Senator saying that he has to give that money back to the State? I have been in one of those State legislatures where they took the money back from them every time, and I say it is ridiculous to say that.

Mr. LONG. I do not think the Senator understands what the committee did.

Mr. CHILES. I understand how a blind person lives on $210 a month, and they cannot do it today. To say that they are being discriminated against and that something is being taken away from them is ridiculous.

Mr. LONG. We are talking about a situation in which the State is paying $200 now to a blind person. When the new SSI program goes into effect with a Federal payment of $140, the State may want to add $60 so that that blind person will continue to get $200. And the State would provide the same $200 for a man who does not become blind until after the new SSI program goes into effect. So both blind persons would get the same level of income. But this amendment would mean that the State must pay $210 to the person already on the rolls who is now getting $200 while the other man would only get the $200. The needs of the two people who are blind would not be considered on the same basis. The people who are newly made eligible would be discriminated against.

The PRESIDING OFFICER. The time available to the Senator from Louisiana has expired. Three minutes remain to the Senator from Missouri.

Mr. EAGLETON. Mr. President, I have listened with great interest to the Senator from Louisiana, who is an expert in these matters, as well as to his exchange with the Senator from Florida; and I am mystified as to whether we are discussing the same amendment.

Let me make it crystal clear, Mr. President, that this bill will not cost the Federal Treasury 1 dime.

All this amendment treats of is that once we vote these increases—a 7 percent cost-of-living increase next January and an additional 4 percent next July—once we decide on this floor, as a matter of national policy, to provide these increases, the Eagleton amendment simply says that we mean it. We mean that the people who were to get that money will in fact get it; that Governor X, Governor Y, and Governor Z cannot say: "Uncle Sam voted those increases for the aged, the blind and the disabled. The Federal Government has given them that money, but we will take it away. We will cut the State's payment from what it was before, and then we will use that money for some other program in the State."

As the Senator from Louisiana has said, it could be used for the children, or in some other State it might be used to refurbish a State race track, or to build a new sports coliseum—all the uses for that money that Governor X, Governor Y, and Governor Z might find.

By providing the benefit increases in this bill, we indicate that a No. 1 priority in this time of inflation is some additional income for the aged, the blind, and the disabled. If Senators vote for this amendment, they are guaranteeing that the 7-percent increase, later to be increased by 4 percent, will in fact get through to the people who deserve it. If they do not vote for this amendment, then it is likely that many States—as many as 41 of them—will just reap a savings out of the increase we are voting in this body.

I yield back the remainder of my time.

Mr. LONG. Mr. President, I ask unanimous consent that 2 additional minutes be allotted to each side.

Mr. EAGLETON. Mr. President, reserving the right to object—and I shall not object—I ask unanimous consent that the names of the following Senators be added as cosponsors of this amendment: Senator RIBICOFF, Senator HATHAWAY, Senator BROOKE, Senator STEVENS, Senator CRANSTON, Senator HUMPHREY, Senator CHILES, and Senator PASTORE.

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

Without objection, 2 additional minutes are available to each side.

Mr. LONG. Mr. President, what this amendment provides is that if a person is on these rolls prior to December of 1973, then there will be disregarded the additional SSI benefits of $10 a month, and there will be disregarded the social security increase; that if a person comes on the rolls at any time after that, which will about one-half of those on the rolls, that it is not disregarded, so one-half of the poor people are favored, and the other half are discriminated against. The States are denied the right to look at their problems and say which of the poor should get the most help and which of the poor should get the least help. Those States are denied any discretion on how to help the poor with money otherwise available to them.

Mr. EAGLETON. Mr. President, will the Senator yield of that point?

Mr. LONG. I yield if I have time.

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. EAGLETON. I would like to ask one question. Do we have any authority, we, the Congress, to require the States to pass through these increases with respect to new recipients?

The answer is "No."

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the amendment of the Senator from Missouri. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Colorado (Mr. HASKELL), the Senator from Iowa (Mr. HUGHES), the Senator from Hawaii (Mr. INOUYE), the Senator from Wyoming (Mr. MCGEE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Mexico (Mr. MONTOYA), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I also announce that the Senator from Missouri (Mr. SYMINGTON) is absent because of illness.

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BELLMON), the Senator from Utah (Mr. BENNETT), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The Senator from Idaho (Mr. MCCLURE) and the Senator from Oregon (Mr. PACKWOOD) are absent on official business.

The result was announced—yeas 49, nays 34, as follows:

[No. 533 Leg.]

YEAS—49

Bayh	Gravel	Muskie
Beall	Gurney	Nelson
Bentsen	Hart	Pastore
Bible	Hartke	Pearson
Biden	Hatfield	Pell
Brooke	Hathaway	Percy
Burdick	Huddleston	Proxmire
Byrd, Robert C.	Humphrey	Ribicoff
Cannon	Jackson	Schweiker
Case	Kennedy	Scott, Hugh
Chiles	Magnuson	Stafford
Clark	Mansfield	Stevens
Cook	Mathias	Stevenson
Cranston	McIntyre	Taft
Dole	Metcalf	Tunney
Eagleton	Mondale	
Fong	Moss	

NAYS—34

Aiken	Eastland	Long
Allen	Ervin	McClellan
Bartlett	Fannin	Nunn
Brock	Fulbright	Randolph
Buckley	Goldwater	Roth
Byrd, Harry F., Jr.	Griffin	Saxbe
Church	Hansen	Scott, William L.
Cotton	Helms	Talmadge
Curtis	Hollings	Thurmond
Domenici	Hruska	Tower
Dominick	Javits	Weicker
	Johnston	

NOT VOTING—17

Abourezk	Inouye	Sparkman
Baker	McClure	Stennis
Bellmon	McGee	Symington
Bennett	McGovern	Williams
Haskell	Montoya	Young
Hughes	Packwood	

So Mr. EAGLETON'S amendment was agreed to.

Mr. EAGLETON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CRANSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HARTKE. Mr. President, I had an amendment, which I discussed with the chairman of the committee, manager of the bill, and which he is prepared to accept. It is an amendment dealing with the blind, which has passed the Senate on five previous occasions. I see no need to have a rollcall. We have had rollcalls before. It has been overwhelmingly adopted.

If there is no objection, I would like to call up my amendment, No. 636, as modified, and ask to have the clerk read it.

The PRESIDING OFFICER. The clerk will read the amendment.

The second assistant legislative clerk proceeded to read the amendment (No. 636), as modified.

Mr. HARTKE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

Amendment No. 636, as modified, is as follows:

At the end of title I, insert the following as "Part I".

