plants for use in home gardens; to the Committee on Agriculture.

H.R. 14662. A bill to authorize the District of Columbia Council to provide for an increase in compensation for teachers in the District of Columbia, and for other purposes; to the Committee on the District of Columbia.

By Mr. KYROS:

H.R. 14663. A bill to amend title 5, United States Code, to correct certain inequities in the crediting of National Guard technician service in connection with civil service retirement, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. RONCALIO of Wyoming:

H.R. 14664. A bill to amend the Small Business Act by adding at the end thereof the following new title; to the Committee on Interior and Insular Affairs.

By Mr. ROSENTHAL:

H.R. 14665. A bill to require retailers to provide point of sale information to consumers concerning the recent price history of products and merchandise offered for sale at retail in commerce, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. BELL (for himself and Mr. STEELE):

H.J. Res. 1002. Joint resolution to protect whales and certain other living marine sources; to the Committee on Foreign Affairs.

By Mr. GUYER:

H.J. Res. 1003. Joint resolution to designate Findley, Ohio, as Flag City, U.S.A.; to the Committee on the Judiciary.

By Mr. HUBER (for himself, Mr. ASHBROOK, Mr. BELL, Mr. ESHLEMAN, Mr. FORSYTHE, Mr. KEMP, Mr. LANDGREBE, Mr. QUIE, Mr. SARASIN, and Mr. TOWELL of Nevada):

H.J. Res. 1004. Joint resolution designating the premises occupied by the Chief of Naval Operations as the official residence of the Vice President, effective upon the termination of service of the incumbent Chief of Naval Operations; to the Committee on Armed Services.

By Mr. McEWEN:

H.J. Res. 1005. Joint resolution to amend title 5 of the United States Code to provide for the designation of the 11th day of November of each year as Veterans' Day; to the Committee on the Judiciary.

By Mr. RONCALIO of Wyoming:

H.J. Res. 1006. Joint resolution to amend title 5 of the United States Code to provide for the designation of the 11th day of November of each year as Veterans' Day; to the Committee on the Judiciary.

By Mr. YOUNG of Illinois:

H.J. Res. 1007. Joint resolution proposing an amendment to the Constitution of the United States to change the terms of office and authorized membership total of the House of Representatives, and to provide a method for future changes in such total; to the Committee on the Judiciary.

By Mr. BINGHAM:

H. Con. Res. 488. Concurrent resolution relating to arms control in the Indian Ocean; to the Committee on Foreign Affairs.

By Mr. WYMAN:

H. Con. Res. 489. Concurrent resolution expressing the sense of Congress to amend the Charter of the United Nations to provide for weighted voting; to the Committee on Foreign Affairs.

By Mr. BOWEN:

H. Res. 1090. Resolution in support of continued undiluted U.S. sovereignty and jurisdiction over the U.S.-owned Canal Zone on the Isthmus of Panama; to the Committee on Foreign Affairs.

By Mr. GUNTER:

H. Res. 1091. Resolution calling upon the President to report to the Congress on steps taken by the executive branch to avert a crisis in the trucking industry; to the Committee on Education and Labor.

By Mr. HOGAN:

H. Res. 1092. Resolution to create a select committee to conduct a study of the precedents and Rules of the House regarding impeachment and to recommend to the House within 60 days, rules of procedure and practice for the consideration of articles of impeachment by the House of Representatives; to the Committee on Rules.

By Mr. KETCHUM:

H. Res. 1093. Resolution expressing the sense of Congress regarding the reclassification of servicemen listed as missing in action in Southeast Asia to presumptive finding of death status; to the Committee on Armed Services.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

464. By the SPEAKER: Memorial of the Legislature of the State of California, relative to resource conservation district services; to the Committee on Agriculture.

465. Also, memorial of the Legislature of the State of California, relative to the Sausalito base yard and dock complex; to the Committee on Armed Services.

466. Also, memorial of the Legislature of the Commonwealth of Massachusetts, relative to oil price controls; to the Committee on Banking and Currency.

467. Also, memorial of the Legislature of the Commonwealth of Massachusetts, relative to the metric system; to the Committee on Science and Astronautics.

468. Also, memorial of the Legislature of the Commonwealth of Massachusetts, relative to the enactment of legislation to preclude social security benefits from affecting Veterans' Administration pension payments; to the Committee on Veterans' Affairs.

469. Also, memorial of the Legislature of the Commonwealth of Massachusetts, relative to Federal financial assistance for the Massachusetts Veterans Service program; to the Committee on Veterans' Affairs.

470. Also, memorial of the Legislature of the Commonwealth of Massachusetts, relative to a national health care insurance program; to the Committee on Ways and Means.

471. Also, memorial of the Legislature of the Commonwealth of Massachusetts relative to real estate taxes; to the Committee on Ways and Means.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. YOUNG of Illinois introduced a bill (H.R. 14666) for the relief of Eva Schejbal which was referred to the Committee on the Judiciary.

SENATE—*Tuesday, May 7, 1974*

The Senate met at 10 a.m. and was called to order by Hon. FLOYD K. HASKELL, a Senator from the State of Colorado.

PRAYER

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

"God of our fathers, known of old, be with us yet
Lest we forget, lest we forget!"

Lest we forget—

Thy care over us in the past,
Thy liberating spirit among free men,
Thy creative power within us even now,
Thy chastening hand upon our sins
Thy forgiveness in our humble repentance
Thy mercy which follows us all our days

"Judge of the nations, spare us yet,
Lest we forget, lest we forget!"

Remembering Thy goodness, we renew our dedication to be Thy faithful ministers in service to the Nation. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., May 7, 1974.

To the Senate:

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

JAMES O. EASTLAND,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, May 6, 1974, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

THE STATUS OF MAJOR LEGISLATION LEFT FROM 1ST SESSION OF 93D CONGRESS AND 2D SESSION, INCLUDING MAY 1, 1974

Mr. MANSFIELD. Mr. President, the Senate has been in session for 54 days up to and including May 1, 1974, in the 2d session of the 93d Congress.

During that period, there have been 163 yea-and-nay or rollcall votes. I should like at this time to submit to the Senate the status of major legislation

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left over from the 1st session of the 93d Congress and the 2d session, including yesterday.

It represents the work not of the Democratic majority in Congress but the results of the endeavors on the part of both Democrats and Republicans who comprise the membership of this body.

I think it is a record of which the Senate can be proud. I only express the hope that the same kind of accommodation which has been so evident will continue in the future—and I anticipate that it will.

There are no appropriation bills on this list because aside from the supplemental bill which will be taken up on Monday or Tuesday next, we have only received one of the regular appropriation bills from the other body.

Of course, we all understand that under precedent and custom, we are unable to act until or unless we receive the bills from the House but, in the meantime, all of the Senate committees are working assiduously trying to keep up to date and to be as well prepared as possible when those bills reach us.

The Senate is to be commended for its devotion and dedication in attending to the business of the Nation, despite Watergate and related matters. It has done so with restraint and responsibility and it has done so fairly and effectively, both in reality and in appearance. The proof of what the Senate has done in facing up to its constitutional responsibilities—and will continue to do—lies in its record to date.

Mr. President, I ask unanimous consent that a list of the status of this major legislation be printed in the RECORD.

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

STATUS OF MAJOR LEGISLATION LEFT FROM 1ST SESSION OF THE 93D CONGRESS AND 2D SESSION INCLUDING MAY 1, 1974

SIGNED INTO LAW 1974

1. Civil Service Annuities—Public Law 93-259.
2. Education Funding and Guaranteed Student Loans—Public Law 93-269.
3. Energy Emergency—VETOED.
4. Minimum Wage Increase—Public Law 93-259.
5. Public Works—Rivers and Harbors—Public Law 93-251.
6. Senate Confirmation of Director of OMB—Public Law 93-250.
7. Sudden Infant Death Syndrome—Public Law 93-270.

IN CONFERENCE

1. Aircraft Hijacking.
2. Biomedical Research.
3. Disaster Relief—Conferees agreed to file a report 4-25-74.
4. Federal Energy Administration—Conf. Rept. agreed to by House.
5. Federal Impoundment Control.
6. Legal Services Corporation.
7. Private Pension Plan Reform.
8. Social Security Act Amendments—Welfare Reform.
9. Toxic Substances Control.
10. Urban Mass Transit—Conference agreement reached 2-20-74, awaits report from House Public Works Committee.
11. Congressional Budget Reform.

PASSED SENATE

1. Campaign Reform—S. 372 P/S 7-30-73.
2. Campaign Reform—S. 3044 P/S 4-11-74.
3. Compensation for Victims of Crime—P/S 4-3-74.
4. Energy Conservation—P/S 12-10-73.
5. Energy Research and Development—P/S 12-7-73.
6. Housing—P/S 3-11-74; House subcommittee markup in progress.
7. Indian Self Determination—P/S 4-1-74.
8. Land Use—P/S 6-21-73; Delayed in House Rules Committee.
9. Medical Devices—P/S 2-11-74.
10. National Cancer Program—P/S 3-26-74.
11. National No-Fault Auto Insurance—P/S 5-1-74.
12. Postcard Registration—P/S 5-9-73; Await action by House Rules Committee.
13. Safe Drinking Water—P/S 6-22-73.
14. Strip Mining Controls—P/S 10-7-73; House full committee marking up.

PASSED HOUSE

1. Foreign Trade—P/H 12-11-73; Senate hearings in progress.

ON SENATE CALENDAR

1. Consumer Protection Agency—P/H 4-25-74.
2. Elementary and Secondary Education—P/H 3-27-74.
3. Standby Energy Authority.

HOUSE ACTION FIRST

1. National Health Insurance—House hearings began 4-24-74.
2. Sugar Act Extension—House hearings held.
3. Tax Reform—House hearings scheduled.

CONSIDERATION OF CERTAIN MEASURES ON THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 780, and then beginning with Calendar Nos. 785 and 795.

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

AMENDMENT OF FOREST PEST CONTROL ACT

The Senate proceeded to consider the bill (S. 3371) to amend the Forest Pest Control Act of June 25, 1974, which had been reported from the Committee on Agriculture and Forestry with an amendment to strike out all after the enacting clause and insert:

That the first sentence of section 5 of the Forest Pest Control Act of June 25, 1947 (61 Stat. 177; 16 U.S.C. 594-1 through 594-5), is amended by changing the period at the end thereof to a comma and adding the following: "such sums to remain available until expended.".

The amendment was agreed to.

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

The title was amended, so as to read: "A bill to amend the Forest Pest Control Act of June 25, 1947."

DEVELOPMENTS IN AGING

The resolution (S. Res. 310) authorizing additional copies of report entitled "Developments in Aging; 1973 and January-March 1974," was considered and agreed to, as follows:

Resolved, That there be printed for the use of the Special Committee on Aging one thousand two hundred additional copies of its report to the Senate entitled "Developments in Aging: 1973 and January-March 1974."

SURGEON GENERAL'S REPORT BY SCIENTIFIC ADVISORY COMMITTEE ON TELEVISION AND SOCIAL BEHAVIOR

The concurrent resolution (S. Con. Res. 83) authorizing the printing of additional copies of Senate hearings entitled "Surgeon General's Report by the Scientific Advisory Committee on Television and Social Behavior," was considered and agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That there be printed for the use of the Senate Committee on Commerce one thousand additional copies of its hearings of the Ninety-second Congress, second session, entitled "Surgeon General's Report by the Scientific Advisory Committee on Television and Social Behavior.".

ADDITIONAL EXPENDITURES BY COMMITTEE ON JUDICIARY

The resolution (S. Res. 311) authorizing additional expenditures by the Committee on the Judiciary, was considered and agreed to, as follows:

Resolved, That the Committee on the Judiciary is authorized to expend from the contingent fund of the Senate, during the Ninety-third Congress, $10,000 in addition to the amounts, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act of 1956, and in S. Res. 103, Ninety-third Congress, agreed to May 10, 1973.

ADDITIONAL EXPENDITURES BY COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

The resolution (S. Res. 312) authorizing additional expenditures by the Committee on Interior and Insular Affairs for routine purposes, was considered and agreed to, as follows:

Resolved, That the Committee on Interior and Insular Affairs is authorized to expend from the contingent fund of the Senate, during the Ninety-third Congress, $25,000 in addition to the amount, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act of 1946, and in S. Res. 96, agreed to May 10, 1973, S. Res. 137, agreed to July 20, 1973, and S. Res. 78, agreed to October 23, 1973.

REPORT OF NATIONAL FOREST RESERVATION COMMISSION

The resolution (S. Res. 313) authorizing the printing of the annual report of the National Forest Reservation Commission was considered and agreed to, as follows:

Resolved, That the Annual Report of the National Forest Reservation Commission for the fiscal year ended June 30, 1973, be printed with an illustration as a Senate document.

SALE AND DISTRIBUTION OF CONGRESSIONAL RECORD

The bill (S. 3373) relating to sale and distribution of the CONGRESSIONAL RECORD, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 910 of title 44, United States Code, is amended to read as follows:

"§ 910. Congressional Record: subscriptions; sale of current, individual numbers, and bound sets; postage rate

"(a) Under the direction of the Joint Committee, the Public Printer may sell—

"(1) subscriptions to the daily Record; and

"(2) current, individual numbers, and bound sets of the Congressional Record.

"(b) The price of a subscription to the daily Record and of current, individual numbers, and bound sets shall be determined by the Public Printer based upon the cost of printing and distribution. Any such price shall be paid in advance. The money from any such sale shall be paid into the Treasury and accounted for in the Public Printer's annual report to Congress.

"(c) The Congressional Record shall be entitled to be mailed at the same rates of postage at which any newspaper or other periodical publication, with a legitimate list of paid subscribers, is entitled to be mailed.".

(b) Section 906 of such title 44 is amended—

(1) by striking out of the section caption the last semicolon and "SUBSCRIPTIONS"; and

(2) by striking out the last full paragraph thereof.

(c) The analysis of chapter 9 of such title 44, immediately preceding section 901, is amended—

(1) by striking out of item 906 the last semicolon and "subscription"; and

(2) by striking out item 910 and inserting in lieu thereof the following:

"910. Congressional Record: subscriptions; sale of current, individual numbers, and bound sets; postage rate.".

ADDITIONAL EXPENDITURES BY THE COMMITTEE ON RULES AND ADMINISTRATION

The resolution (S. Res. 317) authorizing additional expenditures by the Committee on Rules and Administration, was considered and agreed to, as follows:

Resolved, That the Committee on Rules and Administration is authorized to expend from the contingent fund of the Senate, during the Ninety-third Congress, $10,000 in addition to the amount, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act of 1946.

MARGARET A. ROBERTS

The resolution (S. Res. 319) to pay a gratuity to Margaret A. Roberts, was considered and agreed to, as follows:

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Margaret A. Roberts, widow of Hubert C. Roberts, an employee of the Architect of the Capitol assigned to duty in the Senate Office Buildings at the time of his death, a sum equal to six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

KATHERINE F. WOODWARD

The resolution (S. Res. 320) to pay a gratuity to Katherine F. Woodward, was considered and agreed to, as follows:

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Katherine F. Woodward, widow of David H. Woodward, Junior, an employee of the Senate at the time of his death, a sum equal to two months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

ELECTION LAW GUIDEBOOK

The resolution (S. Res. 318) authorizing the printing of a revised edition of the "Election Law Guidebook" as a Senate document was considered and agreed to, as follows:

Resolved, That a revised edition of Senate Document Numbered 92-80, entitled "Election Law Guidebook", be printed as a Senate document, and that there be printed one thousand additional copies of such document for the use of the Committee on Rules and Administration.

IMPROVEMENT OF PAYROLL SYSTEM OF THE SENATE

The resolution (S. Res. 316) authorizing expenditures from the contingent fund to improve the payroll, personnel, and voucher system of the Senate was considered and agreed to, as follows:

Resolved, That the Committee on Rules and Administration is authorized to expend, from the contingent fund of the Senate, not to exceed $153,000, to improve through the use of computers the payroll, personnel, and voucher system of the Senate. Expenses of the committee under this resolution shall be paid upon vouchers approved by the chairman of the committee.

IN SUPPORT OF SECRETARY OF STATE KISSINGER

Mr. MANSFIELD. Mr. President, we are all engaged to some extent in Watergate and related matters. We are interested in the transcripts of the tapes released by the White House on Monday last. It is a most important question which will find its way through the courts on the one hand and through the House Judiciary Committee on the other. That is what the President has indicated would be the proper courses to pursue. That is the way in which we will get Watergate and related matters behind us.

However, I would take this occasion to point out that during all this interest in this matter at home, one of the world's most distinguished statesmen, Secretary of State Dr. Henry Kissinger, is conducting most important negotiations. To date he has visited Libya, Egypt, Jordan, Israel, and Syria. He is due either today or tomorrow on the island of Cyprus to meet with the Soviet Foreign Minister, Mr. Andrei Gromyko.

I do not think we should lose sight of the importance of the journey which Dr. Kissinger has undertaken and how much its success will mean to this country and the rest of the world.

Dr. Kissinger cannot afford a failure. If he fails, it will not be because of lack of effort because, in my opinion, there has been no man in the history of this Republic, up to now, who has performed as creditably and as successfully as Secretary Kissinger. But perhaps his most difficult step is ahead of him. So I take this occasion to rise only to indicate that the Senate is taking note of Dr. Kissinger's travels, that we support him fully and completely in what he is attempting to do, and that we hope and pray that he will be successful in his efforts to find a road to peace in the Middle East, a road which now seems to lead toward Damascus.

I think the distinguished Republican leader may have something to add on this subject.

Mr. HUGH SCOTT. Mr. President, if I may be recognized, a number of Senators, including the distinguished majority leader and I, have, by letter, expressed our full support of the activities of Dr. Kissinger in his very sturdy efforts to secure peaceful conditions in the Middle East. I congratulate the always fair and eminently thoughtful distinguished majority leader for what he has just said.

We must all support Dr. Kissinger whose achievements have been truly remarkable and who is at this moment engaged in very difficult and very touchy negotiations.

SENATOR KENNEDY'S RECENT TRIP TO MOSCOW

Mr. HUGH SCOTT. Mr. President, I should like the RECORD to show two things regarding the recent trip to Moscow by the distinguished Senator from Massachusetts (Mr. KENNEDY).

One, the Senator has written a letter to the Washington Post today pointing out that his speech, and the question-and-answer period with the students at Moscow University were terminated by his action, and not by any action of his Russian hosts.

I wish to affirm that, because I talked to the distinguished Soviet official present at the time, and Senator KENNEDY did have another engagement. As I recall what I was told, his aide advised him of it, and he had to leave. In fairness to the distinguished Senator, that ought to be said.

I should also like to add that during the Dartmouth Conference at Tblisi, in Georgia, about 2 weeks ago, Senator KENNEDY, at my invitation and that of Mr. Norman Cousins and the cochairman, Mr. Yuri Zhukov, was in the city and appeared and delivered a most useful address. It was useful because it stressed the bipartisan nature of our foreign policy in general. It shored up what I had undertaken to say on behalf of the Senate and Congress. We were all impressed and very much gratified that he took the time from his itinerary to appear at this conference.

THE WATERGATE TRANSCRIPTS

Mr. HUGH SCOTT. Mr. President, as to the Watergate matter, I have read about two-thirds of the transcript. I find a great deal there that is deplorable. I think there is much that is shabby and immoral. There are occasional flashes of moral indignation, but not enough. Numerous proposals were made to get all the information out, and that was finally done, very largely through the release of these 1,200 and some pages. But I recommended that 8 months ago, 6 months ago, 4 months ago, 3 months ago, 2 months ago, and so forth. I am relieved that it is out and I favor such means of verification as will satisfy reasonable requests of the House committee.

I will not take a position supporting any action which involved any form of immorality or criminality as the transcripts indicate. At the same time, I again call for a suspension of judgment. I hope that all of us will assume the presumption of innocence and that we will all withhold our judgment as to specific individuals, pending the operation of our great constitutional system. It works. It always has. It will this time.

TRANSCRIPTS OF TAPES SUBMITTED BY THE PRESIDENT: PUBLIC TRANSCRIPTS—III

Appendix 6. Meeting: The President, Dean and Haldeman, Oval Office, March 21, 1973. (10:12–11:55 am):

P. Well, sit down, sit down.

D. Good morning.

P. Well what is the Dean summary of the day about?

D. John caught me on the way out and asked me about why Gray was holding back on information, if that was under instructions from us. And it was and it wasn't. It was instructions proposed by the Attorney General, consistent with your press conference statement that no further raw data was to be turned over to the full committee. And that was the extent of it. And then Gray, himself, who reached the conclusion that no more information should be turned over, that he had turned over enough. So this again is Pat Gray making decisions on his own on how to handle his hearings. He has been totally (unintelligible) to take any guidance, any instruction. We don't know what he is going to do. He is not going to talk about it. He won't review it, and I don't think he does it to harm you in anyway, sir.

P. No, he is just quite stubborn and also he isn't very smart. You know—

D. He is bullheaded.

P. He is smart in his own way but he's got that typical (expletive deleted) this is right and I am going to do it.

D. That's why he thinks he is going to be confirmed. He is being his own man. He is being forthright and honest. He feels he has turned over too much and so it is conscious decision that he is harming the Bureau by doing this and so he is not going to.

P. We have to get the boys off the line that this is because the White House told him to do this and everything. And also, as I told Ehrlichman, I don't see why our little boys can't make something out of the fact that (expletive deleted) this is the only responsible position that could possibly be made. The FBI cannot turn over raw files. Has anybody made that point? I have tried to several times.

D. Sam Ervin has made that point himself. In fact, in reading the transcript of Gray's hearings, Ervin tried to hold Gray back from doing what he was doing at the time he did it. I thought it was very unwise. I don't think that anyone is criticizing your position on it.

P. Let's make a point that raw files, I mean that point should be made that we are standing for the rights of innocent individuals. The American Civil Liberties Union is against it. We are against it. Hoover had the tradition, and it will continue to be the tradition. All files are confidential. See if we can't get someone inspired to put that out. Let them see what is in one.

D. (Expletive deleted) You—

P. Any further word on Sullivan? Is he still—

D. Yes, he is going to be over to see me today, this morning someplace, sometime.

P. As soon as you get that, I will be available to talk to you this afternoon. I will be busy until about one o'clock. Anytime you are through I would like to see what it is he has. We've got something but I would like to see what it is.

D. The reason that I thought we ought to talk this morning is because in our conversations, I have the impression that you don't know everything I know and it makes it very difficult for you to make judgments that only you can make on some of these things and I thought that—

P. In other words, I have to know why you feel that we shouldn't unravel something?

D. Let me give you my overall first.

P. In other words, your judgment as to where it stands, and where we will go.

D. I think that there is no doubt about the seriousness of the problem we've got. We have a cancer within, close to the Presidency, that is growing. It is growing daily. It's compounded, growing geometrically now, because it compounds itself. There will be clear if I, you know, explain some of the details of why it is. Basically, it is because (1) we are being blackmailed; (2) People are going to start perjuring themselves very quickly that have not had to perjure themselves to protect other people in the line. And there is no assurance—

P. That that won't bust?

D. That that won't bust. So let me give you the sort of basic facts, talking first about the Watergate; and then about Segretti; and then about some of the peripheral items that have come up. First of all on the Watergate: how did it all start, where did it start? O.K.! It started with an instruction to me from Bob Haldeman to see if we couldn't set up a perfectly legitimate campaign intelligence operation over at the Re-Election Committee. Not being in this business, I turned to somebody who had been in this business, Jack Caulfield. I don't remember whether you remember Jack or not. He was your original bodyguard before they had the candidate protection, an old city policeman.

P. Yes, I know him.

D. Jack worked for John and then was transferred to my office. I said Jack come up with a plan that, you know—a normal infiltration, buying information from secretaries and all that sort of thing. He did, he put together a plan. It was kicked around. I went to Ehrlichman with it. I went to Mitchell with it, and the consensus was that Caulfield was not the man to do this. In retrospect, that might have been a bad call because he is an incredibly cautious person and wouldn't have put the situation where it is today. After rejecting that, they said we still need something so I was told to look around for someone who could go over to 1701 and do this. That is when I came up with Gordon Liddy. They needed a lawyer. Gordon has an intelligence background from his FBI service. I was aware of the fact that he had done some extremely sensitive things for the White House and he had apparently done them well. Going out into Ellsberg's doctor's office——

P. Oh, yeah.

D. And things like this. He worked with leaks. He tracked these things down. So the report that I got from Krogh was that he was a hell of a good man and not only that a good lawyer and could set up a proper operation. So we talked to Liddy. He was interested in doing it. I took Liddy over to meet Mitchell. Mitchell thought highly of him because Mitchell was partly involved in his coming to the White House to work for Krogh. Liddy had been at Treasury before that. Then Liddy was told to put together his plan, you know, how he would run an intelligence operation. This was after he was hired over there at the Committee. Magruder called me in January and said I would like to have you come over and see Liddy's plan.

P. January of '72?

D. January of '72.

D. "You come over to Mitchell's office and sit in a meeting where Liddy is going to lay his plan out." I said I don't really know if I am the man, but if you want me there I will be happy to. So I came over and Liddy laid out a million dollar plan that was the most incredible thing I have ever laid my eyes on: all in codes, and involved black bag operations, kidnapping, providing prostitutes to weaken the opposition, bugging, mugging teams. It was just an incredible thing.

P. Tell me this: Did Mitchell go along—?

D. No, no, not at all, Mitchell just sat there puffing and laughing. I could tell from—after Liddy left the office I said that is the most incredible thing I have ever seen. He said I agree. And so Liddy was told to go back to the drawingboard and come up with something realistic. So there was a second meeting. They asked me to come over to that. I came into the tail end of the meeting. I wasn't there for the first part. I don't know how long the meeting lasted. At this point, they were discussing again bugging, kidnapping and the like. At this point I said right in front of everybody, very clearly, I said, "These are not the sort of things (1) that are ever to be discussed in the office of the Attorney General of the United States — that was where he still was — and I am personally incensed." And I am trying to get Mitchell off the hook. He is a nice person and doesn't like to have to say no when he is talking with people he is going to have to work with.

P. That's right.

D. So I let it be known. I said "You all pack that stuff up and get it the hell out of here. You just can't talk this way in this office and you should re-examine your whole thinking."

P. Who all was present?

D. It was Magruder, Mitchell, Liddy and myself. I came back right after the meeting and told Bob, "Bob, we have a growing disaster on our hands if they are thinking this way," and I said, "The White House has got to stay out of this and I, frankly, am not going to be involved in it." He said, "I agree John." I thought at that point that the thing was turned off. That is the last I heard of it and I thought it was turned off because it was an absurd proposal.

P. Yeah.

D. Liddy—I did have dealings with him afterwards and we never talked about it. Now that would be hard to believe for some people, but we never did. That is the fact of the matter.

P. Well, you were talking with him about other things.

D. We had so many other things.

P. He had some legal problems too. But you were his advisor, and I understand you had conversations about the campaign laws, etc.

Haldeman told me that you were handling all of that for us. Go ahead.

D. Now. So Liddy went back after that and was over at 1701, the Committee, and this is where I come into having put the pieces together after the fact as to what I can put together about what happened. Liddy sat over there and tried to come up with another plan that he could sell. (1) They were talking to him, teling him that he was putting too much money in it. I don't think they were discounting the illegal points. Jeb is not a lawyer. He did not know whether this is the way the game was played and what it was all about. They came up, apparently, with another plan, but they couldn't get it approved by anybody over there. So Liddy and Hunt apparently came to see Chuck Colson, and Chuck Colson picked up the telephone and called Magruder and said, "You all either fish or cut bait. This is absurd to have these guys over there and not using them. If you are not going to use them, I may use them." Things of this nature.

P. When was this?

D. This was apparently in February of '72.

P. Did Colson know what they were talking about?

D. I can only assume, because of his close relationship with Hunt, that he had a damn good idea what they were talking about, a damn good idea. He would probably deny it today and probably get away with denying it. But I still—unless Hunt blows on him—

P. But then Hunt isn't enough. It takes two doesn't it?

D. Probably. Probably. But Liddy was there also and if Liddy were to blow—

P. Then you have a problem—I was saying as to the criminal liability in the White House.

D. I will go back over that, and take out any of the soft spots.

P. Colson, you think was the person who pushed?

D. I think he helped to get the thing off the dime. Now something else occurred though—

P. Did Colson—had he talked to anybody here?

D. No. I think this was—

P. Did he talk with Haldeman?

D. No, I don't think so. But here is the next thing that comes in the chain. I think Bob was assuming, that they had something that was proper over there, some intelligence gathering operation that Liddy was operating. And through Strachan, who was his tickler, he started pushing them to get some information and they—Magruder—took that as a signal to probably go to Mitchell and to say, "They are pushing us like crazy for this from the White House. And so Mitchell probably puffed on his pipe and said, "Go ahead," and never really reflected on what it was all about. So they had some plan that obviously had, I gather, different targets they were going to go after. They were going to infiltrate, and bug, and do all this sort of thing to a lot of these targets. This is knowledge I have after the fact. Apparently after they had initially broken in and bugged the DNC they were getting information. The information was coming over here to Strachen and some of it was given to Haldeman, there is no doubt about it.

P. Did he know where it was coming from?

D. I don't really know if he would.

P. Not necessarily?

D. Not necessarily. Strachan knew it. There is no doubt about it, and whether Strachan—I have never come to press these people on these points because it hurts them to give up that next inch, so I had to piece things together. Strachan was aware of receiving information, reporting to Bob. At one point Bob even gave instructions to change their capabilities from Muskie to McGovern, and passed this back through Strachan to Magruder and apparently to Liddy. And Liddy was starting to make arrangements to go in and bug the McGovern operation.

P. They had never bugged Muskie, though, did they?

D. No, they hadn't but they had infiltrated it by a secretary.

P. By a secretary?

D. By a secretary and a chauffeur. There is nothing illegal about that. So the information was coming over here and then I, finally, after—. The next point in time that I became aware of anything was on June 17th when I got the word that there had been this break in at the DNC and somebody from our Committee had been caught in the DNC. And I said, "Oh, (expletive deleted)." You know, eventually putting the pieces together—

P. You knew what it was.

D. I knew who it was. So I called Liddy on Monday morning and said, "First, Gordon, I want to know whether anybody in the White House was involved in this." And he said, "No, they weren't." I said, "Well I want to know how in (adjective deleted) name this happened." He said, "Well, I was pushed without mercy by Magruder to get in there and to get more information. That the information was not satisfactory. That Magruder said, "The White House is not happy with that what we are getting.'"

P. The White House?

D. The White House. Yeah!

P. Who do you think was pushing him?

D. Well, I think it was probably Strachan thinking that Bob wanted things, because I have seen that happen on other occasions where things have said to have been of very prime importance when they really weren't.

P. Why at that point in time I wonder? I am just trying to think. We had just finished the Moscow trip. The Democrats had just nominated McGovern. I mean, (expletive deleted), what in the hell were these people doing? I can see their doing it earlier. I can see the pressures, but I don't see why all the pressure was on then.

D. I don't know, other than the fact that they might have been looking for information about the conventions.

P. That's right.

D. Because, I understand that after the fact that there was a plan to bug Larry O'Brien's suite down in Florida. So Liddy told me that this is what had happened and this is why it had happened.

P. Where did he learn that there were plans to bug Larry O'Brien's suite?

D. From Magruder, long after the fact.

P. Magruder is (unintelligible)

D. Yeah. Magruder is totally knowledgeable on the whole thing.

P. Yeah.

D. Alright now, we have gone through the trial. I don't know if Mitchell has perjured himself in the Grand Jury or not.

P. Who?

D. Mitchell. I don't know how much knowledge he actually had. I know that Magruder has perjured himself in the Grand Jury. I know that Porter has perjured himself in the Grand Jury.

P. Who is Porter? (unintelligible)

D. He is one of Magruder's deputies. They set up this scenario which they ran by me. They said, "How about this?" I said, "I don't know. If this is what you are going to hang on, fine."

P. What did they say in the Grand Jury?

D. They said, as they said before the trial in the Grand Jury, that Liddy had come over as Counsel and we knew he had these capacities to do legitimate intelligence. We had no idea what he was doing. He was given an authorization of $250,000 to collect information, because our surrogates were out on the road. They had no protection, and we had information that there were going to be demonstrations against them, and that we had to have a plan as to what liabilities they were going to be confronted with and Liddy was charged with doing this. We had no knowledge that he was going to bug the DNC.

P. The point is, that is not true?

D. That's right.

P. Magruder did know it was going to take place?

D. Magruder gave the instructions to be back in the DNC.

P. He did?

D. Yes.

P. You know that?

D. Yes.

P. I see. O.K.

D. I honestly believe that no one over here knew that. I know that as God is my maker, I had no knowledge that they were going to do this.

P. Bob didn't either, or wouldn't have known that either. You are not the issue involved. Had Bob known, he would be.

D. Bob—I don't believe specifically knew that they were going in there.

P. I don't think so.

D. I don't think he did. I think he knew that there was a capacity to do this but he was not given the specific direction.

P. Did Strachan know?

D. I think Strachan did know.

P. (unintelligible) Going back into the DNC—Hunt, etc.—this is not understandable!

D. So—those people are in trouble as a result of the Grand Jury and the trial. Mitchell, of course, was never called during the trial. Now—

P. Mitchell has given a sworn statement, hasn't he?

D. Yes, Sir.

P. To the Jury?

D. To the Grand Jury.—

P. You mean the Goldberg arrangement?

D. We had an arrangement whereby he went down with several of them, because of the heat of this thing and the implications on the election, we made an arrangement where they could quietly go into the Department of Justice and have one of the assistant U.S. Attorneys take their testimony and then read it before the Grand Jury.

P. I thought Mitchell went.

D. That's right, Mitchell was actually called before the Grand Jury. The Grand Jury would not settle for less, because the jurors wanted him.

P. And he went?

D. And he went.

P. Good!

D. I don't know what he said. I have never seen a transcript of the Grand Jury. Now what has happened post June 17? I was under pretty clear instructions not to investigate this, but this could have been disastrous on the electorate if all hell had broken loose. I worked on a theory of containment——

P. Sure.

D. To try to hold it right where it was.

P. Right.

D. There is no doubt that I was totally aware of what the Bureau was doing at all times. I was totally aware of what the Grand Jury was doing. I knew what witnesses were going to be called. I knew what they were asked, and I had to.

P. Why did Petersen play the game so straight with us?

D. Because Peterson is a soldier. He kept me informed. He told me when we had problems, where we had problems and the like. He believes in you and he believes in this Administration. This Administration has made him. I don't think he has done anything improper, but he did make sure that

the investigation was narrowed down to the very, very fine criminal thing which was a break for us. There is no doubt about it.

P. Do you honestly feel that he did an adequate job?

D. They ran that investigation out to the fullest extent they could follow a lead and that was it.

P. But the way point is, where I suppose he could be criticized for not doing an adequate job. Why didn't he call Haldeman? Why didn't he get a statement from Colson? Oh, they did get Colson!

D. That's right. But as based on their FBI interviews, there was no reason to follow up. There were no leads there. Colson said, "I have no knowledge of this" to the FBI. Strachan said, "I have no knowledge." They didn't ask Strachan any questions about Watergate. They asked him about Segretti. They said, "what is your connection with Liddy?" Strachan just said, "Well, I met him over there." They never really pressed him. Strachan appeared, as a result of some coaching, to be the dumbest paper pusher in the bowels of the White House.

P. I understand.

D. Alright. Now post June 17th: These guys immediately—It is very interesting. (Dean sort of chuckled) Liddy, for example, on the Friday before—I guess it was on the 15th, no, the 16th of June—had been in Henry Peterson's office with another member of my staff on campaign compliance problems. After the incident, he ran Kleindienst down at Burning Tree Country Club and told him "you've got to get my men out of jail." Kleindienst said, "You get the hell out of here, kid. Whatever you have to say, just say to somebody else. Don't bother me." But this has never come up. Liddy said if they all got counsel instantly and said we will ride this thing out. Alright, then they started making demands. "We have to have attorneys fees. We don't have any money ourselves, and you are asking us to take this through the election." Alright, so arrangements were made through Mitchell, initiating it. And I was present in discussions where these guys had to be taken care of. Their attorneys fees had to be done. Kalmbach was brought in. Kalmbach raised some cash.

P. They put that under the cover of a Cuban Committee, I suppose?

D. Well, they had a Cuban Committee and they had—some of it was given to Hunt's lawyer, who in turn passed it out. You know, when Hunt's wife was flying to Chicago with $10,000 she was actually, I understand after the fact now, was going to pass that money to one of the Cubans—to meet him in Chicago and pass it to somebody there.

P. (unintelligible) but I would certainly keep that cover for whatever it is worth.

D. That's the most troublesome post-thing because (1) Bob is involved in that; (2) John is involved in that; (3) I am involved in that; (4) Mitchell is involved in that. And that is an obstruction of justice.

P. In other words the bad it does. You were taking care of witnesses. How did Bob get in it?

D. Well, they ran out of money over there. Bob had $350,000 in a safe over here that was really set aside for polling purposes. And there was no other source of money, so they came over and said you all have got to give us some money. I had to go to Bob and say, "Bob, they need some money over there." He said "What for." So I had to tell him what it was for because he wasn't just about to send money over there willy-nilly. And John was involved in those discussions. And then we decided there was no price too high to pay to let this thing blow up in front of the election.

P. I think we should be able to handle that issue pretty well. May be some lawsuits.

D. I think we can too. Here is what is happening right now. What sort of brings matters to the (unintelligible). One, this is going to be a continual blackmail operation by Hunt and Liddy and the Cubans. No doubt about it. And McCord, who is another one involved. McCord has asked for nothing. McCord did ask to meet with somebody, with Jack Caulfield who is his old friend who had gotten him hired over there. And when Caulfield had him hired, he was a perfectly legitimate security man. And he wanted to talk about commutation, and things like that. And as you know Colson has talked indirectly to Hunt about commutation. All of these things are bad, in that they are problems, they are promises, they are commitments. They are the very sort of thing that the Senate is going to be looking most for. I don't think they can find them, frankly.

P. Pretty hard.

D. Pretty hard. Damn hard. It's all cash.

P. Pretty hard I mean as far as the witnesses are concerned.

D. Alright, now, the blackmail is continuing. Hunt called one of lawyers from the Re-Election Committee on last Friday to leave it with him over the weekend. The guy came in to see me to give a message directly to me. From Hunt to me.

P. Is Hunt out on bail?

D. Pardon?

P. Is Hunt on bail?

D. Hunt in on bail. Correct. Hunt now is demanding another $72,000 for his own personal expenses; another $50,000 to pay attorneys fees; $120,000. Some (1) he wanted it as of the close of business yesterday. He said, "I am going to be sentenced on Friday, and I've got to get my financial affairs in order." I told this fellow O'Brien, "If you want money, you came to the wrong man, fellow. I am not involved in the money. I don't know a thing about it. I can't help you. You better scramble about elsewhere." O'Brien is a ball player. He carried tremendous water for us.

P. He isn't Hunt's lawyer?

D. No he is our lawyer at the Re-Election Committee.

P. I see.

D. So he is safe. There is no problem there. So it raises the whole question. Hunt has now made a direct threat against Ehrlichman. As a result of this, this is his blackmail. He says, "I will bring John Ehrlichman down to his knees and put him in jail. I have done enough seamy things for he and Krogh, they'll never survive it."

P. Was he talking about Ellsberg?

D. Ellsberg, and apparently some other things. I don't know the full extent of it.

P. I don't know about anything else.

D. I don't know either, and I hate to learn some of these things. So that is that situation. Now, where are at the soft points? How many people know about this? Well, let me go one step further in this whole thing. The Cubans that were used in the Watergate were also the same Cubans that Hunt and Liddy used for this California Ellsberg thing, for the break in out there. So they are aware of that. How high their knowledge is, is something else. Hunt and Liddy, of course, are totally aware of it, of the fact that it is right out of the White House.

P. I don't know what the hell we did that for!

D. I don't know either.

P. What in the (expletive deleted) caused this? (unintelligible)

D. Mr. President, there have been a couple of things around here that I have gotten wind of. At one time there was a desire to do a second story job on the Brookings Institute where they had the Pentagon papers. Now I flew to California because I was told that John had instructed it and he said, "I really hadn't. It is a mis-impression, but for (expletive deleted), turn it off." So I did. I came back and turned it off. The risk is minimal and the pain is fantastic. It is something with a (unintelligible) risk and no gain. It is just not worth it. But—who knows about all this now? You've got the Cubans' lawyer, a man by the name of Rothblatt, who is a no good, publicity seeking (characterization deleted), to be very frank with you. He has had to be pruned down and turned off. He was canned by his own people because they didn't trust him. He didn't want them to plead guilty. He wants to represent them before the Senate. So F. Lee Bailey, who was a partner of one of the men representing McCord, got in and cooled Rothblatt down. So that means that F. Lee Bailey has knowledge. Hunt's lawyer, a man by the name of Bittmann, who is an excellent criminal lawyer from the Democratic era of Bobby Kennedy, he's got knowledge.

P. He's got some knowledge?

D. Well, all the direct knowledge that Hunt and Liddy have, as well as all the hearsay they have. You have these two lawyers over at the Re-Election Committee who did an investigation to find out the facts. Slowly, they got the whole picture. They are solid.

P. But they know?

D. But they know. You've got, then an awful lot of the principals involved who know. Some people's wives know. Mrs. Hunt was the savviest woman in the world. She had the whole picture together.

P. Did she?

D. Yes. Apparently, she was the pillar of strength in that family before the death.

P. Great sadness. As a matter of fact, there was a discussion with somebody about Hunt's problem on account of his wife and I said, of course commutation could be considered on the basis of his wife's death, and that is the only conversation I ever had in that light.