SEC. 193. Liberalization of Social Security Eligibility for the Blind. (a) Section 214(a) of the Social Security Act is amended by adding "or" after the semicolon at the end of paragraph (3), and by inserting after paragraph (3) the following new paragraph:

"(4) in the case of an individual who has died and who was entitled to a benefit under section 223 for the month before the month in which he died, 6 quarters of coverage;".

(b) Section 215(b)(1) of such Act is amended by striking out "shall be the quotient" and inserting in lieu thereof "shall (except as provided in paragraph (5)) be the quotient".

(c) Section 215(b) of such Act is further amended by adding at the end thereof the following new paragraph:

"(5) In the case of an individual who is blind (within the meaning of 'blindness' as defined in section 216(i)(1)), such individual's average monthly wage shall be the quotient obtained by dividing (A) the total of his wages paid in, and self-employment income credited to, all of the calendar quarters which are quarters of coverage (as defined in section 213) and which fall within the period after 1950 and prior to the year specified in clause (i) for clause (ii) of paragraph (2)(C), by (B) the number of months in such quarters; except that any such individual who is fully insured (without regard to section 214(a)(4)) shall have his average monthly wage computed under this subsection without regard to this paragraph if such computation results in a larger primary insurance amount."

(d) Section 216(i)(3) of such Act is amended to read is follows:

"(3) The requirements referred to in clauses (i) and (ii) of paragraph (2)(C) are satisfied by an individual with respect to any quarter only if—

"(A) he would have been a fully insured individual (as defined in section 214) had he attained age 62 and filed application for benefits under section 202(a) on the first day of such quarter, and (i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with such quarter, or (ii) if such quarter ends before he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with such quarter and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage; or

"(B) he is blind (within the meaning of 'blindness' as defined in paragraph (1) of this subsection) and has not less than 6 quarters of coverage in the period which ends with such quarter.

For purposes of clauses (i) and (ii) of subparagraph (A) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage."

(e) The first sentence of section 222(b)(1) of such Act is amended by inserting "(other than such an individual whose disability is blindness as defined in section 216(i)(1))" after "an individual entitled to disability insurance benefits".

(f) Section 223(a)(1) of such Act is amended—

(1) by striking out the comma at the end of subparagraph (B) and inserting in lieu thereof "or is blind (within the meaning of 'blindness' as defined in section 216(i)(1)),";

(2) by striking out "the month in which he attains age 65" and inserting in lieu thereof "in the case of any individual other than an individual whose disability is blindness (as defined in section 216(i)(1), the month in which he attains age 65"; and

(3) by striking out the second sentence.

(g) Section 22(c)(1) of such Act is amended to read as follows:

"(4) An individual shall be insured for disability insurance benefits in any month if—

"(A) he would have been a fully insured individual (as defined in section 214) had he attained age 62 and filed application for benefits under section 202(a) on the first day of such month, and (i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with the quarter in which such month occurred, or (ii) if such month ends before the quarter in which he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with the quarter in which such month occurred and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

"(B) he is blind (within the meaning of 'blindness' as defined in section 216(i)(1)) and has not less than 6 quarters of coverage in the period which ends with the quarter in which such month occurs,

For purposes of clauses (i) and (ii) of subparagraph (A) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a period of disability unless such quarter was a quarter of coverage."

(h) Section 223(d)(1)(B) of such Act is amended to read as follows:

"(B) blindness (as defined in section 216(i)(1))."

(i) The second sentence of section 223(d)(4) of such Act is amended by inserting "(other than an individual whose disability is blindness, as defined in section 216(i)(1))" immediately after "individual".

SEC. 7. In the case of an insured individual who is under a disability as defined in section 223(d)(1)(B) of the Social Security Act, who is entitled to monthly insurance benefits under section 202(a) or 223 of such Act for a month after the month in which this Act is enacted, and who applies for a recomputation of his disability insurance benefit or for a disability insurance benefit (if he is entitled under such section 202(a)) in or after the month this Act is enacted, the Secretary shall, notwithstanding the provisions of section 215(f)(1) of such Act, make a recomputation of such benefit if such recomputation results in a higher primary insurance amount.

SEC. 8. The amendments made by sections 6 and 7 shall apply only with respect to monthly benefits under title II of the Social Security Act for and after the second month following the month in which this Act is enacted.

Mr. HARTKE. Mr. President, this amendment liberalizes the provisions of the Federal disability insurance law for blind persons.

On five separate occasions, the proposal has been approved by the Senate during the past dozen years. As an indication of the support which this disability for the blind measure has received in this Chamber, no less than 61 of my colleagues joined me in sponsoring the proposal as a bill (S. 2359) this year.

My amendment would make it possible for a blind person who has worked for a year and a half in social security covered work to qualify and draw disability benefits payments so long as he remains blind and regardless of his earnings. The present law requires that a blind person have worked in covered employment in 20 of the last 40 quarters. That eligibility requirement fails to take into account the fact that a blind person finds it difficult to secure work of any kind, however employable he may be on the basis of talents and training.

My amendment gives legal recognition to another hard fact confronting the blind—they must always function without sight in a society structured for sight, and they must work in an economy organized by sighted people for sighted people. As a result, the blind person will need varying degrees of sight to assist him no matter what he does or how able he may be, and the only sure way to get this help is to hire it. The blind person must thus have disability insurance payments to serve as a continuing source of funds to hire sighted assistance.

It is my hope, Mr. President, that this 93d Congress will be known as the most important of all Congresses for blind Americans. It can achieve that distinction if we enact the disability insurance for the blind amendment which I offer today so that, at long last, blind people can be liberated, and elevated to a more equal relationship with their sighted fellows.

Mr. President, I ask unanimous consent that a factsheet on this amendment, as well as an explanation of it and a list of the cosponsors of S. 2359, be printed in the RECORD at this point.

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

FACTSHEET: IMPROVED DISABILITY INSURANCE FOR THE BLIND

A bill to amend title II of the Social Security Act so as to liberalize the conditions governing eligibility of blind persons to receive disability insurance benefits thereunder.

HISTORY

Offered in the 88th Congress by Senator Hubert Humphrey as a floor amendment to H.R. 11865 (Social Security Bill); adopted by voice vote without a dissenting vote; lost when Social Security conference ended in deadlock.

Offered in 89th Congress by Senator Vance Hartke, as S. 1787; 41 cosponsors; adopted as floor amendment to H.R. 6675 by 78 to 11 roll call votes; not approved by Social Security conference.

Offered in the 91st Congress by Senator Vance Hartke, as S. 2518; 68 co-sponsors including nine of the 17 member Committee on Finance; adopted by Committee on Fi-

nance as amendment to H.R. 17550; sponsored in the House of Representatives by Congressman James A. Burke; as H.R. 3782 (identical to S. 2518), and, slightly modified, as H.R. 14673; 160 co-sponsors to the Burke bill including eleven of the 25-member Committee on Ways and Means; offered in the Committee on Ways and Means Social Security Executive Session by Congressman Burke; Committee adopted proposal of Disability Insurance for the Blind Bill removing recency of quarters earned in Social Security-covered work requirement making 30,000 otherwise ineligible blind persons eligible for disability benefits; no further action since House-Senate Conference on Social Security matters was not held.

Offered in the 92nd Congress in the Senate by Senator Vance Hartke, as S. 1335; 71 co-sponsors including 10 of the 16-member Committee on Finance; adopted by the Committee on Finance as amendment to H.R. 1; sponsored in the House of Representatives by Congressman James A. Burke, as H.R. 1240 (identical to S. 1335); offered by Congressman Burke in Committee on Ways and Means Executive Session on H.R. 1; Committee adopted provision similar to Committee action taken in the 91st Congress; House-Senate Conference on Social Security matters approved change in Disability Insurance for the Blind as adopted by the Committee on Ways and Means.

PROVISIONS

Allows qualification for disability benefits to the person who is blind according to the generally accepted definition of blindness (20/200, etc.) and who has worked six quarters in Social Security-covered work, any time earned, rather than 20 of the last 40 quarters as required of those with other disabilities; continuation of benefits irrespective of earnings so long as blindness lasts, rather than cutting off benefits if the blind person earns as little as $140.00 in a month as provided in existing regulations.

WHAT CHANGES WOULD DO

The Disability Insurance for the Blind bill would transform the Disability Insurance Program providing only subsistence income to long-time employed but presently unemployable blind persons into a system providing short-term employed blind persons with insurance income to off-set the economic consequence of blindness—diminished earning power, greatly diminished employment opportunities, greatly increased costs of living and working, blind, in a sight-directed economy and society.

WHY CHANGES ARE NEEDED

To many blind persons, able to work, although blind, but unable to secure work because they are blind—or unable to secure work of long and steady duration, because they are blind—to these people, the requirement of employment for a year and a half in Social Security-covered work, instead of the five of the last ten years requirement in existing law, is much more realistic and reasonable under the special and adverse circumstances facing blind persons.

It is much more realistic, when considering the misinformed or uninformed attitudes, the adverse and prejudicial practices which confront blind people when they seek work, when they are qualified by talent and training for work, when they are skilled and able to operate successfully with blindness, yet, are not hired because they are believed to be incompetent and incapable.

Making disability insurance payments available when a blind person has worked six quarters in Social Security-covered work is much more reasonable than the five years' requirement, for it would make such payments more readily available to more persons when the disaster of blindness occurs, when the need for the security provided by regularly received disability insurance payments is greatest in a workman's life.

This bill recognizes that a person who tries to function, sightless, in our sight-structured world, functions at a financial disadvantage.

For whatever a blind man would do, whatever employment or activity he would pursue, he has the need for sight to assist him.

Sighted family members and friends may be helpful, when the inclination moves them to be helpful, but the blind vending stand operator, the blind lawyer or teacher, the blind piano tuner, even the blind housewife soon discovers that sight which is hired is more reliably available than sight which is given from kindness.

So the blind person who would function self-dependently, the blind person who would earn a living, who would live self-responsibly, must not only pay the usual daily living costs which his sighted fellows pay, but he must also pay the extra, the burdening expenses of blindness—the expenses incurred in hiring sight.

By allowing a blind person to draw disability insurance payments so long as he continues blind and irrespective of his earnings, this bill would provide to such blind person, a regular source of funds to pay for sight, and it would thus help to reduce the economic disadvantages and inequalities of blindness in his life.

AMENDMENT NO. 636, LIBERALIZATION OF SOCIAL SECURITY ELIGIBILITY FOR THE BLIND

1. Reduces needed quarters of covered employment to 6 from the present 20, to be eligible for disability insurance.
2. Would affect approximately 80,000 persons, presently working.
3. Would cost about $500 million.
4. Introduced as a bill (S. 2359) earlier this year, there were 61 cosponsors (see attached list).

COSPONSORS OF S. 2359

Abourezk, Allen, Baker, Bartlett, Bayh, Beall, Bentsen, Bible, Biden, Brooke, Burdick, Byrd, Robert C., Cannon, Case, Chiles, Church, Clark, Cook, Cranston, Curtis, Domenici, Dominick, Eagleton, Fulbright, Goldwater, Gravel.

Griffin, Gurney, Hansen, Hart, Hatfield, Hollings, Hruska, Hughes, Humphrey, Inouye, Jackson, Javits, Kennedy, Magnuson, Mansfield, Mathias, McGee, McGovern, McIntyre, Metcalf, Mondale, Montoya, Moss, Nelson, Pastore, Pell.

Randolph, Ribicoff, Schweiker, Stafford, Stevens, Thurmond, Tower, Weicker, Young. Total: 61.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

Mr. LONG. Mr. President, the Senate has adopted this amendment on other occasions, and I assume the Senate would want to adopt the amendment again. Therefore, I am willing to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

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. HARTKE. 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 bill is open to further amendment.

Mr. HARTKE. Mr. President, I send to the desk Amendment No. 626, as modified, and ask that it be stated.

The PRESIDING OFFICER. The clerk will read the amendment.

The second assistant legislative clerk proceeded to read the amendment.

Mr. HARTKE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

Amendment No. 626, as modified, is as follows:

Strike out "Part B" of Title I beginning on page 44, line 10 through page 54, line 17, and insert in lieu thereof the following:

PART B. PAYROLL TAX FOR LOW-INCOME INDIVIDUALS

SEC. 112. (a) Section 3101 of the Internal Revenue Code of 1954 (relating to tax on employees) is amended by adding at the end thereof the following new subsection:

"(c) ALTERNATE TAX ON LOW-INCOME INDIVIDUALS.—"(1) IN GENERAL.—In the case of a taxpayer who is married (as determined under Section 143) whose adjusted social security income for the calendar year is less than $850, there is hereby imposed on the income of such individual (in lieu of the taxes imposed by subsection (a) and (b)) a tax determined under the following table:

The tax is the following percentage of the taxes imposed by subsections (a) and (b)

[In percent]

If the adjusted social security income is:	
Less than 0	10
0 to $49	15
$50 to $99	20
$100 to $149	25
$150 to $199	30
$200 to $249	35
$250 to $299	40
$300 to $349	45
$350 to $399	50
$400 to $449	55
$450 to $499	60
$500 to $549	65
$550 to $599	70
$600 to $649	75
$650 to $699	80
$700 to $749	85
$750 to $799	90
$800 to $849	95

"(2) ADJUSTED SOCIAL SECURITY INCOME.—For purposes of this subsection, the adjusted social security income of a taxpayer who is married (as determined under Sec. 143) for any calendar year is his adjusted gross income for his taxable year beginning in such calendar year (determined under section 62), minus the sum of—

"(A) $1,300, and

"(B) the amount of personal exemptions to which he is entitled under section 151.