D. Right.

D. So that is it. That is the extent of the knowledge. So where are the soft spots on this? Well, first of all, there is the problem of the continued blackmail which will not only go on now, but it will go on while these people are in prison, and it will compound the obstruction of justice situation. It will cost money. It is dangerous. People around here are not pros at this sort of thing. This is the sort of thing Mafia people can do: washing money, getting clean money, and things like that. We just don't know about those things, because we are not criminals and not used to dealing in that business.

P. That's right.

D. It is a tough thing to know how to do.

P. Maybe it takes a gang to do that.

D. That's right. There is a real problem as to whether we could even do it. Plus there is a real problem in raising money. Mitchell has been working on raising some money. He is one of the ones with the most to lose. But there is no denying the fact that the White House, in Ehrlichman, Haldeman and Dean are involved in some of the early money decisions.

P. How much money do you need?

D. I would say these people are going to cost a million dollars over the next two years.

P. We could get that. On the money, if you need the money you could get that. You could get a million dollars. You could get it in cash. I know where it could be gotten. It is not easy, but it could be done. But the question is who the hell would handle it? Any ideas on that?

D. That's right. Well, I think that is something that Mitchell ought to be charged with.

P. I would think so too.

D. And get some pros to help him.

P. Let me say there shouldn't be a lot of people running around getting money—

D. Well he's got one person doing it who I am not sure is—

P. Who is that?

D. He has Fred LaRue doing it. Now Fred started out going out trying to solicit money from all kinds of people.

P. No!

D. I had learned about it, and I said, "(expletive deleted) It is just awful! Don't do it!" People are going to ask what the money is for. He has apparently talked to Tom Pappas.

P. I know.

D. And Pappas has agreed to come up with a sizeable amount, I gather.

P. What do you think? You don't need a million right away, but you need a million? Is that right?

D. That is right.

P. You need it in cash don't you? I am just thinking out loud here for a moment. Would you put that through the Cuban Committee:

D. No.

P. It is going to be checks, cash money, etc. How if that ever comes out, are you going to handle it? Is the Cuban Committee an obstruction of justice, if they want to help?

D. Well they have priests in it.

P. Would that give a little bit of a cover?

D. That would give some for the Cubans and possibly Hunt. Then you've got Liddy. McCord is not accepting any money. So he is not a bought man right now.

P. OK. Go ahead.

D. Let me continue a little bit right here now. When I say this is a growing cancer, I say it for reasons like this Bud Krough, in his testimony before the Grand Jury, was forced to perjure himself. He is haunted by it. Bud said, "I have not had a pleasant day on my job." He said, "I told my wife all about this. The curtain may ring down one of these days, and I may have to face the music, which I am perfectly willing to do."

P. What did he perjure himself on, John?

D. Did he know the Cubans. He did.

P. He said he didn't?

D. That is right. They didn't press him hard.

P. He might be able to—I am just trying to think. Perjury is an awful hard rap to prove. If he could just say that I—Well, go ahead.

D. Well, so that is one perjury. Mitchell and Magruder are potential perjurers. There is always the possibility of any one of these individuals blowing. Hunt. Liddy. Liddy is in jail right now, serving his time and having a good time right now. I think Liddy in his own bizarre way the strongest of all of them. So there is that possibility.

P. Your major guy to keep under control is Hunt?

D. That is right.

P. I think. Does he know a lot?

D. He knows so much. He could sink Chuck Colson. Apparently he is quite distressed with Colson. He thinks Colson has abandoned him. Colson was to meet with him when he was out there after, you know, he had left the White House. He met with him through his lawyer. Hunt raised the question he wanted money. Colson's lawyer told him Colson wasn't doing anything with money. Hunt took offense with that immediately, and felt Colson had abandoned him.

P. Just looking at the immediate problem, don't you think you have to handle Hunt's financial situation damn soon?

D. I think that is—I talked with Mitchell about that last night and—

P. It seems to me we have to keep the cap on the bottle that much, or we don't have any options.

D. That's right.

P. Either that or it all blows right now?

D. That's the question.

P. We have Hunt, Krogh. Well go ahead with the other ones.

D. Now we've got Kalmbach. Kalmbach received, at the close of the '68 campaign in January of 1969, he got a million $700,000 to be custodian for. That came down from New York, and was placed in safe deposit boxes here. Some other people were on the boxes. And ultimately, the money was taken out to California. Alright, there is knowledge of the fact that he did start with a million seven. Several people know this. Now since 1969, he has spent a good deal of this money and accounting for it is going to be very difficult for Herb. For example, he has spent close to $500,000 on private polling. That opens up a whole new thing. It is not illegal, but more of the same thing.

P. Everybody does polling.

D. That's right. There is nothing criminal about it. It's private polling.

P. People have done private polling all through the years. There is nothing improper.

D. That's right. He sent $400,000, as he has described to me, somewhere in the South for another candidate. I assume this was 400,000 that went to Wallace.

P. Wallace?

D. Right. He has maintained a man who I only know by the name of "Tony," who is the fellow who did the Chappaquiddick study.

P. I know about that.

D. And other odd jobs like that. Nothing illegal, but closer. I don't know of anything that Herb has done that is illegal, other than the fact that he doesn't want to blow the whistle on a lot of people, and may find himself in a perjury situation. Well, what will happen when they call him up there—and he has no immunity? They will say, "How did you say Mr. Segretti?" He will say, "Well, I had cash on hand." "How much cash did you have on hand?" Where does it go from there? Where did you get the cash? A full series of questions. His bank records indicate he had cash on hand, because some of these were set up in trustee accounts.

P. How would you handle him, John, for example? Would you just have him put the whole thing out? I don't mind the $500,000 and the $400,000.

D. No—that doesn't bother me either. As I say, Herb's problems are politically embarrassing, but not criminal.

P. Well he just handled matters between campaigns. These were surveys etc., etc. There is no need to account for that. There is no law that requires his accounting for that.

D. Ah, now—

P. Sources of money. There is no illegality in having a surplus in cash after a campaign.

D. No, the money—it has always been argued by Stans that it came in the preconvention primary for the 1968 race, and it was just set aside. That all can be explained.

P. How about the other probabilities?

D. We have a runaway Grand Jury up in the Southern District. They are after Mitchell and Stans on some sort of bribe or influence peddling with Vesco. They are also going to try to drag Ehrlichman into that. Apparently Ehrlichman had some meetings with Vesco, also. Don Nixon, Jr. came into see John a couple of times about the problem.

P. Not about Vesco, but about Don, Jr.? Ehrlichman never did anything for Vesco?

D. No one at the White House has done anything for Vesco.

P. Well Ehrlichman doesn't have to appear there?

D. Before that Grand Jury? Yes he could very well.

P. He couldn't use Executive Privilege?

D. Not really. Criminal charge, that is a little different. That would be dynamite to try to defend that.

P. Use the Flanigan analogy?

D. Right! That's pretty much the overall picture. And probably the most troublesome thing is the Segretti thing. Let's get down to that. Bob has indicated to me that he has told you a lot of it, that he, indeed, did authorize it. He did not authorize anything like ultimately evolved. He was aware of it. He was aware that Chapin and Strachan were looking for somebody. Again, this is one that has potential that Dwight Chapin should have a felony in this. He has to disprove a negative. The negative is that he didn't control and direct Segretti.

P. Wouldn't the felony be perjury again?

D. No, the felony in this instance would be a potential use of one of the civil rights statutes, where anybody who interferes with the campaign of a candidate for national office.

P. Why isn't it under civil rights statutes for these clowns demonstrating against us?

D. I have argued for that very purpose.

P. Really?

D. Yes, I have.

P. We were closer—nuts interfering with the campaign.

D. That is exactly right.

P. I have been sick about that because it is so bad the way it has been put out on the PR side. It has ended up on the PR side very confused.

D. What really bothers me is this growing situation. As I say, it is growing because of the continued need to provide support for the Watergate people who are going to hold us up for everything we've got, and the need for some people to perjure themselves as they go down the road here. If this thing ever blows, then we are in a cover up situation. I think it would be extremely damaging to you and the——

P. Sure. The whole concept of Administration justice. Which we cannot have!

D. That is what really troubles me. For example, what happens if it starts breaking, and they do find a criminal case against a Haldeman, a Dean, a Mitchell, an Ehrlichman? That is——

P. If it really comes down to that, we would have to (unintelligible) some of the men.

D. That's right. I am coming down to what I really think, is that Bob and John and John Mitchell and I can sit down and spend a day, or however long, to figure out one, how this can be carved away from you, so that it does not damage you or the Presidency. It just can't! You are not involved in it and it is something you shouldn't——

P. That is true!

D. I know, sir. I can just tell from our conversation that these are things that you have no knowledge of.

P. You certainly can! Buggings, etc! Let me say I am keenly aware of the fact Colson, et al., were doing their best to get information as we went along. But they all knew very well they were supposed to comply with the law. There was no question about that! You feel that really the trigger man was really Colson on this then?

D. No. He was one of us. He was just in the chain. He helped push the thing.

P. All I know about is the time of ITT, he was trying to get something going there because ITT was giving us a bad time.

D. I know he used Hunt.

P. I knew about that. I didn't know about it, but I knew there was something going on. But I didn't know it was a Hunt.

D. What really troubles me is one, will this

thing not break some day and the whole thing—domino situation—everything starts crumbling, fingers will be pointing. Bob will be accused of things he has never heard of and deny and try to disprove it. It will get real nasty and just be a real bad situation. And the person who will be hurt by it most will be you and the Presidency, and I just don't think——

P. First, because I am an executive I am supposed to check these things.

D. That's right.

P. Let's come back to this problem. What are your feelings yourself, John? You know what they are all saying. What are your feelings about the chances?

D. I am not confident that we can ride through this. I think there are soft spots.

P. You used to be——

D. I am not comfortable for this reason. I have noticed of recent—since the publicity has increased on this thing again, with the Gray hearings, that everybody is now starting to watch after their behind. Everyone is getting their own counsel. More counsel are getting involved. How do I protect my ass.

P. They are scared.

D. That is bad. We were able to hold it for a long time. Another thing is that my facility to deal with the multitude of people I have been dealing with has been hampered because of Gray's blowing me up into the front page.

P. Your cover is broken?

D. That's right and it's——

P. So what you really come to is what we do. Let's suppose that you and Haldeman and Ehrlichman and Mitchell say we can't hold this? What then are you going to say? What are you going to put out after it. Complete disclosure, isn't that the best way to do it?

D. Well, one way to do it is——

P. That would be my view.

D. One way to do it is for you to tell the Attorney General that you finally know. Really, this is the first time you are getting all the pieces together.

P. Ask for another Grand Jury?

D. Ask for another Grand Jury. The way it should be done though, is a way—for example, I think that we could avoid criminal liability for countless people and the ones that did get it could be minimal.

P. How?

D. Well, I think by just thinking it all through first as to how. You know, some people could be granted immunity.

P. Like Magruder?

D. Yeah. To come forward. But some people are going to have to go to jail. That is the long and short of it, also.

P. Who? Let's talk about——

D. Alright. I think I could. For one.

P. You go to jail?

D. That's right.

P. Oh, hell no! I can't see how you can.

D. Well, because——

P. I can't see how. Let me say I can't see how a legal case could be made against you, John.

D. It would be tough but, you know, I can see people pointing fingers. You know, to get it out of their own, put me in an impossible position. Just really give me a (unintelligible)

P. Oh, no! Let me say I got the impression here—But just looking at it from a cold legal standpoint: you are a lawyer, you were a counsel—doing what you did as counsel. You were not—What would you go to jail for?

D. The obstruction of justice.

P. The obstruction of justice?

D. That is the only one that bothers me.

P. Well, I don't know. I think that one. I feel it could be cut off at the pass, maybe, the obstruction of justice.

D. You know one of the—that's why——

P. Sometimes it is well to give them something, and then they don't want the bigger push?

D. That's right. I think that, I think that with proper coordination with the Department of Justice, Henry Petersen is the only man I know bright enough and knowledgeable enough in the criminal laws and the process that could really tell us how this could be put together so that it did the maximum to carve it away with a minimum damage to individuals involved.

P. Petersen doesn't know does he?

D. That's right. No, I know he doesn't know. I know he doesn't know. I am talking about somebody who I have over the years known to have enough faith in—you constantly. It would have to put him in a very difficult situation as the Head of the Criminal Division of the United States Department of Justice, and the oath of office—

P. No. Talking about your obstruction of justice, though, I don't see it.

D. Well, I have been a conduit for information on taking care of people out there who are guilty of crimes.

P. Oh, you mean like the blackmailers?

D. The blackmailers. Right.

P. Well, I wonder if that part of it can't be—I wonder if that doesn't—let me put it frankly: I wonder if that doesn't have to be continued? Let me put it this way: let us suppose that you get the million bucks, and you get the proper way to handle it. You could hold that side?

D. Uh, huh.

P. It would seem to me that would be worthwhile.

D. Well, that's one problem.

P. I know you have a problem here. You have the problem with Hunt and his clemency.

D. That's right. And you are going to have a clemency problem with the others. They all are going to expect to be out and that may put you in a position that is just untenable at some point. You know, the Watergate Hearings just over, Hunt now demanding clemency or he is going to blow. And politically, it's impossible for you to do it. You know, after everybody—

P. That's right!

D. I am not sure that you will ever be able to deliver on the clemency. It may be just too hot.

P. You can't do it politically until after the '74 elections, that's for sure. Your point is that even then you couldn't do it.

D. That's right. It may further involve you in a way you should not be involved in this.

P. No—it is wrong that's for sure.

D. Well—there have been some bad judgments made. There have been some necessary judgments made.

P. Before the election?

D. Before the election and in the wake the necessary ones, you know, before the election. You know, with me there was no way, but the burden of this second Administration is something that is not going to go away.

P. No, it isn't.

D. It is not going to go away, Sir!

P. It is not going to go away.

D. Exactly.

P. The idea, well, that people are going to get tired of it and all that sort of thing.

D. Anything will spark it back into life. It's got to be,—It's got to be—

P. It is too much to the partisan interest to others to spark it back into life.

D. And it seems to me the only way—

P. Well, also so let's leave you out of it. I don't think on the obstruction of justice thing—I take that out. I don't know why, I think you may be over that cliff.

D. Well, it is possible.

P. Who else do you think has—

D. Potential criminal liability?

P. Yeah.

D. I think Ehlichman does. I think that uh—

P. Why?

D. Because of this conspiracy to burglarize the Ellsberg doctors' office.

P. That is, provided Hunt breaks?

D. Well, the funny—let me say something interesting about that. Within the files—

P. Oh, I thought of it. The picture!

D. Yes, sir. That is not all that buried. And while I think we've got it buried, there is no telling when it is going to pop up. Now the Cubans could start this whole thing. When the Ervin Committee starts running down why this mysterious telephone was here in the White House listed in the name of a secretary, some of these secretaries have a little idea about this, and they can be broken down just so fast. That is another thing I mentioned in the cycle—in the circle. Liddy's secretary, for example, is knowledgeable. Magruder's secretary is knowledgeable.

P. Sure. So Ehrlichman on the—

D. What I am coming in today with is: I don't have a plan on how to solve it right now, but I think it is at the juncture that we should begin to think in terms of how to cut the losses; how to minimize the further growth of this thing, rather than further compound it by, you know, ultimately paying these guys forever. I think we've got to look—

P. But at the moment, don't you agree it is better to get the Hunt thing that's where that—

D. That is worth buying time on

P. That is buying time, I agree.

D. The Grand Jury is going to reconvene next week after Sirica sentences. But that is why I think that John and Bob have met with me. They have never met with Mitchell on this. We have never had a real down and out with everybody that has the most to lose and it is the most danger for you to have them have criminal liabilities. I think Bob has a potential criminal liability, frankly. In other words, a lot of these people could be indicted.

P. Yeah.

D. They might never be convicted but just the thought of spending nights—

P. Suppose they are?

D. I think that would be devastating.

P. Suppose the worse—that Bob is indicted and Ehrlichman is indicted. And I must say, we just better then try to tough it through. You get the point.

D. That's right.

P. If they, for example, say let's cut our losses and you say we are going to go down the road to see if we can cut our losses and no more blackmail and all the rest. And then the thing blows cutting Bob and the rest to pieces. You would never recover from that, John.

D. That's right.

P. It is better to fight it out. Then you see that's the other thing. It's better to fight it out and not let people testify, and so forth. And now, on the other hand, we realize that we have these weaknesses—that we have these weaknesses—in terms of blackmail.

D. There are two routes. One is to figure out how to cut the losses and minimize the human impact and get you up and out and away from it in any way. In a way it would never come back to haunt you. That is one general alternative. The other is to go down the road, just hunker down, fight it at every corner, every turn, don't let people testify—cover it up is what we really are talking about. Just keep it buried, and just hope

that we can do it, hope that we make good decisions at the right time, keep our heads cool, we make the right moves.

P. And just take the heat?

D. And just take the heat.

P. Now with the second line of attack. You can discuss this (unintelligible) the way you want to. Still consider my scheme of having you brief the Cabinet, just in very general terms and the leaders in very general terms and maybe some very general statement with regard to my investigation. Answer questions, basically on the basis of what they told you, not what you know. Haldeman is not involved. Ehrlichman is not involved.

D. If we go that route Sir, I can give a show we can see them just like we were selling Wheaties on our position. There's no—

P. The problem that you have are these mine fields down the road. I think the most difficult problem are the guys who are going to jail. I think you are right about that.

D. I agree.

P. Now. And also the fact that we are not going to be able to give them clemency.

D. That's right. How long will they take? How long will they sit there? I don't know. We don't know what they will be sentenced to. There's always a chance——

P. Thirty years, isn't it?

D. It could be. You know, they haven't announced yet, but it——

P. Top is thirty years, isn't it?

D. It is even higher than that. It is about 50 years. It all——

P. So ridiculous!

D. And what is so incredible is, he is (unintelligible).

P. People break and enter, etc., and get two years. No weapons! No results! What the hell are they talking about?

D. The individuals who are charged with shooting John Stennis are on the street. They were given, you know, one was put out on his personal recognizance rather than bond. They've got these fellows all stuck with $100,000 bonds. It's the same Judge, Sirica, let one guy who is charged with shooting a United States Senator out on the street.

P. Sirica?

D. Yes—it is phenomenal.

P. What is the matter with him? I thought he was a hard liner.

D. He is. He is just a peculiar animal, and he set the bond for one of the others somewhere around 50 to 60,000. But still, that guy is in. Didn't make bond, but still 60 thousand dollars as opposed to $100,000 for these guys is phenomenal.

P. When could you have this meeting with these fellows as I think time is of the essence. Could you do it this afternoon?

D. Well, Mitchell isn't here. It might be worth it to have him come down. I think that Bob and John did not want to talk to John Mitchell about this, and I don't believe they have had any conversation with him about it.

P. Well, I will get Haldeman in here now.

D. Bob and I have talked about it, just as we are talking about it this morning. I told him I thought that you should have the facts and he agrees. Of course, we have some tough problems down the road if we—(inaudible). Let me say (unintelligible) How do we handle all (unintelligible) who knew all about this in advance. Let me have some of your thoughts on that.

D. Well we can always, you know, on the other side charge them with blackmailing us. This is absurd stuff they are saying, and

P. See, the way you put it out here, letting it all hang out, it may never get there.

(Haldeman enters the room.)

P. I was talking to John about this whole situation and he said if we can get away from the bits and pieces that have broken out. He is right in recommending that there be a meeting at the very first possible time. I realize Ehrlichman is still out in California but, what is today? Is tomorrow Thursday?

H. (unintelligible.)

D. That's right.

P. He does get back. Could we do it Thursday? This meeting—you can't do it today, can you?

D. I don't think so. I was suggesting a meeting with Mitchell.

P. Mitchell, Ehrlichman, yourself and Bob, that is all. Now, Mitchell has to be there because he is seriously involved and we are trying to keep him with us. We have to see how we handle it from here on. We are in the process of having to determine which way to go, and John has thought it through as well as he can. I don't want Moore there on this occasion. You haven't told Moore all of this, have you?

D. Moore's got, by being with me, has more bits and pieces. I have had to give him.

P. Right.

D. Because he is making judgments—

P. The point is when you get down to the PR, once you decide it, what to do, we can let him know so forth and so on. But it is the kind of thing that I think what really has to happen is for you to sit down with those three and for you to tell them exactly what you told me.

D. Uh, huh.

P. It may take him about 35 or 40 minutes. In other words he knows, John knows, about everything and also what all the potential criminal liabilities are, whether it is—like that thing—what, about obstruction?

D. Obstruction of justice. Right.

P. So forth and so on. I think that's best. Then we have to see what the line is. Whether the line is one of continuing to run a kind of stone wall, and take the heat from that, having in mind the fact that there are vulnerable points there;—the vulnerable points being, the first vulnerable points would be obvious. That would be one of the defendents, either Hunt, because he is most vulnerable in my opinion, might blow the whistle and his price is pretty high, but at least we can buy the time on that as I pointed out to John. Apparently, who is dealing with Hunt at the moment now? Colson's—

D. Well, Mitchell's lawyer and Colson's lawyer both.

P. Who is familiar with him? At least he has to know before he is sentenced.

H. Who is Colson's lawyer? Is he in his law firm?

D. Shapiro. Right. The other day he came up and—

H. Colson has told him everything, hasn't he?

D. Yep, I gather he has. The other thing that bothered me about that is that he is a chatterer. He came up to Fred Fielding, of my office, at Colson's going away party. I didn't go over there. It was the Blair House the other night. He said to Fred, he said, "well, Chuck has had some mighty serious words with his friend Howard and has had some mighty serious messages back." Now, how does he know what Fielding knows? Because Fielding knows virtually nothing.

P. Well—

H. That is where your dangers lie, in all these stupid human errors developing.

P. Sure. The point is Bob, let's face it, the secretaries, the assistants know all of this. The principals may be as hard as a rock, but you never know when they, or some of their people may crack. But, we'll see, we'll see. Here we have the Hunt problem that ought to be handled now. Incidentally, I do not feel that Colson should sit in this meeting. Do you agree?

D. No. I would agree.

P. Ok. How then—who does sit on Colson? Because somebody has to, don't they?

D. Chuck—

P. Talks too much.

D. I like Chuck, but I don't want Chuck to know anything that I am doing, frankly.

P. Alright.

H. I think that is right. I think you want to be careful not to give Chuck any more knowledge than he's already got.

D. I wouldn't want Chuck to even know of the meeting, frankly.

P. Ok. Fortunately, with Chuck it is very—I talk to him about many, many political things, but I have never talked with him about this sort of thing. Very probably, I think he must be damn sure that I didn't know anything. And I don't. In fact, I am surprised by what you told me today. From what you said, I gathered the impression, and of course your analysis does not for sure indicate that Chuck knew that it was a bugging operation.

D. That's correct. I don't have—Chuck denies having knowledge.

P. Yet on the other side of that is that Hunt had conversations with Chuck. It may be that Hunt told Chuck that it was bugging, and so forth and so on.

D. Uh, huh, uh, huh. They were very close. They talk too much about too many things. They were intimate on this sort of—

H. That's the problem. Chuck loves (unintelligible). Chuck loves what he does and he loves to talk about it.

P. He also is a name dropper. Chuck may have gone around and talked to Hunt and said, well I was talking to the President, and the President feels we ought to get information about this, or that or the other thing, etc.

D. Well, Liddy is the same way.

P. Well, I have talked about this and that and the other thing. I have never talked to anybody, but I have talked to Chuck and John and the rest and I am sure that Chuck might have even talked to him along these lines.

H. Other than—Well, anything could have happened. I was going—

D. I would doubt that seriously.

H. I don't think he would. Chuck is a name dropper in one sense, but not in that sense. I think he very carefully keeps away from that, except when he is very intentionally bringing the President in for the President's purposes.

P. He had the impression though apparently he, as it turns out, he was the trigger man. Or he may well have been the trigger man where he just called up and said now look here Jeb go out and get that information. And Liddy and Hunt went out and got it at that time. This was February. It must have been after—

D. This was the call to Magruder from Colson saying, "fish or cut bait." Hunt and Liddy were in his office.

H. In Colson's office?

D. In Colson's office. And he called Magruder and said, "Let's fish or cut bait on this operation. Let's get it going."

H. Oh, really?

D. Yeah. This is Magruder telling me that.

H. Of course. That—now wait Magruder testified—

D. Chuck also told me that Hunt and Liddy were in his office when he made the call.

H. Oh, ok.

D. So it was corroborated by the principal.

H. Hunt and Liddy haven't told you that, though?

D. No.

H. You haven't talked to Hunt and Liddy?

D. I talked to Liddy once right after the incident.

P. The point is this, that it is now time, though, that Mitchell has got to sit down, and know where the hell all this thing stands, too. You see, John is concerned, as you know, about the Ehrlichman situation. It worries him a great deal because, and this is why the Hunt problem is so serious, because it had nothing to do with the campaign. It has to do with the Ellsberg case. I don't know what the hell the—(unintelligible)

H. But what I was going to say—

P. What is the answer on this? How you keep it out, I don't know. You can't keep it out if Hunt talks. You see the point is irrelevant. It has gotten to this point—

D. You might put it on a national security grounds basis.

H. It absolutely was.

D. And say that this was—

H. (unintelligible)—CIA—

D. Ah—

H. Seriously,

P. National Security. We had to get information for national security grounds.

D. Then the question is, why didn't the CIA do it or why didn't the FBI do it?

P. Because we had to do it on a confidential basis.

H. Because we were checking them.

P. Neither could be trusted.

H. It has basically never been proven. There was reason to question their position.

P. With the bombing thing coming out and everything coming out, the whole thing was national security.

D. I think we could get by on that.

P. On that one I think we should simply say this was a national security investigation that was conducted. And on that basis, I think the same in the drug field with Krogh. Krogh could say feels he did not perjure himself. He could say it was a national security matter. That is why—

D. That is the way Bud rests easy, because he is convinced that he was doing. He said there was treason about the country, and it could have threatened the way the war was handled and (expletive deleted)—

P. Bud should just say it was a question of national security, and I was not in a position to divulge it. Anyway, let's don't go beyond that. But I do think now there is a time when you just don't want to talk to Mitchell. But John is right. There must be a four way talk of the particular ones you can trust here. We've got to get a decision on it. It is not something—you have two ways basically. You really only have two ways to go. You either decide that the whole (expletive deleted) thing is so full of problems with potential criminal liabilities, which most concern me. I don't give a damn about the publicity. We could rock that through that if we had to let the whole damn thing hang out, and it would be a lousy story for a month. But I can take it. The point is, that I don't want any criminal liabilities. That is the thing that I am concerned about for members of the White House staff, and I would trust for members of the Committee. And that means Magruder.

D. That's right. Let's face it. I think Magruder is the major guy over there I think he's got the most serious problem.

P. Yeah.

H. Well, the thing we talked about yesterday. You have a question where you cut off on this. There is a possibility of cutting it at Liddy, where you are now.

P. Yeah.

D. But to accomplish that requires a continued perjury by Magruder and requires——

P. And requires total commitment and control over all of the defendants which—in other words when they are let down——

H. But we can, because they don't know anything beyond Liddy.

D. No. On the fact that Liddy, they have hearsay.

H. But we don't know about Hunt. Maybe Hunt has that tied into Colson. We don't know that though, really.

P. I think Hunt knows a hell of a lot more.

D. I do too. Now what McCord does——

H. You think he does. I am afraid you are right, but we don't know that.

P. I think we better assume it. I think Colson——

D. He is playing hard ball. He wouldn't play hard ball unless he were pretty confident that he could cause an awful lot of grief.

H. Right.

P. He is playing hard ball with regard to Ehrlichman for example, and that sort of thing. He knows what he's got.

H. What's he planning on, money?

D. Money and—

H. Really?

P. It's about $120,000. That's what, Bob. That would be easy. It is not easy to deliver, but it is easy to get. Now,

H. If the case is just that way, then the thing to do if the thing cranks out.

P. If, for example, you say look we are not going to continue to—let's say, frankly, on the assumption that if we continue to cut our losses, we are not going to win. But in the end, we are going to be bled to death. And in the end, it is all going to come out anyway. Then you get the worst of both worlds. We are going to lose, and people are going to—

H. And look like dopes!

P. And in effect, look like a cover-up. So that we can't do. Now the other line, however, if you take that line, that we are not going to continue to cut our losses, that means then we have to look square in the eye as to what the hell those losses are, and see which people can—so we can avoid criminal liability. Right?

D. Right.

P. And that means keep it off you. Herb has started this Justice thing. We've got to keep it off Herb. You have to keep it, naturally, off of Bob, off Chapin, if possible, Strachan, right?

D. Uh, huh.

P. And Mitchell. Right?

D. Uh, huh.

H. And Magruder, if you can.

P. John Dean's point is that if Magruder goes down, he will pull everybody with him.

H. That's my view. Yep, I think Jeb, I don't think he wants to. And I think he even would try not to, but I don't think he is able not to.

D. I don't think he is strong enough.

P. Another way to do it then Bob, and John realizes this, is to continue to try to cut our losses. Now we have to take a look at that course of action. First it is going to require approximately a million dollars to take care of the jackasses who are in jail. That can be arranged. That could be arranged. But you realize that after we are gone, and assuming we can expend this money, then they are going to crack and it would be an unseemly story. Frankly, all the people aren't going to care that much.

D. That's right.

P. People won't care, but people are going to be talking about it, there is no question. And the second thing is, we are not going to be able to deliver on any of a clemency thing. You know Colson has gone around on this clemency thing with Hunt and the rest?

D. Hunt is now talking about being out by Christmas.

H. This year?

D. This year. He was told by O'Brien, who is my conveyor of doom back and forth, that hell, he would be lucky if he were out a year from now, or after Ervin's hearings were over. He said how in the Lord's name could you be commuted that quickly? He said, "Well, that is my commitment from Colson."

H. By Christmas of this year?

D. Yeah.

H. See that, really, that is verbal evil. Colson is—That is your fatal flaw in Chuck. He is an operator in expediency, and he will pay at the time and where he is to accomplish whatever he is there to do. And that, and that's, — I would believe that he has made that commitment if Hunt says he has. I would believe he is capable of saying that.

P. The only thing we could do with him would be to parole him like the (unintelligible) situation. But you couldn't buy clemency.

D. Kleindienst has now got control of the Parole Board, and he said to tell me we could pull Paroles off now where we couldn't before. So—

H. Kleindienst always tells you that, but I never believe it.

P. Paroles—let the (unintelligible) worry about that.

Parole, in appearance, etc., is something I think in Hunt's case, you could do Hunt, but you couldn't do the others. You understand.

D. Well, so much depends on how Sirica sentences. He can sentence in a way that makes parole even impossible.

P. He can?

D. Sure. He can do all kind of permanent sentences.

P. (Unintelligible).

D. Yeah. He can be (characterization deleted) as far as the whole thing.

H. Can't you appeal an unjust sentence as well as an unjust?

D. You have 60 days to ask the Judge to review it. There is no Appellate review of sentences.

H. There isn't?

P. The judge can review it.

H. Only the sentencing judge can review his own sentence?

P. Coming back, though, to this. So you got that hanging over. Now! If—you see, if you let it hang there, you fight with them at all or they part—The point is, your feeling is that we just can't continue to pay the blackmail of these guys?

D. I think that is our great jeopardy.

P. Now, let me tell you. We could get the money. There is no problem in that. We can't provide the clemency. Money could be provided. Mitchell could provide the way to deliver it. That could be done. See what I mean?

H. Mitchell says he can't doesn't he?

D. Mitchell says—there has been an interesting phenomenon all the way along. There have been a lot of people having to pull oars and not everybody pulls them all the same time, the same way, because they develop self-interests.

H. What John is saying, everybody smiles at Dean and says well you better get something done about it.

D. That's right.

H. Mitchell is leaving Dean hanging out on him. None of us, well, may be we are doing the same thing to you.

D. That's right.

H. But let me say this. I don't see how there is any way that you can have the White House or anybody presently in the White House involved in trying to gin out this money.

D. We are already deeply enough in that. That is the problem, Bob.

P. I thought you said—

H. We need more money.

D. Well, in fact when—

P. Kalmbach?

D. Well, Kalmbach.

H. He's not the one.

D. No, but when they ran out of that money, as you know it came out of the 350,000 that was over here.

P. And they knew that?

D. And I had to explain what it was for before I could get the money.

H. In the first place, that was put back to LaRue.

D. That's right.

H. It was put back where it belonged. It wasn't all returned in a lump sum. It was put back in pieces.

D. That's right.

P. Then LaRue used it for this other purpose?

D. That's right.

H. And the balance was all returned to LaRue, but we don't have any receipt for that. We have no way of proving it.

D. And I think that was because of self-interest over there. Mitchell—

H. Mitchell told LaRue not to take it at all.

D. That's right.

H. That is what you told me.

D. That's right. And then don't give them a receipt.

P. Then what happened? LaRue took it, and then what?

D. It was sent back to him because we just couldn't continue piecemeal giving. Everytime I asked for it I had to tell Bob I needed some, or something like that, and he had to get Gordon Strachan to go up to his safe and take it out and take it over to LaRue. And it was just a forever operation.

P. Why did they take it all?

D. I just sent it along to them.

H. We had been trying to get a way to get that money back out of here anyway. And what this was supposed to be was loans. This was immediate cash needs that was going to be replenished. Mitchell was arguing that you can't take the $350,000 back until it is all replenished. Isn't that right?

D. That is right.

H. They hadn't replenished, so we just gave it all back anyway.

P. I had a feeling we could handle this one.

D. Well, first of all, I would have a hell of a time proving it. That is one thing.

P. I just have a feeling on it. Well, it sounds like a lot of money, a million dollars. Let me say that I think we could get that. I know money is hard to raise. But the point is, what we do on that—Let's look at the hard problem—

D. That has been, thus far, the most difficult problem. That is why these fellows have been on and off the reservation all the way along.

P. So the hard place is this. Your feeling at the present time is the hell with the million dollars. I would just say to these fellows I am sorry it is all off and let them talk. Alright?

D. Well,—

P. That's the way to do it isn't it, if you want to do it clean?

H. That's the way. We can live with it, because the problem with the blackmailing, that is the thing we kept raising with you when you said there was a money problem. When you said we need $20,000, or $100,000, or something. We said yeah, that is what you need today. But what do you need tomorrow or next year or five years from now?

P. How long?

D. That was just to get us through November 7th, though.

H. That's what we had to have to get through November 7th. There is no question.

D. These fellows could have sold out to the Democrats for one-half a million.

P. These fellows though, as far as what has happened up to this time, are covered on their situation, because the Cuban Committee did this for them during the election?

D. Well, yeah. We can put that together. That isn't of course quite the way it happened, but—

P. I know, but that's the way it is going to have to happen.

D. It's going to have to happen.

P. Finally, though, so you let it happen. So then they go, and so what happens? Do they go out and start blowing the whistle on everybody else? Isn't that what it really gets down to?

D. Uh, huh.

P. So that would be the clean way—Right!

D. Ah——

P. Is that—you would go so far as to recommend that?

D. No, I wouldn't. I don't think necessarily that is the cleanest way. One of the things that I think we all need to discuss is, is there some way that we can get our story before a Grand Jury, so that they can really have investigated the White House on this. I must say that I have not really thought through that alternative. We have been so busy on the other containment situation.

P. John Ehrlichman, of course, has raised the point of another Grand Jury. I just don't know how you could do it. On what basis. I could call for it, but I——

D. That would be out of the question.

P. I hate to leave with differences in view of all this stripped land. I could understand this, but I think I want another Grand Jury proceeding and we will have the White House appear before them. Is that right John?

D. Uh huh.

P. That is the point, see. Of course! That would make the difference. I want everybody in the White House called. And that gives you a reason not to have to go before the Ervin and Baker Committee. It puts it in an executive session, in a sense.

H. Right.

D. That's right.

H. And there would be some rules of evidence, aren't there?

D. There are rules of evidence.

P. Rules of evidence and you have lawyers.

H. You are in a hell of a lot better position than you are up there.

D. No, you can't have a lawyer before the Grand Jury.

P. Oh, no. That's right.

H. But you do have rules of evidence. You can refuse to talk.

D. You can take the 5th Amendment.

P. That's right.

H. You can say you have forgotten too can't you?

D. Sure but you are chancing a very high risk for perjury situation.

P. But you can say I don't remember. You can say I can't recall. I can't give any answer to that that I can recall.

H. You have the same perjury thing on the Hill don't you?

D. That's right.

P. Oh hell, yes.

H. And the Ervin Committee is a hell of a lot worse to deal with.

D. That's right.

P. The Grand Jury thing has its in view of this thing. Suppose we have a Grand Jury thing. What would that do to the Ervin Committee? Would it go right ahead?

D. Probably. Probably.

P. If we do that on a Grand Jury, we would then have a much better cause in terms of saying, "Look, this is a Grand Jury, in which the prosecutor—How about a special prosecutor? We would use Peterson, or use another one. You see he is probably suspect. Would you call in another prosecutor?

D. I would like to have Peterson on our side, if I did this thing.

P. Well, Peterson is honest. There isn't anybody about to question him is there?

D. No, but he will get a barrage when these Watergate Hearings start.

P. But he can go up and say that he has been told to go further with the Grand Jury and go in to this and that and the other thing. Call everybody in the White House, and I want them to come and I want them to go to the Grand Jury.

D. This may happen without even our calling for it when these—

P. Vesco?

D. No. Well, that is one possibility. But also when these people go back before the Grand Jury here, they are going to pull all these criminal defendants back before the Grand Jury and immunize them.

P. Who will do this?

D. The U.S. Attorney's Office will.

P. To do what?

D. To let them talk about anything further they want to talk about.

P. But what do they gain out of it?

D. Nothing.

P. To hell with it!

D. They're going to stonewall it, as it now stands. Excepting Hunt. That's why his threat.

H. It's Hunt opportunity.

P. That's why for your immediate things you have no choice but to come up with the $120,000, or whatever it is. Right?

D. That's right.

P. Would you agree that that's the prime thing that you damn well better get that done?

D. Obviously he ought to be given some signal anyway.

P. (Expletive deleted), get it. In a way that—who is going to talk to him? Colson? He is the one who is supposed to know him?

D. Well, Colson doesn't have any money though. That is the thing. That's been one of the real problems. They haven't been able to raise a million dollars in cash. (unintelligible) has been just a very difficult problem as we discussed before. Mitchell has talked to Pappas, and John asked me to call him last night after our discussion and after you had met with John to see where that was. And I said, "Have you talked to Pappas?" He was at home, and Martha picked up the phone so it was all in code. I said, "Have you talked to the Greek?" And he said, "Yes, I have." I said, "Is the Greek bearing gifts?" He said, "Well, I'll call you tomorrow on that."

P. Well look, what it is you need on that? When—I am not familiar with the money situation.

D. It sounds easy to do and everyone is out there doing it and that is where our breakdown has come every time.

P. Well, if you had it, how would you get it to somebody?

D. Well, I got it to LaRue by just leaving it in mail boxes and things like that. And someone phones Hunt to come and pick it up. As I say, we are a bunch of amateurs in that business.

H. That is the thing that we thought Mitchell ought to be able to know how to find somebody who would know how to do all that sort of thing, because none of us know how to.

D. That's right. You have to wash the money. You can get a $100,000 out of a bank, and it all comes in serialized bills.

P. I understand.

D. And that means you have to go to Vegas with it or a bookmaker in New York City. I have learned all these things after the fact. I will be in great shape for the next time around.

H. (Expletive deleted)

P. Well, of course you have a surplus from the campaign. Is there any other money hanging around?

H. Well, what about the money we moved back out of here?

D. Apparently, there is some there. That might be what they can use. I don't know how much is left.

P. Kalmbach must have some.

D. Kalmbach doesn't have a cent.

P. He doesn't?

H. That $350,000 that we moved out was all that we saved. Because they were afraid to because of this. That is the trouble. We are so (adjective deleted) square that we get caught at everything.

P. Could I suggest this though: Let me go back around——

H. Be careful——

P. The Grand Jury thing has a feel. Right? It says we are cooperating well with the Grand Jury.

D. Once we start down any route that involves the criminal justice system, we've got to have full appreciation that there is really no control over that. While we did an amazing job of keeping us in on the track before while the FBI was out there, and that was the only way they found out where they were going——

P. But you've got to (unintelligible) Let's take it to a Grand Jury. A new Grand Jury would call Magruder again, wouldn't it?

D. Based on what information? For example, what happens if Dean goes in and gives a story. You know, that here is the way it all came about. It was supposed to be a legitimate operation and it obviously got off the track. I heard—before, but told Haldeman that we shouldn't be involved in it. Then Magruder can be called in and questioned again about all those meetings and the like. And it again he's begun to change his story as to what he told the Grand Jury the last time. That way, he is in a perjury situation.

H. Except that is the best leverage you've got with Jeb. He has to keep his story straight or he is in real trouble, unless they get smart and give him immunity. If they immunize Jeb, then you have an interesting problem.

D. We have control over who gets immunized. I think they wouldn't do that without our——

P. But you see the Grand Jury proceeding achieves this thing. If we go down that road—(unintelligible) we would be cooperating. We would be cooperating through a Grand Jury. Everybody would be behind us. That is the proper way to do this. It should be done in the Grand Jury, not up there under the kleig lights of the Committee. Nobody questions a Grand Jury. And then we would insist on Executive Privilege before the Committee, flat out say, "No we won't do that. It is a matter before the Grand Jury, and so on, and that's that."

H. Then you go the next step. Would we then—The Grand Jury is in executive session?

D. Yes, they are secret sessions.

H. Alright, then would we agree to release our Grand Jury transcripts?

D. We don't have the authority to do that. That is up to the Court and the Court, thus far, has not released the ones from the Grand Jury.