In the case of a married individual whose spouse receives wages or self-employment income during such year, his adjusted gross income and the number of exemptions to which he is entitled shall, for purposes of this paragraph, be determined as if he were not married."

(2) Section 3102 of such Code (relating to deduction of tax from wages) is amended by adding at the end thereof the following new subsection:

"(d) WITHHOLDING ON WAGES OF LOW INCOME INDIVIDUALS.—

"(1) IN GENERAL.—In the case of a taxpayer who is married (as determined under Sec. 143) whose adjusted wages are less than $850 (computed at an annual rate), the employer of such taxpayer shall deduct from the wages paid (in lieu of the amount required to be deducted under subsection (a))

an amount of the tax imposed by section 3101 determined under the following table:

The amount to be deducted is the following percentage of the amount required to be deducted under subsection (a)

"If the adjusted wages (computed at an annual rate) are:

	[In percent]
Less than 0	10
0 to $49	15
$50 to $99	20
$100 to $149	25
$150 to $199	30
$200 to $249	35
$250 to $299	40
$300 to $349	45
$350 to $399	50
$400 to $449	55
$450 to $499	60
$500 to $549	65
$550 to $599	70
$600 to $649	75
$650 to $699	80
$700 to $749	85
$750 to $799	90
$800 to $849	95

"(2) ADJUSTED WAGES.—For purposes of this subsection, the adjusted wages of a married taxpayer for any period is the amount of wages (adjusted to an annual rate), minus the sum of—

"(A) $1,300, and

"(B) the amount of personal exemptions to which he is entitled under section 151. In the case of a married individual whose spouse receives wages during such period, the number of exemptions to which he is entitled shall be determined as if he were not married.

"(3) CREDIT AGAINST TAX.—Amounts deducted from the wages of an employee under this subsection shall be allowed as a credit against the tax imposed on the employee under section 3101.

"(4) WITHHOLDING CERTIFICATES.—Each employee shall furnish his employer with a signed certificate setting forth such information as is necessary to enable the employer to determine whether this subsection is applicable to him, and the amount of tax to be deducted under this subsection. Such certificate shall be in such form, shall be furnished at such time or times, and shall remain in effect for such period as the Secretary or his delegate prescribes by regulations.

"(5) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and section 3101(c)."

(b) Section 1401 of the Internal Revenue Code of 1954 (relating to rate of tax on self-employment income) is amended by adding at the end thereof the following new subsection:

"(c) ALTERNATE TAX ON LOW-INCOME INDIVIDUALS—

"(1) IN GENERAL.—In the case of a married taxpayer whose adjusted social security income for the taxable year is less than $850, there hereby is imposed on the self-employment income of such taxpayer (in lieu of the taxes imposed by subsections (a) and (b)) a tax determined under the following table:

The tax is the following percentage of the taxes imposed by subsections (a) and (b)

"If the adjusted social security income is:

	[In percent]
Less than 0	10
0 to $49	15
$50 to $99	20
$100 to $149	25
$150 to $199	30
$200 to $249	35
$250 to $299	40
$300 to $349	45
$350 to $399	50
$400 to $449	55
$450 to $499	60
$500 to $549	65
$550 to $599	70
$600 to $649	75
$650 to $699	80
$700 to $749	85
$750 to $799	90
$800 to $849	95

"(2) ADJUSTED SOCIAL SECURITY INCOME.—For purposes of this subsection, the adjusted social security income of a taxpayer who is married (as determined under section 1431), for any taxable year is his adjusted gross income for such year (determined under section 62), minus the sum of—

"(A) $1,300, and

"(B) the amount of the personal exemptions to which he is entitled under section 151.

In the case of a married individual whose spouse receives wages or self-employment income during each year, his adjusted gross income and the number of exemptions to which he is entitled shall, for purposes of this paragraph, be determined as if he were not married."

(c) Section 31(b) of the Internal Revenue Code of 1954 (relating to credit for special refunds of social security tax) is amended by striking out the heading and paragraph (1) and inserting in lieu thereof the following:

"(b) CREDIT FOR EXCESS WITHHOLDING OF SOCIAL SECURITY TAX.—

"(1) IN GENERAL.—The Secretary or his delegate may prescribe regulations providing for the crediting against the tax imposed by this subtitle of amounts deducted under section 3102 from the wages paid to the taxpayer in excess of the tax imposed on such wages by section 3101, including the amount determined by the taxpayer or the Secretary or his delegate to be allowable under section 6413(c) as a special refund of such tax. The amount allowable as a credit under such regulations shall, for purposes of this subtitle, be considered an amount withheld at source as tax under section 3402."

(d) There is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Health Insurance Trust Fund amounts (as determined by the Secretary of the Treasury) equal to losses of revenues of such trust funds resulting from the application of sections 3101(c) and 1401(c) of the Internal Revenue Code of 1954. The amounts appropriated by the preceding sentence shall be transferred from time to time from the general fund in the Treasury to the respective trust funds on the basis of estimates by the Secretary of the Treasury. Proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the amounts which should have been transferred.

PARTIAL GENERAL FINANCING OF RETIREMENT BENEFITS

SEC. 7. (a) In addition to any other funds appropriated or authorized to be appropriated pursuant to other provisions of law for any fiscal year to the Federal Old-Age and Survivors Insurance Trust Fund, and in addition to any other funds authorized by other provisions of law to be appropriated to or deposited in the Federal Disability Insurance Trust Fund for any fiscal year, there are authorized to be appropriated to each of such funds the following amounts:

(1) For the fiscal year ending June 30, 1974, an amount equal to one twenty-fifth of the expenditures from such fund for such year;

(2) For the fiscal year ending June 30, 1975, an amount equal to three-fiftieths of the expenditures from such fund for such year;

(3) For the fiscal year ending June 30, 1976, an amount equal to two twenty-fifths of the expenditures from such fund for such year;

(4) For the fiscal year ending June 30, 1977, an amount equal to one-tenth of the expenditures from such fund for such year;

(5) For the fiscal year ending June 30, 1978, an amount equal to three twenty-fifths of the expenditures from such fund for such year;

(6) For the fiscal year ending June 30, 1979, an amount equal to seven-fiftieths of the expenditures from such fund for such such year;

(7) For the fiscal year ending June 30, 1980, an amount equal to four twenty-fifths of the expenditures from such fund for such year;

(8) For the fiscal year ending June 30, 1981, an amount equal to nine-fiftieths of the expenditures from such fund for such year; and

(9) For any fiscal year ending after June 30, 1981, an amount equal to one-fifth of the expenditures from such fund for such year.

(b)(1) Funds authorized to be appropriated under subsection (a) shall be appropriated for any fiscal year on the basis of estimates by the Congress of the amounts which will be expended for such year from the trust fund to which funds are being appropriated, reduced, or increased to the extent of any overappropriation or underappropriation under this section to such fund for any preceding year with respect to which adjustment has not already been made.

(2) The Secretary of Health, Education, and Welfare shall furnish to the Congress such information, data, and actuarial studies as may be appropriate to enable the Congress to make the estimates referred to in paragraph (1).

Mr. HARTKE. Mr. President, the social security payroll tax is the fastest growing tax in the United States. In 1971, payroll tax collections reached $44 billion—27 times the level of 1949. This increase is equal to a compound growth rate of more than 16 percent per year. In terms of total Federal revenues, the payroll tax now brings in 23 percent of all Federal revenues, whereas, in 1949, it brought in just 4 percent.

At least one-half of all workers who file tax returns pay more social security tax than they do Federal income tax. For the worker with a small family and an income hovering near the poverty line, his effective social security tax rate is about 11.4 percent. The same worker with a $24,000 income has an effective rate of 2.1 percent. Study after study has cited the regressive nature of the payroll tax. It hits the low- and moderate-income worker hardest.

While the bill now before the Senate contains no increase in payroll taxes until 1980, and only modest increases thereafter, the mail I am receiving indicates that workers are already overburdened by the payroll tax. The amendment I offer today provides some immediate payroll tax relief for low-income workers. In the long run, however, I believe that we will have to go even further than this proposal to provide tax relief to many moderate-income workers, as well.

Mr. President, the payroll tax is an involuntary tax levied without exemptions or deductions. The low-income worker I referred to earlier in my statement is paying an effective income tax rate of zero, while his social security rate is over 11 percent. The worker with $24,000 in

wages is paying an effective social security rate of just over 2 percent, while his income tax rate is almost 28 percent.

Clearly, there are major inequities in this tax structure. The Finance Committee proposals provide a tax credit for low-income workers with families. There are several major deficiencies in this approach, however. First, it does nothing to make the payroll tax less regressive. Second, it applies only to married workers with families. Third, it is given at the end of the year, although low-income families need relief throughout the year.

The proposal I offer today is free from each of these deficiencies. It is a direct effort to introduce a progressive feature into the payroll tax. Second, it applies to all married workers, with or without children. Third, it provides relief with every payroll check.

Mr. President, my proposal is a simple one, yet long hours of thought and effort have gone into its preparation. What it provides is that a worker with a tax liability of less than zero pays only 10 percent of his full social security tax. A worker with an income tax liability of 0 to $49 pays 15 percent of his social security tax obligation. From that point on, every $50, the worker's social security tax obligation is increased 5 percent, until the tax liability reaches $850. At that point, the worker pays the full social security tax which is normally due.

The reduction applies only to the employee tax; the employer pays his full share of the normal tax on the worker's salary.

Mr. President, I ask unanimous consent that tables showing the operation of my proposal at various levels of income for single and married workers be printed in the RECORD at this point.

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

TABLE I.—MARRIED WORKER—SPOUSE WORKING—NO CHILDREN [1]

Gross wages	Income tax liability	Full social security tax	Percent social security [2]	Hartke social security save [3]	Finance Committee tax credit [4]
$1,000	(5)	$58.50	10	$52.65	0
$1,050	(5)	61.43	10	55.28	0
$1,100	(5)	64.35	10	57.91	0
$1,150	(5)	67.28	10	60.54	0
$1,200	(5)	70.20	10	63.18	0
$1,250	(5)	73.23	10	65.82	0
$1,300	(5)	76.05	10	68.44	0
$1,350	(5)	78.98	10	71.08	0
$1,400	(5)	81.90	10	73.71	0
$1,450	(5)	84.83	10	76.35	0
$1,500	(5)	87.75	10	78.97	0
$1,550	(5)	90.68	10	81.61	0
$1,600	(5)	93.60	10	84.24	0
$1,650	(5)	96.53	10	86.66	0
$1,700	(5)	99.45	10	90.50	0
$1,750	(5)	102.38	10	92.14	0
$1,800	(5)	105.30	10	94.57	0
$1,850	(5)	107.43	10	96.69	0
$1,900	(5)	111.15	10	100.03	0
$1,950	(5)	114.08	10	102.67	0
$2,000	(5)	117.00	10	105.30	0
$2,050	0	119.93	15	101.94	0
$2,100	$50	122.85	20	98.28	0
$2,150	100	125.78	25	94.44	0
$2,200	150	128.70	30	90.09	0
$2,250	200	131.63	35	85.56	0
$2,300	250	134.55	40	80.73	0
$2,350	300	138.48	45	76.16	0
$2,400	350	140.40	50	70.20	0
$2,450	400	143.37	55	64.52	0
$2,500	450	146.25	60	58.50	0
$2,550	500	149.22	65	52.23	0
$2,600	550	152.20	70	45.66	0
$2,650	600	$155.17	75	$38.79	0
$2,700	650	158.15	80	31.63	0
$2,750	700	161.12	85	24.17	0
$2,800	750	163.80	90	16.38	0
$2,850	800	166.77	95	8.34	0
$2,899	849	169.59	95	8.48	0
$2,900	850	169.65	100	0	0

[1] Under the Hartke proposal, a married worker whose spouse is working is treated for purposes of calculated tax liability as if he or she were single.
[2] Indicates percent of full social security tax for which employee is liable.
[3] Indicates total annual amount which employee would save under Hartke proposal.
[4] The Finance Committee tax credit applies only to married workers with at least 1 child.
[5] Less than 0.