P. They usually are not.

D. It would be highly unusual for a Grand Jury to come out. What usually happens is——

H. But a lot of the stuff from the Grand Jury came out.

P. Leaks.

D. It came out of the U. S. Attorney's office, more than the Grand Jury. We don't know. Some of the Grand Jurors may have blabbered, but they were—

P. Bob, it's not so bad. It's bad, but it's not the worst place.

H. I was going the other way there. I was going to say that it might be to our interest to get it out.

P. Well, we could easily do that. Leak out certain stuff. We could pretty much control that. We've got so much more control. Now, the other possibility is not to go to the Grand Jury. We have three things. (1) You just say the hell with it, we can't raise the money, sorry Hunt you can say what you want, and so on. He blows the whistle. Right?

D. Right.

P. If that happens, that raises some possibilities about some criminal liabilities, because he is likely to say a hell of a lot of things and will certainly get Magruder in on it.

D. It will get Magruder. It will start the whole FBI investigation going again.

P. Yeah. It would get Magruder, and it would possibly get Colson.

D. That's right. Could get—

P. Get Mitchell. Maybe. No.

H. Hunt can't get Mitchell.

D. I don't think Hunt can get Mitchell. Hunt's got a lot of hearsay.

P. Ehrlichman?

D. Krogh could go down in smoke.

P On the other hand—Krogh says it is a national security matter. Is that what he says?

D. Yeah, but that won't sell ultimately in a criminal situation. It may be mitigating on sentences but it won't, in the main matter.

P. Seems we're going around the track. You have no choice on Hunt but to try to keep—

D. Right now, we have no choice.

P. But my point is, do you ever have any choice on Hunt? That is the point. No matter what we do here now, John, whatever he wants if he doesn't get it—immunity, etc., he is going to blow the whistle.

D. What I have been trying to conceive of is how we could lay out everything we know in a way that we have told the Grand Jury or somebody else, so that if a Hunt blows, so what's new? It's already been told to a Grand Jury and they found no criminal liability and they investigated it in full. We're sorry fellow—And we don't, it doesn't—

P. (Unintelligible) for another year.

D. That's right.

P. And Hunt would get off by telling them the Ellsberg thing.

D. No Hunt would go to jail for that too—he should understand that.

P. That's a point too. I don't think I would throw that out. I don't think we need to go into everything. (adjective deleted) thing Hunt has done.

D. No.

P. Some of the things in the national security area. Yes.

H. Whoever said that anyway. We laid the groundwork for that.

P. But here is the point, John. Let's go the other angle, is to decide if you open up the Grand Jury: first, it won't be any good, it won't be believed. And then you will have two things going: the Grand Jury and the other things, committee, etc. The Grand Jury appeals to me from the standpoint, the President makes the move. All these charges being bandied about, etc., the best thing to do is that I have asked the Grand Jury to look into any further charges. All charges have been raised. That is the place to do it, and not before a Committee of the Congress. Right?

D. Yeah.

P. Then, however, we may say, (expletive deleted), we can't risk that, or she'll break loose there. That leaves you to your third thing.

D. Hunker down and fight it.

P. Hunker down and fight it and what happens? Your view is that is not really a viable option.

D. It is a high risk. It is a very high risk.

P. Your view is that what will happen on it, that it's going to come out. That something is going to break loose, and—

D. Something is going to break and—

P. It will look like the President

D. is covering up—

P. Has covered up a hugh (unintelligible)

D. That's correct.

H. But you can't (inaudible)

P. You have now moved away from the hunker down—

D. Well, I have moved to the point that we certainly have to take a harder look at the other alternative, which we haven't before.

P. The other alternative is—

D. Yes, the other choices.

P. As a matter of fact, your middle ground of Grand Jury. I suppose there is a middle ground of a public statement without a transcript.

D. What we need also, Sir.

H. But John's view is if we make the public statement that we talked about this morning, the thing we talked about last night—each of us in our hotel, he says that will immediately lead to a Grand Jury.

P. Fine—alright, fine.

H. As soon as we make that statement, they will have to call a Grand Jury.

P. They may even make a public statement before the Grand Jury, in order to—

H. So it looks like we are trying to do it over.

D. Here are public statements, and we want full Grand Jury investigations by the U.S. Attorneys office.

P. If we said that the reason we had delayed this is until after the sentencing—You see that the point is that the reason time is of the essence, we can't play around on this. If they are going to sentence on Friday, we are going to have to move on the (expletive deleted) thing pretty fast. See what I mean?

D. That's right.

P. So we really have a time problem.

D. The other thing is that The Attorney General could call Sirica, and say that, "The government has some major developments that it is considering. Would you hold sentencing for two weeks?" If we set ourselves on a course of action.

P. Yep, yep.

D. See, the sentencing may be in the wrong perspective right now. I don't know for certain, but I just think there are some things that I am not at liberty to discuss with you, but I want to ask that the Court withhold two weeks sentencing.

H. So then the story is out: "Sirica delays sentencing Watergate"—

D. I think that could be handled in a way between Sirica and Kleindienst that it would not get out. Kleindienst apparently does have good rapport with Sirica. He has never talked since this case developed, but—

P. That's helpful. So Kleindienst should say that he is working on something and would like to have a week. I wouldn't take two weeks. I would take a week.

D. I will tell you the person that I feel we could use his counsel on this, because he understands the criminal process better than anybody over here does.

P. Petersen?

D. Yes, Petersen. It is awkward for Petersen. He is the head of the criminal division. But to discuss some of things with him, we may well want to remove him from the head

of the Criminal Division and say, "That related to this case, you will have no relation." Give him some special assignment over here where he could sit down and say, "Yes, this is an obstruction, but it couldn't be proved," so on and so forth. We almost need him out of there to take his counsel. I don't think he would want that, but he is the most knowledgeable.

P. How could we get him out?

D. I think an appeal directly to Henry—

P. Why couldn't the President call him in as Special Counsel to the White House for the purpose of conducting an investigation. Rather than a Dean in office, having him the Special Counsel to represent us before the Grand Jury.

D. I have thought of that. That is one possibility.

H. On the basis that Dean has now become a principal, rather than a Counsel.

D. I could recommend that to you.

H. Petersen is planning to leave, anyway.

D. Is he?

P. You could recommend it and he could come over and I would say, "Now Petersen, we want you to get to the bottom of the damn thing. Call another Grand Jury or anything else. Correct? Well, now you gotta know whether Kleindienst can get Sirica to hold off. Right? Second, you have to get Mitchell down here. And you and Ehrlichman and Mitchell by tomorrow.

H. Why don't we do that tonight?

P. I don't think you can get Mitchell that soon, can you?

H. John?

P. It would be helpful if you could.

D. It would be better if he could come down this afternoon.

P. It would be very helpful to get going. Actually, I am perfectly willing to meet with the group. I don't know whether I should.

H. Do you think you want to?

P. Or maybe have Dean report to me at the end. See what conclusions you have reached. I think I need to stay away from the Mitchell subject at this point, do you agree?

D. Uh, huh.

D. Unless we see, you know, some sort of a reluctant dragon there.

H. You might meet with the rest of us, but I am not sure you would want to meet with John in this group at this time.

P. Alright. Fine. And my point is that I think it is good, frankly, to consider these various options. And then, once you decide on the right plan, you say, "John," you say, "No doubts about the right plan before the election. You handled it just right. You contained it. And now after the election we have to have another plan. Because we can't for four years have this thing eating away." We can't do it.

H. We should change that a little bit. John's point is exactly right. The erosion here now is going to you, and that is the thing that we have to turn off at whatever cost. We have to turn it off at the lowest cost we can, but at whatever cost it takes.

D. That's what we have to do.

P. Well, the erosion is inevitably going to come here, apart from anything and all the people saying well the Watergate isn't a major issue. It isn't. But it will be. It's bound to. (Unintelligible) has to go out. Delaying is the great danger to the White House area. We don't, I say that the White House can't do it. Right?

D. Yes, sir.

Appendix 7. Meeting: The President, Dean, Haldeman and Ehrlichman, EOB Office, March 21, 1973. (5:20—6:01 pm):

P. Well, what conclusions have you reached up to the moment?

H. Well, you go round and round and come up with all questions and no answers. Right back where you were at when you started.

P. Well, do you have any additional thoughts?

E. Well, I just don't think that the immunity thing will wash—

P. In a Grand Jury?

E. It may but (inaudible) John's Grand Jury package was—

P. To get immunity for some—

E. For various witnesses.

P. Who had to go before the Grand Jury.

E. I think you have to figure that that is out of the picture.

I just don't believe we can do that. It can't be carried off.

H. Either the Grand Jury (inaudible) special, or a special panel,

D. A panel could investigate and report back on the whole thing. Immunized witnesses can be obtained.

P. Will it be an indictment of people in the Presidential family?

D. We have pending work on legislation to get immunity powers at the Department of Justice right now, asking them to assess this.

P. Well, let's take the Grand Jury now, without immunity, and what are your ideas about getting out of it?

D. Well, yes I think that is still a possibility, at least for some very drastic results (inaudible) statutes later on some (inaudible).

E. Well, there could be people in and out of the White House indicted for various offenses.

P. The other item I mentioned, I wouldn't spend too much time with that.

E. The other item would be to pick out two papers and possibly three and say "(expletive omitted), you asked me about this. Here is my review of the facts." I think we disagree as to whether or not that is a viable. I think you could get out a fairly credible document that would stand up, and that would have the effect of turning the scope, and would have the effect of maybe becoming the battle ground on a reduced scope, which I think is important. The big danger in the Ervin Hearings, as I see it, is the Committee will run out leads into areas that it would be better not to have them get into. And then Baker could come in this direction. And then you could put out a basic document that would come on in a limited subject that would rather consciously hit the target.

P. The imposing problem is this, Does anybody really think we can do nothing? That's the option, period. If he fights it out on this ground, it takes all summer.

H. Which it will.

P. That's it, whether or not today at the danger point.

H. Well, we have talked about that. We have talked about possible opportunities in the Senate. Things may turn up that we don't foresee now. Some people may be sort of playing the odds.

E. The problem of the Hunt thing or some of these other people, there is just no sign off on them. That problem goes on and on.

P. Well, that's right. If that's the case then, what is your view as to what we should do now about Hunt, et cetera?

E. Well, my view is that Hunt's interests lie in getting a pardon if he can. That ought to be somehow or another one of the options that he is most particularly concerned about. Now, his indirect contacts with John don't contemplate that at all—(inaudible).

P. He assumes that's already understood.

D. He's got to get that by Christmas, I understand.

E. That's right. And if he does, obviously he has a bigger defense crosswise.

H. If that blows—

E. If that blows and that seems to me, although I doubt if he is understood, he has really turned over backwards since he has been in there.

However, can he, by talking, get a pardon? Clemency from the Court?

Obviously he has thought of this. If he goes in there and tells this Judge before sentencing, if he says, "Your honor I am willing to tell all. I don't want to go to jail. I plead guilty to an offense. If I don't have to go to jail, I will cooperate with you and the government. I will tell you everything I know." I think that probably he would receive very favorable consideration.

P. Yeah. And then so the point we have to, the bridge we have to cross there, that you have to cross I understand quite soon, is what you do about Hunt and his present finance? What do we do about that?

D. Well apparently Mitchell and LaRue are now aware of it so they know how he is feeling.

P. True. Are they going to do something?

D. Well, I have not talked with either of them. Their positions are sympathetic.

P. Well, it is a long road isn't it? When you look back on it, as John has pointed out here, it really has been a long road for all of you, of us.

H. It sure is.

P. For all of us, for all of us. That's why you are wrestling with the idea of moving in another direction.

D. That's right. It is not only that group, but within this circle of people, that have tidbits of knowledge, there are a lot of weak individuals and it could be one of those who crosses up: the secretary to Liddy, the secretary to Jeb Magruder. Chuck Colson's secretary, among others, will be called before the Senate Committee. This is not solved by one forum. A civil suit filed by O'Brien which for some reason we can't get settled. They are holding on to it. They will have intense civil discovery. They may well work hand and glove with that Senate Committee. They will go out and take depositions and start checking for the inconsistencies, see what is in the transcript of one and see what people say in the other (inaudible)

P. Well, I am not going to worry about that.

D. Well, they, the people are starting to protect their own behind: Dwight, for example, hired himself a lawyer; Colson has retained a lawyer; and now that we are all starting the self-protection certainly.

P. Maybe we face the situation. We can't do a damn about the participants. If it is going to be that way eventually, why not now? That is what you are sort of resigned to, isn't it?

D. Well, I thought (inaudible) by keeping on top of it it would not harm you. Maybe the individuals would get harmed.

P. We don't want to harm the people either. That is my concern. We can't harm these young people (inaudible). They were doing things for the best interests of their country—that is all.

H. Well, we don't have any question here of some guy stashing money in his pocket.

P. It isn't somthing like this, for example, (expletive omitted) treason.

H. Well, like Sherman Adams, doing it for their own ambition or comfort.

P. Well, that is why I say on this one that we have to realize that the system is going to run and that is your problem.

H. The only problem (inaudible)

D. It is structured. That your concern about, "There is something lurking here." Now is the time to get the facts before Richard Nixon himself. Dean couldn't get all the information. People wouldn't give it to him. There are things, there are a lot of things. And if you would like to get all of

this information and you lay it before the public, but it is not going to come because some people go to a Grand Jury and tell the truth.

H. Lie?

P. And it isn't going to come out of the Committee.

H. For those reasons,

D. It would not be fair. Go ahead, that's the point, or it may never come out. But now is the time to throw it all out.

H. They are not going to have the key witnesses.

D. So therefore you select a panel of the Attorney General, the head of the Criminal Division, head of the Civil Division—something like that. Call on everybody in the White House, and tell them we want them, we have been instructed by the President to tell him exactly what happened. And you won't be prosecuted for it because that is not the point now. The point is to get out this information. And then you will make a decision, based on what you learn, whether people can remain in the government or not. And if it is bad they will be removed or forced to resign. If it was something that is palatable, they'll go on with their job.

H. The hue and cry is that this is a super-Presidential Board. And now they realize that they have got guilty people, and they immunize them so that they cannot be prosecuted.

D. I am not so sure how many people would come out guilty.

H. The perception, as you put it.

P. The point is, we were talking—

D. Alright, is that better? Or is it better to have (inaudible) and things blow up and all of a sudden collapse? Think about it.

H. After a little time, the President is accused of covering up that way.

P. That isn't the point.

E. Or is there another way?

P. Yeah, like——

E. The Dean statements, where the President then makes a bold disclosure of everything which he then has. And is in a position if it does collapse at a later time to say, "I had the FBI and the Grand Jury, and I had my own Counsel. I turned over every document I could find. I placed in my confidence young people and as is obvious now (inaudible).

P. (inaudible). It doesn't concern me. I mean as far as the policy is concerned. You as White House Counsel, John. I asked for a written report, which I do not have, which is very general understand. I am thinking now in far more general terms, having in mind the facts, that where specifics are concerned, make it very general, your investigation of the case. Not that "this man is guilty, this man is not guilty," but "this man did do that." You are going to have to say that, John. Segretti (inaudible) That has to be said. And so under the circumstances,

E. Could he do this? To give some belief to this, that he could attach an appendix, listing the FBI reports that you had access to: interview with Kalmbach, interview with Segretti, interview with Chapin, Magruder, and whoever and me. So that the President at some later time is in a position to say, "I relied."

D. And Dean cooperated on these things.

E. That's right.

P. It also helps with the Gray situation because it shows Dean's name on the FBI reports as reporting to the President. He can say in there, "I have not disclosed the contents of these to anybody else. Yes, I had access to the reports for the purpose of carrying out your instructions." And I know that that is true because you are the one I asked with regard to my report.

E. I think the President is in a stronger position later. The President is in a stronger position later, if he can be shown to have justifiably relied on you at this point in time.

D. Well, there is the argument now that Dean's credibility is in question. Maybe I shouldn't do it. Maybe someone else——

H. This will rehabilitate you though. Your credibility——

P. As a matter of fact, John, I don't think your credibility has been much injured. Sure you are under a test that they want. You are up there to testify. I don't think it is the credibility. They want you to testify. I would not be too sensitive about that. You are going to make a hell of a good impression.

E. Beyond that, you can help your participation in the interviews by saying that, in addition to having seen the FBI synoposes, you were present at the time of the interviews.

P. No. Not seeing. You were present at the time of the interviews and that you, yourself, conducted interviews of the following people. I am just trying to think of people, et cetera, that you can list.

D. It will turn it all into a puzzle.

H. Absolutely, yeah.

E. I am doing this in furtherance of my role.

P. Also, that there has been such a lot of—put out about what you have done without referring to the fact, without being defensive about it, you intended to—This should not be a letter to Eastland. I think this should be a letter to me. You could say that, "Now, now that hearings are going on, I can now give a report that we can put out."

H. That is what you can say. In other words, he gives you a report because you asked him for it, regardless of the timeliness.

D. I am not thinking of that. Don't worry about that. I have no problem with the timing. It is just that Liddy and McCord are still out on appeal. That is why I haven't tried to do this before.

H. We are going to have a big period of that. I think you could say—

E. You could say, "I have a report. I don't want to show it. I would not want it published because some fellows' trial of the case is still going on."

P. Let me say this. The problem with, is: I don't believe that helps on our cause. The fact that cover up—I am not sure. Maybe I am wrong. The fact that the President says, "I have shown Ervin." Remember we had nobody there. I think that something has to go first. We need to put out something.

H. If we worry about the timeliness, and try to hang it on a sense thing, then we have to ignore the trial, and say Dean has given you a report. We basically said it was an oral report. The thing is that Dean has kept you posted from time to time with periodic oral reports as this thing, as it becomes convenient. You have asked him now to summarize those into an overall summary.

P. Overall summary. And I will make the report available to the Ervin Committee. And then I offer the Ervin Committee report this way, I say, "Dear Senator Ervin. Here is the report before your hearings. You have this report, and as I have said previously, any questions that are not answered here, you can call the White House staff member, and they will be directed to answer any questions on an informational basis." (inaudible).

H. Yeah.

E. Let's suppose you did do that. You did as to the burglary, you did it as to Segretti and you made some passing comments to money, right? You send her up there. Let's suppose I am called at some time. Our position on that is that I wasn't a prosecutor, that he was sent out to do an investigation on Ellsberg. And when we discovered what he was up to, we stopped him. Now, I suppose that lets Ellsberg out, because there are search and seizure things here that may be sufficient at least for a mistrial, if not for—

P. Isn't that case about finished yet?

E. Oh, it will go a little while yet. Let's suppose that occurred. That it was a national security situation. The man exercised bad judgment, and I think it is inarguable that he should never have been permitted to go to the Committee after that episode, having reflected on his judgment that way. But beyond that, the question is did he completely authorize (inaudible)

P. Yeah. Getting back to this, John. You still tilt to the panel idea yourself?

D. Well, I see in this conversation what I have talked about before. They do not ultimately solve what I see as a grave problem of a cancer growing around the Presidency. This creates another problem. It does not clean the problem out.

P. Well,

E. But doesn't it permit the President to clean it out at such time as it does comes up? By saying, "Indeed, I relied on it. And now this later thing turns up, and I don't condone that. And if I had known that before, obviously I would have run it down."

P. Here's what John is to. You really think you've got to clean the cancer out now, right?

D. Yes sir.

P. How would you do that? Do you see another way? Without breaking down our executive privilege.

D. I see a couple of ways to do it.

P. You certainly don't want to do it at the Senate, do you?

D. No sir, I think that would be an added trap.

P. That's the worst thing. Right. We've got to do it. We aren't asked to do it.

D. You've got to do it, to get the credit for it. That gets you above it. As I see it, naturally you'll get hurt and I hope we can find the answer to that problem.

E. Alright, suppose we did this? Supposing you write a report to the President on everything you know about this. And the President then, prior to seeing it, says "Did you send the report over to the Justice Department?" When it goes he says, (unintelligible) has been at work on this. My Counsel has been at work on this. Here are his findings."

P. Where would you start? I don't know where it stops. Ziegler? The Vice President?

H. Well, re Magruder over at Commerce. Obviously you would send a report over that said Magruder did this and that. Well, that is what he is talking about apparently.

P. And then Magruder. The fellow is a free agent.

H. The free agent.

P. Who according to the Hunt theory, could pull others down with him.

H. Sure. What would happen? Sure as hell we have to assume Dwight would be drawn in.

D. Draw numbers with names out of a hat to see who gets hurt and who doesn't. That sounds about as fair as you can be, because anyone can get hurt.

P. Strachan. This wouldn't do anything to him would it?

D. Strachan? I would say yes. About the same as Jeb.

H. Do you think so?

D. Yes, I think he has a problem.

P. What is the problem about?

H. He has a problem of knowledge.

D. Magruder has a problem of action, action and perjury.

H. Well, Strachan handled the money. That is the problem.

D. The thing that I would like to happen,

if it is possible to do it, is—Hunt has now sent a blackmail request directly to the White House.

P. Who did he send it to? You?

D. Yes.

P. Or to me?

D. Your Counsel!

H. That is the interesting kind of thing, there is something there that may blow it all up that way and everything starts going in a whole new direction.