TABLE II.—MARRIED WORKER—SPOUSE NOT WORKING—2 CHILDREN

Gross wages	Income tax liability	Full social security tax	Percent social security [1]	Hartke social security save [2]	Finance Committee tax credit [3]
$1,000	(4)	$58.50	10	$52.65	$100.00
$1,050	(4)	61.43	10	55.28	105.00
$1,100	(4)	64.35	10	57.91	110.00
$1,150	(4)	67.28	10	60.54	115.00
$1,200	(4)	70.20	10	63.18	120.00
$1,250	(4)	73.13	10	65.28	125.00
$1,300	(4)	76.05	10	68.44	130.00
$1,350	(4)	78.98	10	71.08	135.00
$1,400	(4)	81.90	10	73.71	140.00
$1,450	(4)	84.83	10	76.35	145.00
$1,500	(4)	87.75	10	78.97	150.00
$1,550	(4)	90.68	10	81.61	155.00
$1,600	(4)	93.60	10	84.24	160.00
$1,650	(4)	96.53	10	86.88	165.00
$1,700	(4)	99.45	10	90.50	170.00
$1,750	(4)	102.38	10	92.14	175.00
$1,800	(4)	105.30	10	94.57	180.00
$1,850	(4)	107.43	10	96.69	185.00
$1,900	(4)	111.15	10	100.03	190.00
$1,950	(4)	114.08	10	102.67	195.00
$2,000	(4)	117.00	10	105.30	200.00
$2,050	(4)	119.93	10	107.94	205.00
$2,100	(4)	122.85	10	110.58	210.00
$2,150	(4)	125.78	10	113.22	215.00
$2,200	(4)	128.70	10	115.86	220.00
$2,250	(4)	131.63	10	118.47	225.00
$2,300	(4)	134.55	10	121.09	230.00
$2,350	(4)	138.48	10	124.63	235.00
$2,400	(4)	140.40	10	126.36	240.00
$2,450	(4)	143.37	10	129.03	245.00
$2,500	(4)	146.25	10	131.62	250.00
$2,550	(4)	149.92	10	134.93	255.00
$2,600	(4)	152.20	10	136.98	260.00
$2,650	(4)	155.17	10	139.65	265.00
$2,700	(4)	158.15	10	142.33	270.00
$2,750	(4)	161.12	10	145.01	275.00
$2,800	(4)	163.80	10	147.42	280.00
$2,850	(4)	167.77	10	150.99	285.00
$2,900	(4)	169.65	10	152.68	290.00
$2,950	(4)	172.58	10	155.32	295.00
$3,000	(4)	175.50	10	157.94	300.00
$3,050	(4)	178.43	10	160.59	305.00
$3,100	(4)	181.35	10	163.21	310.00
$3,150	(4)	184.28	10	165.85	315.00
$3,200	(4)	187.20	10	168.48	320.00
$3,250	(4)	190.13	10	171.12	325.00
$3,300	(4)	193.05	10	173.74	330.00
$3,350	(4)	195.98	10	176.38	335.00
$3,400	(4)	198.90	10	179.01	340.00
$3,450	(4)	201.83	10	181.65	345.00
$3,500	(4)	204.75	10	184.27	350.00
$3,550	(4)	207.68	10	186.91	355.00
$3,600	(4)	209.60	10	188.64	360.00
$3,650	(4)	213.52	10	192.17	365.00
$3,700	(4)	216.45	10	194.80	370.00
$3,750	(4)	219.38	10	197.44	375.00
$3,800	(4)	222.30	10	200.07	380.00
$3,850	(4)	224.23	10	201.81	385.00
$3,900	(4)	228.15	10	205.33	390.00
$3,950	(4)	231.08	10	207.97	395.00
$4,000	(4)	234.00	10	210.60	400.00
$4,050	(4)	236.93	10	213.24	387.50
$4,100	(4)	239.85	10	215.86	375.00
$4,150	(4)	242.78	10	218.50	362.50
$4,200	(4)	245.70	10	221.13	350.00
$4,250	(4)	248.63	10	223.77	337.50
$4,300	0	251.55	15	213.82	325.00
$4,350	$50	254.48	20	203.58	312.50
$4,400	100	257.40	25	193.05	300.00
$4,450	150	260.33	30	182.23	287.50
$4,500	200	263.25	35	171.11	275.00
$4,550	250	266.17	40	159.60	262.50
$4,600	300	269.10	45	148.01	250.00
$4,650	350	272.03	50	136.02	237.50
$4,700	$400	$274.95	55	$123.73	$225.00
$4,750	450	277.88	60	111.15	212.50
$4,800	500	280.80	65	98.28	200.00
$4,850	550	283.73	70	85.12	187.50
$4,900	600	286.65	75	71.66	175.00
$4,950	650	289.58	80	57.92	162.50
$5,000	700	292.50	85	43.88	150.00
$5,050	750	295.43	90	26.59	137.50
$5,100	800	298.35	95	14.92	125.00
$5,149	849	301.22	95	15.06	112.75
$5,150	850	301.27	100	0	112.50

[1] Indicates percent of full social security tax for which employee is liable.
[2] Indicates total annual amount which employee would save under Hartke proposal.
[3] The Finance Committee tax credit applies only to married workers with at least 1 child.
[4] Less than 0.

TABLE III.—MARRIED WORKER—SPOUSE WORKING—2 CHILDREN [1]

Gross wages	Income tax liability	Full social security tax	Percent social security [2]	Hartke social security save [3]	Finance Committee tax credit [4]
$1,000	(5)	$58.50	10	$52.65	$100.00
$1,050	(5)	61.43	10	55.28	105.00
$1,100	(5)	64.35	10	57.91	110.00
$1,150	(5)	67.28	10	60.54	115.00
$1,200	(5)	70.20	10	63.18	120.00
$1,250	(5)	73.13	10	65.82	125.00
$1,300	(5)	76.05	10	68.44	130.00
$1,350	(5)	78.98	10	71.08	135.00
$1,400	(5)	81.90	10	73.71	140.00
$1,450	(5)	84.83	10	76.35	145.00
$1,500	(5)	87.75	10	78.97	150.00
$1,650	(5)	90.68	10	81.61	155.00
$1,600	(5)	93.60	10	84.24	160.00
$1,650	(5)	96.53	10	86.66	165.00
$1,700	(5)	99.45	10	90.50	170.00
$1,750	(5)	102.38	10	92.14	175.00
$1,800	(5)	105.30	10	94.57	180.00
$1,850	(5)	107.43	10	96.69	185.00
$1,900	(5)	111.15	10	100.03	190.00
$1,950	(5)	114.08	10	102.67	195.00
$2,000	(5)	117.00	10	105.30	200.00
$2,050	0	119.93	15	101.94	205.00
$2,100	$50	122.85	20	98.28	210.00
$2,150	100	125.78	25	94.44	215.00
$2,200	150	128.70	30	90.09	220.00
$2,250	200	131.63	35	85.56	225.00
$2,300	250	134.55	40	80.73	230.00
$2,350	300	138.48	45	76.16	235.00
$2,400	350	140.40	50	70.20	240.00
$2,450	400	143.37	55	64.52	245.00
$2,500	450	146.25	60	58.50	250.00
$2,550	500	149.22	65	52.23	255.00
$2,600	550	152.20	70	45.66	260.00
$2,650	600	155.17	75	38.79	265.00
$2,700	650	158.15	80	31.63	270.00
$2,750	700	161.12	85	24.17	275.00
$2,800	750	163.80	90	16.38	280.00
$2,850	800	166.77	95	8.34	285.00
$2,899	849	169.59	95	8.48	289.90
$2,900	850	169.65	100	0	290.00

[1] Under the Hartke proposal, a married worker whose spouse is working is treated for purposes of calculated tax liability as if he or she were single.
[2] Indicates percent of full social security tax for which employee is liable.
[3] Indicates total annual amount which employee would save under Hartke proposal.
[4] The Finance Committee tax credit applies only to married workers with at least 1 child.
[5] Less than 0.