E. That he would hurt the Eastern Asian Defense. Right there. That is blackmail.

H. For example, where does that take you? That takes you to your support, the other people who are not fully aware of the DC end of it. But then we didn't know about it either.

D. That's right. Well, then you have to get the proper people to say——

H. Well, see if we go your route, you can't draw the line someplace and say——

D. No, no you can't.

P. You see, if we go your route of cutting the cancer out. If we cut it out now. Take a Hunt. Well, wouldn't that knock the hell out from under him?

D. That's right.

H. If you take your move and it goes slightly awry, you have a certainty, almost, of Magruder going to jail, Chapin going to jail, and you going to jail, and probably me going to jail.

P. No, I question the last two.

H. Certainly Chapin. Certainly Strachan. No, not really. Chapin and Strachan are clean.

E. I think Strachan is hooked on this money.

P. What money was that?

E. He is an accessory on undeclared campaign funds.

H. That's not his problem. The only man responsible for that is the Treasurer. I am sure.

D. I don't know under the law.

P. That undeclared was money from before 1970, that was 1968.

E. Yeah. But then it got back into the coffers and was used in this campaign.

D. Let's say the President sent me to the Grand Jury to make a report. Who could I actually do anything for? As a practical matter, firsthand knowledge, almost no one. All I could do would be to give them focus point leads.

P. Right.

H. Then they would start calling the leads.

D. That's right and whether all of them would come down or be served. There again, we don't have anybody who could talk to somebody who has learned how to process that sort of thing on the outside. I was talking outside with Bob about Henry Peterson. We need to have someone talk of Henry Peterson, who can say to Henry, "What does this mean in criminal justice? What kind of a case could be made on this? What kind of sentences would evolve out of that?" He would have a pretty good idea of most of the statutes that are involved. There is so much behind the statutes.

P. Do you want to recommend that? That you talk to him?

D. Well, you are putting in his knowledge.

P. I see.

D. There're a couple of points——

H. It would be even much better. Yes. I have this brother-in-law in school.——

D. He wants a wild scenario.

H. My friend is writing a play, and he wants to see how——

D. It bothers me to do anything further now, sir, when Hunt is our real unknown.

P. Do you think it is a mistake to talk to him?

D. Yes, I do.

P. It doesn't solve anything—it's just one more step.

H. The payment to Hunt does too.

D. The payment to Hunt does. That is why I say if somebody would assess the criminal liability.

H. Maybe we are mis-assessing it?

D. Well, maybe. We don't know.

P. Would you reply to him?

H. I think I would.

E. How else would you do it? You could start down that road. Say, "I want to talk with you about some questions that arise in the course of my own investigation, but I would have to swear you to secrecy."

H. If he will take it on that basis.

D. The answer is, of course, in the course of this investigation I don't know whether he would talk to me off-the-record.

H. What are your options?

E. Boy, if you could eliminate the option by taking a legal position. You knew nothing about it.

P. So you don't see the statement thing helping insofar as in anyway sparking the start? You think that over some more.

D. Yes, sir. You see it is a temporary cancer.

P. I agree with that. And the point is,—but you see, here is the way I would see the statement that we would put out: Everything we would intend to say in a general statement that I have already indicated with regard to the facts as we send them in, we say people are to cooperate, without executive privilege, et cetera. Statement, it is true, is temporary. But it will indicate that the President has looked into the matter, has had his Counsel report to him and this is the result of the matter. We tell the Committee "we will cooperate." The Committee will say no. And so we just stand right there.

D. Well, really I think what will complicate the problem will be Sirica giving a speech from the Bench on Friday when he sentences. Where he will charge that he doesn't believe that the trial conducted by the lawyers for the government presented a legitimate case and that he is not convinced that the case represents the full situation.

H. In other words—

D. It will have a dramatic impact coming from the Bench.

P. That's right.

D. I may say in Sirica's defense, it has been charged that there are higher-ups involved in this. He may take some dramatic action like, he might appoint a special prosecutor. Who knows?

P. Can he do that?

D. Sure.

P. He would appoint a special prosecutor, for what?

D. For work in the field of investigating. He is the Presiding Judge.

H. You know he can pick the Grand Jury. Or he said he could.

P. The government is going to do that for a while.

D. A week after sentencing they are going to take all of the people who have been sentenced before a Grand Jury—

P. These same ones?

D. These same ones. And see if they will now want to talk. When it comes to Sirica and sentencing, he may be giving the ones who talk a lesser sentence. If they don't talk, he will probably leave these long sentences stand.

P. Suppose he does that. Where does that leave us, John?

E. I don't think that is a surprise to the defendants. I think their counsel has advised them of that.

P. Right, right. However in terms of this, what about a solution? We are damned by the courts before Ervin even gets started.

E. The only thing we can say is that we have investigated it backwards and forwards in the White House, and have been satisfied on the basis of the report we had that nobody in the White House has been involved in a burglary, nobody had notice of it, knowledge of it, participated in the planning, or aided or abetted it in any way. And it happens to be true as for that transaction.

P. John, you don't think that is enough?

D. No, Mr. President.

E. Let's try another concomitant to that. Supposing Mitchell were to step out on that same day to say, "I have been doing some investigation at 1701 and I find—so and so and so and so."

P. Such as what?

E. I don't know what he would say, but that he wanted to be some kind of a spokesman for 1701.

P. What the hell does one disclose that isn't doing to blow something? I don't have any time. I am sorry. I have to leave. Well, good-bye. You meet what time tomorrow?

H. I am not sure. In the morning probably.

TRANSACTION OF ROUTINE MORNING BUSINESS

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

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

S. 3009. A bill to provide that moneys due the States under the Provisions of the Mineral Leasing Act of 1920, as amended, derived from the development of oil shale resources, may be used for purposes other than public roads and schools (Rept. No. 93-828).

EXECUTIVE REPORTS OF A COMMITTEE

Mr. CANNON. Mr. President, as in executive session, from the Committee on Armed Services, I report favorably the nominations of 5 lieutenant generals in the Army to be placed on the retired list in that grade—Pickett, Davidson, Seignious, Taber, and McLaughlin; that 66 colonels beginning with Risner through Presley be promoted to the temporary appointment of brigadier general in the Army; in the Navy, Adm. Worth Bagley, U.S. Navy, be appointed as Vice Chief of Naval Operations, Vice Adm. Damon Cooper, U.S. Navy, be appointed to the grade of vice admiral, when retired and Rear Adm. Harry Train for appointment as vice admiral; in the Marine Corps, the list beginning with DeBarr through Kelley and consisting of 10 colonels for temporary appointment to brigadier general be approved; and in the Air Force and Air National Guard, 1

to the permanent promotion of major general and temporary appointment of lieutenant general and 1 colonel to the temporary appointment of brigadier general, I ask that these names be placed on the Executive Calendar.

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

The nominations ordered to be placed on the Executive Calendar are as follows:

Col. Robinson Risner, Regular Air Force, and sundry other officers, for temporary appointment in the U.S. Air Force;

Maj. Gen. Walter T. Galligan (brigadier general, Regular Air Force), U.S. Air Force, for appointment in the Regular Air Force;

Col. John T. Guice, Air National Guard, for temporary appointment in the U.S. Air Force;

Lt. Gen. George Edward Pickett, Army of the United States (major general, U.S. Army), to be placed on the retired list in the grade of lieutenant general;

Lt. Gen. Phillip Buford Davidson, Jr., Army of the United States (major general, U.S. Army), and sundry other officers, to be placed on the retired list in the grade of lieutenant general;

Lt. Gen. John Daniel McLaughlin, Army of the United States (major general, U.S. Army), to be placed on the retired list in the grade of lieutenant general;

Adm. Worth H. Bagley, U.S. Navy, for appointment as Vice Chief of Naval Operations;

Vice Adm. Damon W. Cooper, U.S. Navy, for appointment to the grade of vice admiral, when retired;

Rear Adm. Harry D. Train II, U.S. Navy, for commands and other duties determined by the President, for appointment to the grade of vice admiral while so serving; and

John R. DeBarr, and sundry other officers, for temporary appointment to the grade of brigadier general in the Marine Corps.

Mr. CANNON. Mr. President, in addition, there is 1 appointment in the Army to the grade of captain; in the Marine Corps there are 217 for promotion to the rank of colonel and below; in the Naval Reserve there are 478 for temporary promotion to the grade of commander; and in the Air Force, 837 appointments to the grade of second lieutenant, and 142 for appointment in the grade of lieutenant colonel and below. Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing on the calendar I ask that these lists be placed on the Secretary's desk for the information of any Senator.

The PRESIDING OFFICER. Without objection it is so ordered.

The nominations ordered to lie on the desk are as follows:

Bobby M. Jones, and sundry other officers, for appointment in the Regular Air Force;

Robert A. Ain. and sundry other cadets, U.S. Air Force Academy, for appointment in the Regular Air Force;

Sally Ann McCandless, for appointment in the Regular Army of the United States;

Alfredo Lionel Abeyta, and sundry other Naval Reserve officers, for temporary promotion in the Navy;

Michael Capoot, and sundry other persons (Navy enlisted scientific education program) graduates, for permanent appointment in the Marine Corps;

Ronald H. Alnutt, and sundry other commissioned warrant officers/warrant officers, for temporary appointment in the Marine Corps;

Myron E. Allen, and sundry other staff noncommissioned officers, for temporary appointment in the Marine Corps;

George K. VanNess (Navy enlisted scientific education program) graduate for permanent appointment in the Marine Corps; and

Kenneth D. Dunn, and Charles Robinson (U.S. Naval Academy) graduates, for permanent appointment in the Marine Corps.

Mr. CANNON. Mr. President, as part of these nominations, I am submitting for the RECORD an affidavit by Colonel Hans H. Driessnack. This affidavit was part of my subcommittee's examination of Colonel Driessnack's involvement in the Air Force treatment of Mr. A. Ernest Fitzgerald.

The PRESIDING OFFICER. Without objection, the affidavit will be printed in the RECORD.

The affidavit is as follows:

STATEMENT FOR THE RECORD

1. I am Colonel Hans H. Driessnack, United States Air Force. I wish to state for the record the background to and the facts of my association with A. Ernest Fitzgerald during his service as Deputy for Management Systems, Office of the Assistant Secretary of the Air Force for Financial Management. This is the first time I have had an opportunity to clarify the nature and extent of my role in this matter, since my testimony was not required by the Civil Service Examiners.

2. I first met Mr. Fitzgerald in 1965, when he was still President of Performance Technology Corporation (PTC). At that time I was working for Mr. J. Ronald Fox, who was the Deputy for Management Systems in the Office of the Assistant Secretary of the Air Force for Financial Management. Fitzgerald succeeded Fox later that same year as the Deputy for Management Systems and became my boss.

3. In 1967, while I was still in the Deputy's office, Systems Command assumed direction of part of a PTC-Minuteman contract and hired PTC to conduct several cost management training sessions for AFSC personnel, and to develop material to be used ultimately in a similar course to be run by the Air Force Institute of Technoolgy. Systems Command personnel were to review the management systems of the Air Force contractors to test their compliance with Air Force cost management criteria, and PTC officials were to accompany the Air Force employees to conduct what was, in effect, on-the-job training. The contract was programmed for about a one-year effort.

4. In June 1968, I was reassigned to Systems Command to implement the new Department of Defense cost management criteria, which were based in large part on the work that had been done within the Air Force. On or about February 10, 1969, I read an article in the Washington papers to the effect that Performance Technology Corporation was going out of business because the Air Force had failed to make timely payments under a contract between its Ballistics Systems Division (BSD) and PTC. The article implied that these slow payments were in retaliation for a critical cost analysis report PTC had filed with the Navy concerning Pratt & Whitney's contract for procurement of F-111 engines. A copy of the article is attached to this statement. I knew that the referenced PTC contract with BSD was in reality our contract. I therefore immediately checked the story with Lieutenant Colonel John Badin, the contract monitor, who assured me that its contents were misstatements of the true facts. He informed me that in his opinion PTC had gotten into financial difficulty because it had more than doubled in size to handle what it expected would be increasing Government business which never materialized. I let the matter drop.

5. On the morning of May 7, 1969, I read an article in the Washington Post concerning the testimony of Gordon Rule, a Navy Procurement official, before the House Government Operations Subcommittee. A copy of this second article is also attached. Rule had testified that he had noticed a high mortality rate among competent private management firms that examined Government contractors. Rule reportedly stated that Performance Technology Corporation had gone bankrupt when the Air Force had delayed payments under one of its contracts. I recalled my earlier conversation with John Badin and recognized that the misstatements contained in the previous article were now being advertised as concrete facts.

I felt that the uncontradicted assertion of these inaccurate statements were derogatory to the Air Force and to my own organization. I immediately reported the entire matter to my superior, Brigadier General Harold Teubner, Comptroller of Air Force Systems Command. I felt very strongly that the Congress and the public were being misled by distorted facts in front-page articles, and that we should make a public response. General Teubner agreed. During our conversation we reviewed the whole matter of the PTC/AFSC relationship. We discussed the fact that the presence of the PTC personnel with the Air Force review teams had always troubled some contractors. These contractors felt that Mr. Fitzgerald, the immediate past President of PTC, was directly involved with developing and implementing an Air Force requirement which resulted in PTC's presence to inspect their operations.

I also noted that, from my own observation, PTC personnel did have easy and frequent access to Mr. Fitzgerald. General Teubner raised the question of whether or not the PTC/AFSC contract relationship possibly constituted a conflict of interest on Mr. Fitzgerald's part. I told General Teubner that I had never personally connected Mr. Fitzgerald's frequent contact with PTC to a conflict of interest. General Teubner pointed out that Air Force Regulation 30-30 concerning Standards of Conduct required that Air Force personnel avoid even the appearance of a conflict of interest. We both felt that there was at least a basis for suspicion of favoritism, but neither of us possessed sufficient information to draw a final conclusion.

General Teubner decided that, in accordance with Air Force Regulation 124-8, Violation of Public Trust, he was obliged to report our discussion to Lieutenant General Duward L. Crow, Comptroller of the Air Force. An appointment was arranged for that same day with General Crow. At that meeting, I brought General Crow's attention to the newspaper articles and reviewed for him my information concerning payments under the PTC contract and the real cause of PTC's financial troubles. I urged him to respond to the articles at once so that the inaccurate and misleading version of the facts presented in the articles would not go unchallenged.

We also reviewed what we knew about the PTC/AFSC contract. General Crow asked if I thought this represented a possible conflict of interest on Fitzgerald's part. I responded that I had heard the possibility mentioned before, and that I could see that the potential for a conflict of interest existed, but that I had no way of knowing because I had been out of the Deputy's office for more than a year. I suggested that other AFSC officials,

who were directly involved in managing the contract with PTC, would have a much better grasp of the facts than I did. General Crow then said, "I'll take it from here," and the meeting ended.

6. On an evening very soon after the meeting with General Crow, an agent named Sullivan from the Office of Special Investigations came to my home. I had no notice of the visit, and I did not know its subject matter until Sullivan announced that he was there as a result of the meeting with Generals Crow and Teubner. The interview lasted less than an hour.

7. I must point out here that the contents of the OSI memorandum concerning this interview, which I saw for the first time just recently, bear little resemblance to the actual tone of the interview. The entire affair was a question and answer session, but the questions were not detailed and so the answers change their meaning when taken out of context. For example, I did not, as it was later reported, accuse Fitzgerald of being cheap. To the contrary, I was denying that he seemed to spend more money than he made from his Government salary; in effect, negating any implication that he had an undisclosed source of income. Furthermore, I never made a statement and Sullivan never showed me a copy of his memorandum of the interview, so I could not control its accuracy. This, too, had unfortunate consequences. I did not call Fitzgerald untrustworthy; I said that he did not trust or respect the abilities of most Air Force military men in cost management, and I made that comment in response to a direct question about our working relationship. Later, at what I regard as a crucial point, Sullivan asked: "How does Fitzgerald get anything out of this?" I answered, "While he does have a close relationship with PTC personnel, I don't know if or how he gets anything out of it" (paraphrasing in both cases). That exchange is very different from my reported comment that I didn't know how they paid him off.

8. Beyond my role as an OSI interviewee, I played no part in any OSI or other investigation of Fitzgerald. I had no knowledge of any events in this connection beyond my own interview. I was not and am not aware of any inquiry into Fitzgerald's personal life, nor did I ever knowingly misrepresent his character or background at any time. I had absolutely no connection with any effort to terminate Fitzgerald's position.

9. In conclusion, I did not act in any way out of malice or other personal motives. I only responded to what I felt was my duty to answer false stories about the Air Force that concerned my area of responsibility.

HANS H. DRIESSNACK,
Colonel, USAF.

CHANGE OF REFERENCE

Mr. HARTKE. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be discharged from further consideration of the bill (S. 2500), the Office of Constituent Assistance Act, and that it be referred to the Committee on Government Operations.

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

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. BAKER:

S. 3446. A bill to provide for trial by jury in certain Federal condemnation proceedings and to provide for advisory commissions in such proceedings. Referred to the Committee on the Judiciary.

By Mr. ROTH (for himself and Mr. HUMPHREY):

S. 3447. A bill to amend certain provisions of law relating to the leasing of oil and gas deposits of the United States, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. STAFFORD:

S. 3448. A bill to amend the Tariff Act of 1930 to permit the informal entry of merchandise not exceeding $500 in value. Referred to the Committee on Finance.

S. 3449. A bill to amend the act of June 21, 1940, as amended, to remove the ninety day requirement for the submission of general plans and specifications for altering a bridge in accordance with an order of the Secretary of Transportation; and

S. 3450. A bill to amend the act of August 18, 1894, the act of March 3, 1899, the Bridge Act of 1906 and the General Bridge Act of 1946, to provide for civil penalties in certain circumstances, and for other purposes. Referred to the Committee on Public Works.

By Mr. McCLURE:

S. 3451. A bill to exempt range sheep industry mobile housing from regulations affecting permanent housing for agricultural workers. Referred to the Committee on Labor and Public Welfare.

By Mr. PASTORE (by request):

S. 3452. A bill to amend the Atomic Energy Act of 1954, as amended, to revise the method of providing for public remuneration in the event of a nuclear incident, and for other purposes. Referred to the Joint Committee on Atomic Energy.

By Mr. MAGNUSON (for himself and Mr. COTTON) (by request):

S. 3453. A bill to amend certain provisions of the Communications Satellite Act of 1962, as amended. Referred to the Committee on Commerce.

By Mr. STAFFORD:

S. 3454. A bill to amend the Occupational Safety and Health Act of 1970, to provide the initial onsite inspections not subject to penalties in certain cases, and to provide a more adequate means of voluntary compliance with the provisions of this Act, and for other purposes. Referred to the Committee on Labor and Public Welfare.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAKER:

S. 3446. A bill to provide for trial by jury in certain Federal condemnation proceedings and to provide for advisory commissions in such proceedings. Referred to the Committee on the Judiciary.

Mr. BAKER. Mr. President, I send to the desk for introduction and appropriate referral a bill to provide that a homeowner shall be entitled to have a trial by jury of the issue of value when his property is taken for a Federal project. I consider it to be one of the great anomolies of the American legal system that a person whose home is taken for a Federal project has no right to a jury trial on the issue of value despite the fundamental constitutional precept which guarantees due process of law. The fifth amendment to the Constitution specifically guarantees that private property may not be taken for public use "without just compensation." However, under the Federal Rules of Civil Procedure the issue of just compensation may be relegated to panels of real estate experts who are often biased strongly in favor of the narrow market value test as a basis of compensation.

Not only is this inconsistent with the basic legal rules concerning the determination of just compensation, but it often results in compensation to the homeowner which is substantially less than the cost of replacement housing—especially in urban ghettos and rural areas which lack economic vitality.

We have all heard the saying "there is no market for property" in a certain place and know that what is meant is that the market for property in that area is extremely depressed. I am also sure that we all know of such areas.

The infrequency of land transactions and the susceptability of sales to extra market influences in these areas makes the market value test subject to a high degree of error.

While rule 71A of the Federal Rules of Civil Procedure contains flexibility in the use of the commission in lieu of a jury, the pressure of overloaded dockets often leads to the use of the streamlined procedure even though the determination of value by a jury might more adequately reflect the real value of the property involved.

The bill which I am now introducing would afford an absolute right to a trial by jury on the issue of compensation in any case where the property condemned includes the residence of the owner of such property or his family or where a condemnation of land in immediate proximity adversely affected the value of such a residence. The Commission procedure, as provided in rule 71A, would still be retained in cases not involving such residences or as an assistance to the court on the issue of value in cases where the right of jury under this bill would apply.

In cases involving investment or business property the market value test imposed through the commission system is often a surer barometer of value and the Commission is more able to deal with the complex questions of value which might arise in such cases. But in cases involving a dwelling the ability of a jury to accomplish fairness in the determination of value cannot be exceeded and should not be bypassed.

I ask unanimous consent that a Vanderbilt Law Review article by Dr. W. Harold Bigham be printed in the RECORD following these remarks.

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

"FAIR MARKET VALUE," "JUST COMPENSATION," AND THE CONSTITUTION: A CRITICAL VIEW

(By W. Harold Bigham) *

Fair market value is . . . the amount of money which a purchaser willing but not obligated to buy the property would pay to an owner willing but not obligated to sell it, taking into consideration all uses to which

Footnotes at end of article.

the land was adapted and might in reason be applied.[1]

"[M]arket value" is not an end in itself, but merely a means to an end, the ultimate object being the ascertainment of "just compensation." Ordinarily, where the value of the land is to be ascertained, and it is of such kind and so situated as to be available for sale in the ordinary course of dealing, market value is perhaps the best test and under such circumstances is generally adopted.[2]

I. INTRODUCTION

It has become almost an article of faith that "fair market value" constitutes the only fair and workable measure of damages for a landowner whose real property has been taken for public use.[3] The courts apply it woodenly;[4] the magnic words are solemnly intoned to jurors, commissioners, and arbitrators.[5] Even the learned scholars in the field give it at least implicit recognition.[6] Moreover, it continues to flourish despite widespread public dissatisfaction with both the substantive test for damages and the procedures through which the land is obtained.[7] The taking of private property for the federal interstate highway and urban renewal programs, for example, has left a trail of unhappy landowners who have lost all faith in the ability or willingness of government to deal fairly with its citizens.

The discontent with existing condemnation compensation practices stems from the failure of condemning authorities using the fair market value test to make whole those who are forced to give up their property for public use.[8] The fifth amendment's command that "private property [shall not] be taken for public use, without just compensation" has been construed to mean that the condemnor must pay only for the property taken. The adoption of the fair market value standard for valuing property, coupled with judicial interpretation of the terms "property" and "taken," has resulted in denial of recovery for sundry incidental damages. For instance, compensation is not allowable for the unwillingness of the owner to part with his property,[9] the loss of business or future profits,[10] the frustration of the owner's plans, loss of opportunities, or other so-called consequential or indirect damages.[11]

Although the fair market value test has been widely utilized, another view of the extent of the government's obligation to the dispossessed landowner may reasonably be evolved from an accommodation of the constitutional power of eminent domain and the constitutional right to just compensation. This is the theory that the landowner has the right to be made whole—to be put in as good a pecuniary position as he would have been in if his property had not been taken.[12] This approach, known pejoratively as the "indemnity theory," frames the question in terms of "what has the owner lost, not what has the taker gained."[13] When the interests of society are balanced against those of the condemnee, it seems clear that there is no compelling justification for not *completely* indemnifying the landowner for his loss. The object of the fifth amendment's just compensation clause is to effect a distribution of certain losses inflicted by public improvements among the public generally rather than upon those whose property is taken.[14] It is sometimes said that the law does not require the condemnee to bear more than his fair share of the burden of the public improvement for which his land is being taken. To the extent that the existing use of the fair market value test prohibits compensation for consequential damages, however, the landowner's compensation is inadequate, and he is in fact paying more than his fair share.

Footnotes at end of article.

While it is recognized that a few state and federal statutes have provided some relief from the procustean bed that is the test of fair market value, it is the thesis of this article that the time is rapidly approaching when merely peripheral and palliative remedies will no longer suffice to suppress the widely-held view that government is unconstitutionally refusing to "pay the piper" in its public operations requiring the taking of private property. The purpose of this article is to consider the areas in which it appears that the "fair market value" test fails to give the condemnee "just compensation" and to suggest procedural reforms in condemnation administration. Additionally, alternative valuation standards will be examined through a review of the expropriation procedures of several foreign countries.

II. "FAIR MARKET VALUE" AND THE RELUCTANT LANDOWNER

A. In general

With respect to the fifth amendment's prohibition against the taking of property without just compensation, former Attorney General Ramsey Clark has said: "There is no more vital concept in the Constitution, for it protects the citizen in his property, and freedom cannot exist in a propertyless state. Property affords the opportunity for the exercise of liberty."[15] It is an axiom of basic property law that the ownership of real property involves a bundle of rights. If the government is to compensate for only a portion of the bundle, then it should be forthright enough to admit it. If the courts believe that the Constitution requires only that government pay what it can afford for public-use property, it would be less of an irritation for them to say so than to continue to mouth pious incantations about "fair market value." At the same time, however, "there is as much, if not more, need for thoughtful consideration to be given as to how best the entire public interests can be protected as there is for concern about the individuals whose property is acquired for public use."[16] One has little patience or sympathy, for instance, with the kind of grasping landowner described in *United States v. Merchants Matrix Cut Syndicate, Inc.*:

"All too frequently, profit seeking motives creep into condemnation cases. This observation, no doubt, will be distasteful to those who envisage the public treasury as fair game in such proceedings. Though competitive existence in our society may stimulate such desires, just compensation, only, remains the yardstick in eminent domain proceedings."[17]

Lack of public planning[18] and failure to anticipate the need for public property can result in apparent raids on the public treasury, particularly when the value of land is steadily appreciating.

With the foregoing perspective, the discussion now turns to some of those areas in which the fair market value test results not only in an inability to do substantial justice, but also in a failure to meet the constitutional imperative of "just compensation."

B. Disruption, disturbance, and demoralization

The definition of "fair market value" assumes valuation based on the "highest and best use"[19] to which the property can be put as of the date of taking. At least at this point it is clear, however, that the condemnee is not constitutionally entitled to compensation for the incidental taking of his business. Since the landowner presumably can carry on his business elsewhere, a requirement that the condemning authority "pay for the business" would result in an exorbitant condemnation value. Moreover, since the property's highest potential is a factor in determining market value, and since the present use of the property may represent its highest potential, it has been argued that the landowner is, in fact, indirectly compensated for the loss of his business.[20] If, for example, the landowner is using the property to operate a service station, and if the property would be valued higher in the market place for that than for any other potential use, then the landowner's compensation should make him whole since the value of the service station is included in the valuation of the land. This reasoning, however, ignores damages attributable to such factors as business interruption, the loss of going concern value and goodwill when the business cannot relocate without a substantial loss of its patronage, the loss of ability to continue in business when there is inadequate capital or credit to finance a new operation, the loss of the services of an elderly proprietor or others with inadequate training or health to withstand the competitive pressures and risks of relocation, transportation costs and expenses of search for replacement property, and costs of moving personal property and dismantling and reinstalling machinery and equipment. Claims for expenses incident to the taking of property have, nevertheless, been regularly rejected on the grounds that they are too speculative, that they confuse the issue, or that consideration of the property's "highest and best use" necessarily includes these elements of damage.[21] These objections all reflect skepticism of the expedience of a "value to the owner" standard, which, it is argued, is not only administratively infeasible but gives the landowner a windfall at the expense of society in general. Very frequently, however, the unarticulated reason that proof of "value to the owner" damages for loss of business is rejected can be traced to a basic lack of faith in the ability of the trier of fact to arrive at a rational result in the face of confusingly large amounts of data.

Few would deny that land is often "worth" more to a particular landowner than it is to anyone else. It is certainly not difficult to conclude that the fair market value test creates substantial injustice when the family homestead is being taken and no replacement property is available, or when a black or poor white family has paid off a home in a ghetto and cannot find comparable shelter for the small price they receive for their home. There is a certain lack of persuasiveness to the argument that the trier of fact, even with proper instructions, cannot measure the value of these factors when triers of fact regularly assess and award damages for such obviously subjective ailments as pain and mental anguish.

The existence of the problems described has been recognized and discussed, not in terms of constitutional prerequisites, but in terms of pure utilitarianism.[22] The constitutional issues, however, are clearly the same, and the following balance of these interests should be persuasive as to constitutional requirements as well. If society makes the pragmatic decision that the *total* loss suffered by the landowner whose business or home is taken for public projects, including expenses of replacing the taken property, outrage and anger at the governmental taking and any other tangible or intangible but measureable loss is so great that it outweighs the public benefit of the acquisition, then the public project should be abandoned or compensation should be made for all of the loss. If the loss remains uncompensated, society must suffer what Professor Michelman calls the demoralization costs.[23]

III. FAIR MARKET VALUE AND PROCEDURAL DIFFICULTIES

In assessing the fairness of the "fair market value" approach, the difficulties that have arisen in the procedural application of substantive condemnation principles cannot

be ignored. There is, for example, a constant struggle between condemning agencies and landowners over who should be the trier of fact. Condemnees and their attorneys are convinced that substantially more in the way of an award can be obtained from a jury than from a judge or a commission. Not only is there no empirical proof for this proposition, the available evidence indicates that the factual confusion that attends the trial of eminent domain cases is much more likely to result in a lower award from a jury of laymen than from a judge or an experienced and sophisticated commission or arbitration tribunal.[24] Regardless of the form of the tribunal or the procedure adopted, however, the fact that the goal is the establishment of "fair market value" inevitably renders the proceeding chaotic.[25]

A. The "comparable sales" dilemma

The courts frequently refer to "comparable sales" as the "best evidence" of market value.[26] Presumably, evidence of comparable sales provides the least confusing guide to market value, and the definiteness and ascertainability of such evidence lends an air of objectivity to the testimony of the appraiser-experts. If the sales are in fact "comparable," they are excellent indicators of the value of the subject property. A free and open sale of the *same* property, not too remote in time, would in fact be the *best* evidence of the fair market value of the property as of the date of taking, but this is a happy situation not frequently encountered. Several difficult problems attend the utilization of comparable sales data.

In the first place, with the possible exception of very unattractive subdivision tracts, no two pieces of property are exactly alike.[27] Almost all eminent domain proceedings are afflicted with unseemly wrangles about the comparability of the sales being used. The sales may not be comparable, for example, because of their geographical distance from the subject property and their remoteness in time from the date of taking.[28] It may even develop that there have been no sales of comparable property within reasonable geographical and calendar proximity. The introduction of evidence of comparable sales, therefore, may lead to trial of collateral issues, and the absence of evidence of comparable sales may leave the trier of fact hopelessly uninformed. Moreover, since almost every allegedly qualified appraiser has a different concept of what is meant by a comparable sale, the use of comparable sales data often results in compromise awards somewhere between the highest and lowest appraisal, without any real reference to the intrinsic value of the property. The use of the comparable sales approach to arrive at "fair market value" has been recently characterized in uncomplimentary terms:

"It is advanced herein that the dual tendency of the courts to limit the presentation of market value to the comparative sales approach and to label this method the 'best evidence' constitutes an unwarranted and often erroneous simplification of the value problem. Such an approach is blind to the advancement of appraising techniques and, more so, to the marketplace. In an effort to achieve expediency and simplicity, it reconstructs a Procrustean bed; if the subject does not fit comfortably—and with *comparative* ease—upon the ready-made bed, then the victim's head or feet are cut down to the convenient size. . . .

"Buying and selling in the mid-twentieth century is far different in the marketplace from the way it is viewed from the courthouse." [29]

Considerable controversy has raged over the years on the question of whether sales of comparable property made subsequent to the date of taking should be considered in arriving at fair market value.[30] The most frequently cited criticism of the use of this evidence is that the condemnation proceedings often cause an increase in property values in the vicinity, with the result that subsequent sales may not accurately reflect the value of the subject property at the exact date of its taking, which is the only proper time for the fixing of value. The short answer to this argument is that adjustments are necessary in order to make evidence of comparable sales usable, whether they occur *before* or *after* the date of taking. If conditions have been changed to the extent that the sale can no longer be said to be "comparable," then evidence of the sale can be excluded for that reason alone. As the California Law Revision Commission recently pointed out:

"Not only is the admission of subsequent sales justified on the ground that they indicate what the value would have been on the date of taking, but they are especially important when prior sales are (1) few in number or (2) considerably more remote on the date of taking than are the subsequent sales. Furthermore, subsequent sales may indicate a trend in the market." [31]

When a public works project is of any magnitude, such as a dam and reservoir, an interstate highway, or an urban renewal project, the failure of condemning authorities and their appraisers to be consistent and uniform in their offers can create great difficulty. Public dissatisfaction with apparent unequal treatment inevitably results since there is no practical means by which the confidentiality of the condemnor's offers can be maintained. Notwithstanding the apparent inequities of inconsistent offers, the overwhelming majority of the cases exclude from evidence testimony of both offers made and sales amounts actually paid to other condemnees for similar property in the project areas,[32] no matter how comparable in terms of geography, time, and potential use. Three reasons are normally assigned for refusing to admit evidence of such sales. First, the sale is not, by definition, a voluntary sale in a free and open market. Secondly, in partial taking cases the condemnor's sales price may include not only the value of the property taken but damages for remaining property as well. Finally, the admission of evidence of other sales in the project area would allegedly introduce "aggravating and time-consuming collateral issues tending to promote confusion rather than clarity." [33] These reasons are not persuasive. Although sales to the condemnor are not "voluntary," there should at least be an element of estoppel working against the condemnor's attempt to resist admission of evidence of such sales. This would not place an undue burden on the condemnor, since any attempt on the part of landowner's appraisers to rely on sales to the condemnor could be attacked through cross-examination on the basis that different conditions rendered the sales not comparable. Moreover, it does not seem that review of the condemnor's explanation for inconsistent sales prices would involve the court in the examination of collateral issues. On the other hand, the admission of proof of these sales would have the salutary effect of compelling the condemnor, on pain of having his failure to do so disclosed in open court, to deal with similarly situated landowners on a fair and uniform basis.[34]

Much of what has been said about sales to condemnors can also be said about so-called "forced sales." Evidence of sales of comparable property by an executor or administrator, foreclosure sales, sales to settle estates, and any other sales made under legal duress or coercion, is not admissible.[35] As soon as it appears that the sale falls into one of these categories, the trier of fact may not hear about it, even though it may have been conducted in a free and open manner, even including an auction sale. No satisfactory explanation has been given why the appraiser could not adjust for the forced nature of the sale as he does for geographical or temporal disparities. Both sides have experts who are free to question the alleged comparability of sales. It is the height of folly, therefore, to refuse to allow the trier of fact to hear of a foreclosure auction sale, in connection with a foreclosure, of property adjacent to the taken property, made only a day or two prior to the date the subject property is taken, and conceded by an objective, experienced appraiser to have been fair in every respect. After all, there is an element of necessity connected with all sales, even those made in the ordinary course of business.[36]

Finally, offers to buy or to sell property, including the subject property, are generally considered inadmissible, even for the purpose of challenging a witness's credibility.[37] These offers are inadmissible even if made voluntarily and in good faith. Certainly the relevance of bona fide offers to buy the subject property is clear:

"When the conduct of others indicating the nature of a salable article consists in offering this or that sum of money, it creates the phenomena [sic] of *value*, so-called. For evidential purposes, Sale-Value is nothing more than the nature of quality of the article as measured by the money which others show themselves willing to lay out in purchasing it. Their offers of money not merely indicate the value; they are the value; *i.e.* since value is merely a standard or measure in figures, those sums taken in net potential result are that standard." [38]

Nevertheless, courts consistently cite a multitude of reasons why such testimony of offers to buy or sell property should be excluded: pure speculation may have induced the offer; the purchaser may have wanted the land for some purpose disconnected with its value; the offer cannot be cross-examined; or the offer may have been a mere expression of opinion by one who was without serious intention or who had no resources.[39] Although in individual cases there may very well be merit to the objections listed, a failure to even consider such evidence indicates a very limited confidence in the ability of courts to examine evidence objectively and to exclude that which requires an excessive amount of collateral investigation. The result is that in many instances sales of scant evidentiary value are presented to the trier of fact, while offers that provide a much more rational basis for valuing the subject property are excluded out of hand.

What has been said, of course, reflects discontent with the refusal of courts to hear what is in many cases reliable evidence concerning the value of property. Realistically, it must be admitted, however, that use of the fair market value approach with its concomitant reliance on the market data or comparable sales approach makes inevitable the evidentiary rules discussed. These exclusionary rules have their origin in a jury trial atmosphere, which the courts believe compels a high degree of judicial selectivity. In that regard, more will be said later about possible alternative tribunals for the setting of just compensation.

B. "Fair market value" minus the attorney's fee

While it may be somewhat sacrilegious to say so, the application of the "fair market value" test in the context of traditional eminent domain proceedings results more often than is necessary in the hiring of an attorney, with the result that the attorney's fee must be subtracted from the amount the landowner receives for his property.[40] The following review of typical condemnation practice demonstrates why an attorney is so often needed. Very often, especially in condemnation proceedings at the state level and in those carried out by quasi-public agencies granted the power of eminent domain, an appraisal is made sometime prior to the

Footnotes at end of article.

actual contemplated date of taking by either an appraiser who is only moderately qualified—very frequently an employee of the condemning agency—or by an independent expert. If the agency is financially unable to employ an appraiser to reappraise the property as of the date of the taking, then the deposit that is finally paid into the court, when settlement with the landowner is not possible, is based on an erroneous appraisal. The problem is particularly acute when there has been a steady appreciation in the value of the land from the time of the initial negotiations for the purchase until the dispute is taken to court. Even if the landowner was unreasonable in his demands prior to the filing of the litigation, he may be willing to settle rather than litigate if a new offer is made based on the realistic value of the land at the date of taking. Where a new offer is not made, however, the landowner has no choice but to hire counsel and pay the attorney's fee.

Under the typical arrangement, the attorney's fee is from one-third to one-half of the amount by which the final award exceeds the condemnor's deposit or final firm offer. In many instances, the final award represents the value of the property *as of the date of taking*. In these cases, the landowner has been forced to pay a sizeable attorney's fee to obtain compensation to which even the condemning agency admits he is entitled.[41]

Public officials, including negotiators for condemnors, are well aware of the burden that an attorney's fee places upon the recalcitrant landowner, and it is not at all unusual for them to exploit this obstacle to litigation to force the landowner to settle out of court. Indeed, recent studies have shown that in many instances the first offer is less than the condemning agency's own appraisal.[42] As reprehensible as this conduct may appear, it is not as deplorable as another practice that is sometimes used. The landowner may be given a firm offer, told that it is a "take it or leave it" proposition, and notified that it is the agency's intention to deposit *less* than the firm offer in court if the offer is rejected. This kind of high-handedness is of course aided and abetted by the generally accepted rule that precludes discovery of the opinions of the condemnor's experts concerning the fair market value of the property.[43]

The solution to these problems may lie in the appointment of a "condemnation proctor" or "public defender" for eminent domain proceedings—a publicly paid, but independent counsel who would represent the interests of the landowner. One suspects, however, that empirical experience with such a drastic measure would reveal that the landowner, in the long run, would be economically better off with private counsel, with all the attendant expenses, since the independence of public counsel would seem to be very difficult to preserve.[44] A more reasonable solution lies in the improvement and modernization of condemnation procedure.

The fair conclusion from the foregoing would be that the quest for fair market value in the context of a highly-structured judicial atmosphere, with the accompanying technical rules of evidence and procedure, leaves a great deal to be desired. There seems to be general recognition of this fact. As stated above, any attempt to remove eminent domain proceedings from the courts is met with stern resistance on the part of landowners—resistance which, in the long run, is probably shortsighted.[45]

C. Alternative tribunals to ascertain "fair market value"

The deluge of valuation problems caused by use of the fair market value test is not being handled efficiently or effectively by the courts. Even if it is assumed that the standard itself should not be rejected, it seems clear that administration of the test must be reformed. The removal of eminent domain proceedings from the courts may provide part of the solution.

Several states have established permanent arbitration tribunals staffed with experienced personnel as an alternative to the judicial forum for condemnation proceedings. Along these lines, the American Arbitration Association (AAA) has recently promulgated eminent domain arbitration rules,[46] and the California Law Revision Commission (CLRC) has recommended that the State legislature adopt arbitration rules that provide for the determination of just compensation by a panel of arbitrators.[47] Significantly, neither the AAA nor the CLRC rules provide an alternative to the "fair market value" test. Given the variables involved and the difficulty of charging lay jurors, the arbitration expedient seems particularly promising, especially if the "fair market value" test is retained.

Another procedure that has worked satisfactorily is the use of a commission appointed by the court. Rule 71A(h) of the Federal Rules of Civil Procedure provides for a jury trial in condemnation cases "unless the court in its discretion orders that, because of the character, location, or quantity of the property condemned, or for other reasons in the interest of justice the issue of compensation shall be determined by a committee of three persons appointed by it." [48] In *United States v. Merz*,[49] the Supreme Court outlined the standards that district courts should apply to a commission appointed under rule 71A (h), the duties of the commission in making findings, the duties of the litigants, and the duties of the district court vis-a-vis the report of the commission.[50] The commission's finding on "fair market value" and just compensation can be overturned by the district court only if it is "clearly erroneous." The preliminary draft of the Model Code on Eminent Domain, prepared by the Real Property, Probate and Trust Section of the American Bar Association, however, recommends a more liberal standard of judicial review of commission decisions.[51] While this position is not surprising in view of the Bar Association's resistance to the 71A(h) commission, its reasonableness is subject to the challenge that the right to a trial de novo before the court reduces the commission proceeding to a waste of time.