TABLE IV.—MARRIED WORKER—SPOUSE NOT WORKING—NO CHILDREN

Gross wages	Income tax liability	Full social security tax	Percent social security [1]	Hartke social security save [2]	Finance Committee tax credit [3]
$1,000	(4)	$58.50	10	$52.65	0
$1,050	(4)	61.43	10	55.28	0
$1,100	(4)	64.35	10	57.91	0
$1,150	(4)	67.28	10	60.54	0
$1,200	(4)	70.20	10	63.18	0
$1,250	(4)	73.13	10	65.28	0
$1,300	(4)	76.05	10	68.44	0
$1,350	(4)	78.98	10	71.08	0

Gross wages	Income tax liability	Full social security tax	Percent social security [1]	Hartke social security save [2]	Finance Committee tax credit [3]
$1,400	(4)	$81.90	$10	73.71	0
$1,450	(4)	84.83	10	76.35	0
$1,500	(4)	87.75	10	78.97	0
$1,550	(4)	90.68	10	81.61	0
$1,600	(4)	93.60	10	84.24	0
$1,650	(4)	96.53	10	86.88	0
$1,700	(4)	99.45	10	90.50	0
$1,750	(4)	102.38	10	92.14	0
$1,800	(4)	105.30	10	94.57	0
$1,850	(4)	107.43	10	96.69	0
$1,900	(4)	111.15	10	100.03	0
$1,950	(4)	114.08	10	102.67	0
$2,000	(4)	117.00	10	105.30	0
$2,050	(4)	119.39	10	107.94	0
$2,100	(4)	122.85	10	110.58	0
$2,150	(4)	125.78	10	113.22	0
$2,200	(4)	128.70	10	115.86	0
$2,250	(4)	131.63	10	118.47	0
$2,300	(4)	134.55	10	121.09	0
$2,350	(4)	138.48	10	124.63	0
$2,400	(4)	140.40	10	126.36	0
$2,450	(4)	143.37	10	129.03	0
$2,500	(4)	146.25	10	131.62	0
$2,550	(4)	149.92	10	134.93	0
$2,600	(4)	152.20	10	136.98	0
$2,650	(4)	155.17	10	139.65	0
$2,700	(4)	158.15	10	142.33	0
$2,750	(4)	161.12	10	145.01	0
$2,800	0	163.80	15	139.23	0
$2,850	$50	167.77	20	134.22	0
$2,900	100	169.65	25	127.24	0
$2,950	150	172.58	30	120.81	0
$3,000	200	175.50	35	114.08	0
$3,050	250	178.43	40	107.06	0
$3,100	300	181.35	45	99.74	0
$3,150	350	184.28	50	92.14	0
$3,200	400	187.20	55	84.24	0
$3,250	450	190.13	60	76.05	0
$3,300	500	193.05	65	67.57	0
$3,350	550	195.98	70	58.79	0
$3,400	600	198.90	75	49.73	0
$3,450	650	201.83	80	40.37	0
$3,500	700	204.75	85	30.72	0
$3,550	750	207.68	90	20.77	0
$3,600	800	209.60	95	10.48	0
$3,649	849	213.47	95	10.67	0
$3,650	850	216.45	100	0	0

[1] Indicates percent of full social security tax for which employee is liable.
[2] Indicates total annual amount which employee would save under Hartke proposal.
[3] The Finance Committee tax credit applies only to married workers with at least 1 child.
[4] Less than 0.

Mr. HARTKE. Mr. President, let me clarify the modification of my amendment. As originally introduced, it covered all taxpayers paying the social security tax. As introduced, the cost estimate was close to $2 billion.

I have modified my amendment to cover only married workers thereby reducing the cost of my amendment to be the same as the bill on the floor. The significant difference here is the coverage. Under the Finance Committee bill, only married workers with children are covered. Under my amendment, all married workers are covered regardless of whether or not they have children.

Let me emphasize here that two significant groups of people will be covered by my amendment that are not covered by the bill as reported. Those groups are the newly married individuals who are entering the job market at a low-income level, and those married couples who have raised their children and are now unable to secure employment at a high income because of age, disablement, or lack of training. We must not forget those people who will significantly contribute to the economy of this country, nor those people who have already contributed throughout their lifetime. My amendment would bring both of these groups within the payroll tax deduction.

I have further modified my amendment, and struck all changes in medicare and hospital insurance. I have made this modification for one reason, I feel that it is absolutely necessary that the bill we approve here in the Senate provide for relief to the low-income worker. Under my amendment there would be immediate relief to those workers who need it most.

Mr. President, I have notified the manager of the bill, chairman of the Finance Committee, that this amendment deals with provisions concerning how we alleviate the present burden of the payroll tax. There has been in the bill, under the direction of the chairman, a measure whereby there is a tax credit for certain low-income people. This is in direct conflict with that approach. I feel this is a preferable one, but, under the circumstances, in view of the fact that the committee has approved the other provision, I feel we should give the chairman's approach preference, although I would want to proceed at a later date, in another year, with this approach, and I hope I can convince the chairman to agree with that approach.

Under those circumstances, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

ORDER THAT AMENDMENT NO. 723 BE PENDING BUSINESS ON TOMORROW

Mr. GRIFFIN. Mr. President, I ask unanimous consent, on behalf of the Senator from New York (Mr. JAVITS), that his amendment No. 723 be called up and made the pending question tomorrow.

The PRESIDING OFFICER. The clerk will report the amendment. The second assistant legislative clerk read as follows:

At the end of the bill insert the following new section:

SEC. —. (a) Section 203(e)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 is amended by adding at the end thereof the following new sentence: "Effective with respect to compensation for weeks of unemployment beginning after the date of the enactment of this sentence (or, if later, the date established pursuant to State law), the State may by law provide that the determination of whether there has been a State 'on' or 'off' indicator beginning or ending any extended benefit period shall be made under this subsection as if (i) paragraph (1) did not contain subparagraph (A) thereof, and (ii) the numeral '4' contained in subparagraph (B) thereof were '4.5'.".

(b) Subsection (f) of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 is amended to read as follows:

"Rate of Insured Unemployment, Covered Employment

"(f)(1) For the purpose of subsection (d), the term 'rate of insured unemployment' means the percentage arrived at by dividing—

"(A) the average weekly number of individuals filing claims for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by all State agencies to the Secretary, by

"(B) the average monthly covered employment for the specified period.

"(2) For the purpose of subsection (e), the term 'rate of insured unemployment' means the percentage arrived at by dividing—

"(A) the average weekly number of individuals filing claims for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by the State agency to the Secretary, by

"(B) the average monthly covered employment for the specified period, plus, if the State by law so provides, effective with respect to compensation for weeks of unemployment beginning after the date of enactment of this sentence (or, if later, the date established pursuant to State law) the thirteen-week exhaustion rate (as determined under paragraph (3)).

"(3) The 'thirteen-week exhaustion rate' is the percentage arrived at by dividing—

"(A) 25 per centum of the sum of the exhaustions, during the most recent twelve calendar months ending before the week with respect to which such rate is computed, of regular compensation under the State law, by

"(B) the average monthly covered employment as determined under paragraph (2)(B).

"(4) Determinations under subsection (d) shall be made by the Secretary in accordance with regulations prescribed by him.

"(5) Determinations under subsection (e) shall be made by the State agency in accordance with regulations prescribed by the Secretary.".

The PRESIDING OFFICER. Is there objection to the request of the Senator from Michigan? The Chair hears none, and it is so ordered.

U.S. PARTICIPATION IN UNITED NATIONS ENVIRONMENT PROGRAM—CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I submit a report of the committee of conference on H.R. 6768, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. HART). The report will be stated by title.

The second assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6768) to provide for participation by the United States in the United Nations Environment Program having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of November 15, 1973, at page 37137.)

Mr. ROBERT C. BYRD. Mr. President, I move that the conference report be agreed to.

The motion was agreed to.

ORDER FOR ADJOURNMENT TO 10 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it

stand in adjournment until the hour of 10 a.m. tomorrow morning.

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

ORDER FOR RECOGNITION OF SENATORS WEICKER, PERCY, AND GRIFFIN TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, after the two leaders or their designees have been recognized tomorrow under the standing order, the following Senators be recognized, each for not to exceed 15 minutes and in the order stated: Senators WEICKER, PERCY, and GRIFFIN.

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

ORDER FOR RECOGNITION OF SENATOR MANSFIELD AND FOR CONSIDERATION OF PENDING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the remarks by the able Senator from Michigan (Mr. GRIFFIN), the distinguished majority leader, the Senator from Montana (Mr. MANSFIELD), be recognized for not to exceed 15 minutes, after which the Senate resume the consideration of the unfinished business, H.R. 3153.

That means that there will be no period for the transaction of routine morning business early tomorrow.

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

ORDER TO PLACE S. 5 ON THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Government Operations be discharged from further consideration of the bill S. 5, which was referred to the Committee on Government Operations for 60 days, and that the bill be placed on the calendar.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

Mr. ALLEN. Mr. President, what was the bill?

Mr. ROBERT C. BYRD. This is a bill which was introduced on January 4 by Mr. MONDALE for himself and other Senators. It was reported by Mr. MONDALE on July 18, 1973 without amendment. It was committed to the Committee on Government Operation on September 11, 1973 with instructions to report back within 60 days by order of the Senate. I understand that the 60 days ran out on November 11, and that the committee desires that this request be made since it does not care to take any action thereon.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 5) to promote the general welfare.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

QUORUM CALL

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.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene at the hour of 10 a.m. tomorrow.

After the two leaders or their designees have been recognized under the standing order, the following Senators will be recognized each for not to exceed 15 minutes and in the order stated: Senators WEICKER, PERCY, GRIFFIN, and MANSFIELD.

At the conclusion of the aforementioned orders, the Senate will resume the consideration of the unfinished business, H.R. 3153, a bill to amend the Social Security Act and make certain technical and conforming changes.

At that time the question before the Senate will be on agreeing to amendment No. 723 by the Senator from New York (Mr. JAVITS), on which there is no time limitation.

Yea-and-nay votes will occur on tomorrow.

It is the hope of the leadership that on tomorrow the Senate can complete action on the unfinished business, the social security bill and take up the debt limit matter and can also dispose of the daylight saving time bill. That means that we will have a pretty full day.

Mr. President, I am directed by the distinguished majority leader to indicate the possibility of a Saturday session if we cannot complete our business on tomorrow. Hopefully we can complete the business that I have outlined. Senators can, therefore, expect several rollcalls.

Senators ought to be prepared to have a reasonably long session tomorrow.

Mr. GRIFFIN. Mr. President, will the distinguished majority whip yield for an inquiry on the program?

Mr. ROBERT C. BYRD. Yes.

Mr. GRIFFIN. In so far as the debt ceiling matter is concerned, that would be a privileged matter and could be brought up at any time, is that correct?

Mr. ROBERT C. BYRD. Yes, the Senator is correct. The law will expire at midnight tomorrow, and it is hoped by the leadership on both sides, after consultations that have taken place today on this side of the Capitol, and after having consulted with the leadership on the other side of the Capitol, that that matter can be resolved fairly expeditiously tomorrow in the Senate, so that it can go back to the House and perhaps be resolved there in ample time before the law expires.

Mr. GRIFFIN. But insofar as any particular time or scheduling is concerned, that is not determined at this point?

Mr. ROBERT C. BYRD. It has not been determined, the Senator is correct.

ADJOURNMENT UNTIL 10 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 10 o'clock tomorrow morning.

The motion was agreed to; and at 6:47 p.m. the Senate adjourned until tomorrow, Friday, November 30, 1973, at 10 a.m.

HOUSE OF REPRESENTATIVES—*Thursday, November 29, 1973*

The House met at 12 o'clock noon.

Rabbi Solomon I. Berl, Young Israel of Co-op City, Bronx, N.Y., offered the following prayer:

O Lord, in these soul-stirring times, we seek Thy guidance for our Nation's representatives, entrusted with the guardianship of our rights and liberties, who dedicate themselves to directing the affairs of our country and the strengthening of its ideals and way of life.

May Thy spirit dwell within them, as they manifest abiding courage and sincere faith in the cherished traditions of our Founding Fathers, to work for freedom, justice, and peace.

Bless all the people of our country. Above divisive difference of race, creed, and social station, may we ever feel our common humanity and our common duties of justice and truth.

Hasten the day when the millenial hope of universal peace will prevail throughout the world with justice and freedom for all. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment concurrent resolutions of the House of the following titles:

H. Con. Res. 381. Concurrent resolution authorizing the Clerk of the House to make a technical correction in the enrollment of H.R. 1284; and

H. Con. Res. 382. Concurrent resolution