IV. A COMPARATIVE STUDY

The foregoing discussion has been oriented primarily toward the inequities created by judicial efforts to serve the constitutional mandate of "just compensation" through the "fair market value" test. Undoubtedly, many of the problems considered could be more simply and effectively disposed of by substituting another standard for that of fair market value. Suggestions of this nature, however, are frequently met with the charge that any other method of arriving at just compensation would work an injustice on the public, give a windfall to the landowners, and deter the undertaking of worthwhile and necessary public projects. Since this position apparently has been accepted unquestionably in the United States, it seems appropriate to challenge the presumption through a comparative examination of eminent domain policy and methods of valuation in several other countries, including an examination of procedure where apposite. All of the countries chosen are nontotalitarian in nature and have governmental systems that protect the ownership of private property. Moreover, it may be safely assumed that in these countries public projects requiring the expropriation of private property occur with regularity and that somehow these societies have been able to obtain a balance between the rights of the public and the private property interests of the landowners.

A. Canada

There is in Canada no constitutional principle that private property cannot be taken without due process of law, like the fifth and fourteenth constitutional amendments in the United States. It has been said of the Imperial Parliament that is can do anything except make a man a woman. The Dominion Parliament and the Provincial Legislatures within their spheres are just as supreme. "As to the question whether Parliament has the power to expropriate land for public purposes without compensation, there cannot be any doubt." [52]

Despite the Canadian landowner's lack of constitutional protection, an examination of the cases and the various provincial and federal Canadian statutes reveals that the landowner is much more likely to be made whole in Canada than in the United States. The Canadian courts have repeatedly stated that when private property is taken for public use "the value to be paid for is the value to the owner . . . not the value to the taker . . ." [53] The following quotation accurately expresses the approach of the Canadian courts to the valuation problem:

"The principles upon which compensation is assessed when land is taken under compulsory powers are well settled. The owner receives for the land he gives up [its] equivalent, *i.e.* that which [it is] worth to him in money. His property is . . . not diminished in amount but to that extent it is compulsorily changed in form. But the equivalent is estimated on the value to him and not on the value to the purchaser, and hence it has from the first been recognized as an absolute rule that this value is to be estimated as it stood before the grant of the compulsory powers. The owner is only to receive compensation based upon the market value of his lands as they stood before the scheme was authorized by which they are put to public uses. Subject to that he is entitled to be paid the full price for his lands and any and every element of value which they possess must be taken into consideration insofar as the increase the value to him.[54]

As expressed in the recent of *Zeta Psi Elders Association* v. *University of Toronto:*

"The value of a property to its owner is identical in amount with the adverse value of the entire loss, direct and indirect, that the owner might expect to suffer if he were to be deprived of the property.

"Value to the owner means the price at which the owner would value his property if he made an intelligent valuation in the light of data available on valuation date." [55]

In estimating the amount that should be paid to the owner whose land is taken, the court, arbitrator, or board must consider all the circumstances in order to determine the sum that will restore the owner to a position that is as nearly as possible identical to the position he occupied before the expropriation.[56] In those cases in which there are buildings or lands of exceptional character, or premises suitable for a business only under special conditions or by means of a special license, compensation includes the right to "reinstatement." Reinstatement, defined as "placing the owner from whom property is taken in a substantially equivalent position by means of substituted property," [57] is analogous to the American doctrine that allows reproduction costs less depreciation when there is no comparative market data by which to arrive at fair market value.

In recent years, the major controversy in Canada has swirled around the so-called "allowance" for compulsory dispossession.[58] While there are statutes granting recovery for so-called "injurious affection," [59] interest and costs, there apparently is no express staute authorizing the practice of granting an allowance.[60] The allowance, which ranges from an average of ten percent to as high as

Footnotes at end of article.

50 percent, is awarded to the reluctant landowner simply because he is an unwilling seller. Although it has often been said that the allowance is granted because of the difficulty in arriving at value to the owner, recent cases have suggested that it is awarded to cover the "expense and inconvenience of moving elsewhere, the loss of benefits enjoyed by the owner due to location of the property taken and, where a business is carried on which the owner proposes to continue elsewhere, the loss due to the dislocation of the business carried on and the loss of profit in the interval before it can be established elsewhere, moving costs and other unavoidable expenses." [61]

While a great many Canadians feel that the existing law gives landowners only their fair due, a new federal expropriation bill for Canada has been proposed to correct what some believe to be a landowner-oriented bias in the law.[62] Bill C 200 would give the landowner additional power to challenge the necessity of the public taking, but it would, in a substantial number of cases, substitute the "fair market value" test for the "value to the landowner" standard. Although the proposed bill purports to abolish the ten percent allowance for compulsory taking, it provides for allowances for costs, including moving costs, expenses, and disturbances, which combined may exceed the ten percent "allowance."

B. England

The existing law in Canada accurately describes the English expropriation law prior to the passage of the Acquisition of Land Act of 1919.[63] The Act abandoned the "value to the owner" rule and provided that "[t]he value of the land shall . . . be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise." [64] No provision is made in the Act for an allowance for the compulsory nature of an acquisition.

The English law dealing with expropriation of land is best understood when considered in conjunction with the various planning acts.[65] The Town and Country Planning Act of 1947,[66] as well as earlier planning and development acts, consisted of a pervasive system and plan of land use development. This scheme tended to affect the fair market value of property by severely restricting its potential uses. For some time, the "open market" value of property could only be computed with reference to its existing use and any possible deterrents to its development, including development fees. Now, according to a leading authority:

"Valuation is, in general, to be made not only on the basis of any planning permissions which at the date of the notice to treat have actually been granted, but also on the basis of any planning permissions likely to be granted. Thus if the land is being acquired for some specific purpose, it is to be assumed that planning permission would be given for that purpose; and it is to be assumed permission would be given to develop the land in accordance with the development plan." [67]

Significantly, the Acquisition of Land Act of 1919 does recognize a right to compensation for "disturbance," as well as a right to recover for severance damages, or "injurious affection." [68] Additionally, when the land has no market value, the doctrine of reinstatement [69] continues to apply in England. The various planning acts also recognize that the previous application of land use controls can, under certain circumstances, constitute a taking that is compensable under the law.

C. Sweden

The Swedish Law on Expropriation provides as follows:

"*Article 7.* Compensation shall be made for real estate that is expropriated in amount corresponding to the value of the real estate, especially with regard to the comparative value and productive value of the real estate. If a part of the real estate is expropriated and the remainder sustains damage or encroachment through the expropriation or the use of the expropriated part, compensation for this shall be made. If damage otherwise arises for the owner through the expropriation, such damage shall also be compensated.

"*Article 8.* When deciding on the compensation for real estate, no consideration shall be given to a change in the value that occurs as a consequences of the expropriation or the accomplishing of the intended purpose.

"*Article 9.* If a part of real estate is expropriated and the expropriation or the use of the expropriated part causes damage or depreciation of the residue, but in another respect causes it to appreciate, compensation shall be paid only when the depreciation is greater than the appreciation." [70]

The compensation must be paid according to the market price of the real estate—the price that can be expected through usual transactions due to the quality, nature, and location of the real estate, without taking into account unusual or personal circumstances.[71] When deciding market price, consideration is given primarily to the comparative value.[72] When deciding on the comparative value, earlier transactions used for comparison must be representative in location, kind, nature of the ground, size, age, condition of buildings, and so on, and the prices compared cannot be outdated.[73] Changes resulting from the increase or decrease of purchase power are also taken into consideration examination of comparable sales. As is the case in all of the countries studied, the Swedish expropriation law does not, as a general rule, compensate for sentimental values of the owner. Severance damages, however, are recognized and compensated.

Article 7 of the Law on Expropriation states that all damages shall be compensated. This means, for instance, compensation for special damages, such as loss of business which frequently remain uncompensated in the United States. Consistent with general damage compensation theory, compensation for loss of business requires a determination of the extent to which the business would have developed, had the expropriation not occurred. This is established by the so-called "difference principle," [74] which requires that the amount of compensation be decided after comparing business losses that have occurred in connection with expropriation with those that might have occurred independently of expropriation.[75] If the business is discontinued, the compensation is estimated on the basis of the usual projected net profits. Compensation is also given for goodwill and other business values. Significantly, expropriation matters are adjudicated in special expropriation courts on which expropriation technicians serve. Notwithstanding their specialization, however, the courts apparently have not been very effective and condemnation proceedings are, according to the authorities, quite frequently prolonged.[76]

D. France

Article 17 of the Declaration of Rights of 1789 as reaffirmed by the Constitution of 1946 proclaims:

"Property being a sacred and inviolable right, no one can be deprived of it unless a legally established public necessity evidently demands it, and on the condition of a just and prior indemnity." [77]

"Just and previous indemnity" has been defined to encompass recovery for "the entire damage, direct, material and certain, caused by the condemnation." [78] Precise and complex rules concerning the methods of evaluating condemned property and the elements of damage have been established to prevent private persons from making sacrifices for public purposes.[79] According to the principles established by court practices, reestablishment of the landowner to the same or similar status is considered "just." [80] Although the indemnity must cover the entire damage caused by the condemnation, it is limited to direct, material, and certain damage. Demoralization loss, for example, is excluded. Although the methods for evaluating condemned property vary according to the existing use of the property, the basis for the evaluation is always market value, which is defined as "[t]he value which tribunals and the Court of Cassation defined as the price for which a reasonable man agrees to acquire an estate, taking into consideration the market price of the real estate of the region where the reality is located." [81]

E. Italy

The Italian Civil Code provides that [n]o one shall be deprived, wholly or in part, of his property except for legally declared reasons of the public interest. . . ." [82] and then only upon the payment of "just indemnity." [83] This expropriation for the public benefit may be described as a contribution that the landowner is compelled to make for the achievement and benefit of all.[84] As a result of this approach, there has been some controversy concerning whether an indemnity should correspond to the value of the expropriated object or should consist of a smaller amount in view of the fact that the public need exists.[85] The present Italian expropriation rule, however, is that indemnity should consist of a just price that has been established by experts exactly as it would have been established for a sales transaction.[86] In effect, the law grants full indemnity to the owner as if he were making the sale of his own free will.[87] The paramount intent of the law is to fully satisfy the just price; it reflects the need to balance the interest of the public with that of the private landowner. The indemnity "must exclude an unjust sacrifice as well as unjustified enrichment." [88]

F. Germany

In Germany, compensation in eminent domain cases is provided for in the constitution. The basic expropriation law provides that:

"Expropriation shall be admissible only for the well-being of the general public. It may be effected only by legislation or on the basis of a law which shall regulate the nature and extent of compensation. The compensation shall be determined after just consideration of the interests of the general public and the participants. Regarding the extent of compensation, appeal may be made to the ordinary courts in cases of dispute." [89]

The German Code contains more specific compensation standards; compensation shall be given for eminent domain and it shall be awarded:

1. For the loss of rights occurring as a consequence of eminent domain;

2. For other damage in property occurring as a consequence of eminent domain.[90]

Section 93(3) of the Code debits the landowner with any special benefit that may accrue to remaining properties as a result of the public project. Section 95 of the Code provides that compensation shall be ascertained according to the "market value" of the real property to be expropriated. The Code precludes recovery for "changes in value which have arisen as a consequence of the impending eminent domain," and there is, in addition, a rather peculiar provision that excludes "increases in value which have occurred after the time when the property owner could have accepted an equitable purchase or exchange offer made by the petitioner to avoid the expropriation." This "in terrorem" provision has not been found in any other country.

Footnotes at end of article.

Section 96 of the Code authorizes compensation for "other property damage"—presumably consequential and incidental damages—and for the "temporary or continous loss which the previous owner suffers in his professional activity, business activity, or in the fulfillment of duties which are basically imputable to him, however, only to the extent of the expenditures which are necessary to use another property in the same way as the property to be expropriated was used." [91] Finally, the section provides for compensation for necessary moving expenses and incidental damage to remaining land.

Valuation is rendered by independent "expert commissions" set up for that specific purpose. Either the condemnee or the condemnor may request the expert evaluation of the commission. The market value that the expert commission seeks is explicitly defined by Section 141 of the Code:

(1) The expert commission shall establish the common value (market value).

(2) The market value shall be determined by the price which can be realized in the regular business at the time at which the appraisal is made, according to the qualities and other conditions as well as the location of the piece of real property, with no regard to special or personal circumstances.

(3) In the case of developed properties, the market values for the land and for the buildings shall be ascertained separately if this is possible on the basis of comparative prices; these shall be separately indicated in the expert opinion.[92]

Two rather unusual provisions not encountered elsewhere should also be noted.[93] First, in certain cases, upon the request of the former owner, compensation must or may be rendered in the form of exchange property of no higher value than the fair market value of the expropriated property. This provision is most often invoked when the property taken is a single-family home. The decision on whether to grant the request for exchange property rests with the authorities who decided on the request for eminent domain. The second oddity is that the former owner of the expropriated property may request that compensation be paid in regular installments or in a lump sum.

G. Belgium

The complex system of expropriation for the public interest in Belgium was inherited from France.[94] It dates back to the Declaration of the Rights of Man and of the Citizen of August 26, 1789. The ideas set forth in Article 17 of this Declaration [95] were incorporated in the Belgium Constitution and the Belgium Civil Code.[96] Belgium has replaced the French concept of "public necessity" with the concept of "public interest." [97] Since the Belgium Code deals only briefly with condemnation indemnity, expropriation policies have developed primarily in the case law through broad judicial interpretation of the legislative mandate that expropriation shall only be effected "with the condition of a just and previous indemnity." [98]

To be "just," compensation must be full and equitable—it must cover all damage caused by the expropriation. For writers of the nineteenth century, it was sufficient if all rights and advantages taken from the owner by expropriation, as well as any prejudices caused, were replaced by a pecuniary compensation.[99] More recently it has been said that "the judge must compare what would be the price without expropriation and what would happen (to the price) if expropriation took place. It is the balance of these two situations which constitutes the loss in an expropriation in which the compensation for expropriation must pay." [100] Still another view is that a person whose property has been expropriated should be put, as nearly as possible, in a position to obtain for himself, with the help of the compensation, the same rights and advantages as those of which he has been dispossessed.[101]

Compensation is not "just" unless it completely indemnifies the former owner.[102] Just compensation is composed of two elements: the market value of the property and reparation of the prejudice resulting from the expropriation.[103] The definition of market value as "a price which could normally be obtained for the property if it were sold publicly on the day when the court ruled that the administrative formalities had been completed and ordered the transfer of ownership" is not surprising.[104] Generally "future value," the potential that the property has apart from its use at the date of taking, has also been considered.[105] Other factors considered in determining just compensation include a supplemental indemnity for settlement charges to which the landowner is subject in acquiring an equivalent property,[106] and a "convenience value." [107] The "convenience value" would appear to be analogous to the "allowance" of the Canadian law, although it has been stated that courts refuse to consider "sentimental values." [108] If a person is obliged to suspend his activities at his present location and move to another place, and in so doing encounters disruptions in his commercial business, resulting in damage, the Belgium courts and legal writers are in agreement that this prejudice requires a special indemnity.[109]

V. CONCLUSION

It is an inescapable conclusion that a delicate balancing is involved in condemnation cases between public and private interests. Public funds, on the one hand, are becoming increasingly inadequate to finance needed public improvements and therefore desperately need to be safeguarded. On the other hand, private interests plead for increasing recognition of the elements of damage, some of which are real but many of which are fancied. Use of the "fair market value" test to strike this balance of public and private interests has not been satisfactory; its application has precluded recovery for many elements of actual damage that accrue as a result of the taking of private land for public use. The search for "fair market value" is a snipe hunt carried on at midnight on a moonless landscape.

The hackneyed expression that "there is nothing so powerful as an idea whose time has come" may very well be apropos here. The decisions of the United States Supreme Court usually are not very far behind public sentiment. Already the criticisms of eminent domain procedures in this country are growing louder and louder. There is an observable general sentiment that government at all levels owns too much land, and that there is general insensitivity on the part of public officials to the suffering wrought by the taking of private property. Heretofore, the Supreme Court's reading of "just compensation" has involved an interpretation of expediency, promoted by public officials who waved banners of private greed. It is herein predicted that the time is rapidly approaching when the Supreme Court is going to insist, as a matter of constitutional law, that the landowner be paid for all he surrenders. The cases themselves admit that "fair market value" does not indemnify the landowner. A good case can be made for the proposition that the elements of damage now denied the landowner on the ground that they are incapable of measurement are in fact measurable if the proof is adduced in a tribunal having expertise in condemnation problems. And, surely, the argument that allowing presently prescribed damages would make the costs so high that the public could not pay its own way is going to be finally met by the response that, if that is the situation, neither can it ride on the train.

Almost without exception, the foreign countries discussed in this paper are doing a better job of compensating the deprived landowner than is the United States. It may be, if the United States is unwilling to streamline its condemnation procedures and tribunals, that the "allowance" utilized by Canada is the most feasible solution. It certainly would go a long way toward allaying the fears and soothing the irritations that existing evaluation methods and procedures have created.

FOOTNOTES

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The writer is a member of a land condemnation commission appointed under Federal Rule of Civil Procedure 71(A)(h) by the former chief judge of the United States District Court for the Middle District of Tennessee, the Honorable William E. Miller, now a member of the United States Court of Appeals for the Sixth Circuit. The views expressed herein are not those of the Commission, nor, to the extent that they reflect variations from existing law, do they represent the principles applied by the author in the carrying out of his duties as a member of the Commission, under the explicit instructions of the court. This paper was prepared, in part, under the terms of a grant from the Urban and Regional Development Center of Vanderbilt University and the author gratefully acknowledges the help and encouragement of the Center.

[1] 4 P. NICHOLS, THE LAW OF EMINENT DOMAIN § 12.2[1] (rev. 3d ed. J. Sackman 1962) (footnotes omitted).

[2] *Id.* § 12.2 (footnotes omitted). *See, e.g.*, Berger & Rohan, *The Nassau County Study: An Empirical Look into the Practices of Condemnation*, 67 COLUM. L. REV. 430 (1967); Hershman, *Compensation—Just and Unjust*, 21 BUS. LAW 285 (1966).

[3] *See, e.g.*, Crouch, *Valuation Problems and Procedures Under Eminent Domain*, in AMERICAN BAR ASSOCIATION NATIONAL INSTITUTE, CONDEMNATION, COMPENSATION AND THE COURTS 31 (1969); Dolan, *Just Compensation: Indemnity or Market Value?*, 34 APPRAISAL J. 353 (1966); MacLeod, *Adequacy of Compensation in Condemnation*, 31 APPRAISAL J. 477 (1963); Sengstock & McAuliffe, *What is the Price of Eminent Domain?*, 44 J. URBAN L. 185 (1966).

[4] "For purposes of the compensation due under the Fifth Amendment, of course, only that 'value' need be considered which is attached to 'property,' but that only approaches by one step the problem of definition. The value of property springs from subjective needs and attitudes; its value to the owner may therefore differ widely from its value to the taker. Most things, however, have a general demand which gives them a value transferable from one owner to another." Kimball Laundry Co. v. United States, 338 U.S. 1, 5 (1949). *See also* United States *ex rel.* TVA v. Powelson, 319 U.S. 266 (1943); United States v. Miller, 317 U.S. 369 (1943); McCandless v. United States, 298 U.S. 342 (1936); Olson v. United States, 292 U.S. 246 (1934); United States v. New River Collieries Co., 262 U.S. 341 (1923); Seaboard Air Line Ry. v. United States, 261 U.S. (1923).

[5] A fair example, and a correct statement of the law, is the following extract from the *Instructions to Commissioners* given by Judge William E. Miller.

"The method by which to determine the just compensation to be paid to the property owner for the taking of a part of his property is, as a general rule, to compare the fair market value of the property before and after the taking; that is to say, by subtracting the fair market value of what remains after the taking from the fair market value of the whole immediately before the taking.

"Just compensation is not a question of the value of the property in question to the

defendant, on the one hand, nor its value to the Government on the other. Therefore, in determining the fair market value of the property in question on the date of taking you shall not consider or be influenced by the fact that the United States needs the property or that these proceedings are pending, nor shall you consider or in any way be influenced by the fact that the United States is able and willing to pay for the property or that the defendant is or may be unwilling to sell. It would be improper for you to permit such matters to affect your findings.

"In every condemnation proceeding the problem is to determine what the property owner has lost as a result of the taking, and not what the Government may have gained.

"Just compensation is intended to cover the loss caused the owner by the taking of his property for public use and not the value of the property as applied to the public use. How much the property taken may be worth to the public for those purposes to which it will be applied is not to be considered by you in any way in arriving at the fair market value of the property at the date of the taking by the Government.

"So, in determining fair market value of the time of the taking, you are not to consider the fact that the Government intends to take the land; instead you are to fix the fair market value on the date of taking at a time immediately before the taking, without regard either to the imminency of the taking or the pendency of any proceedings to take the land.

"In determining the fair market value of the estate or interest taken, you may not consider the Government's need for the property, nor whether or not the defendant owner wanted to sell it. Your task is to find what was the fair market value of the tract involved in this trial, as of the time of the taking, uninfluenced in any way by either the necessities of the Government or the wishes or wants or desires of the owners.

"By fair market value is meant the price in cash or its equivalent that the property would have brought at the time of the taking, considering its highest and most profitable use, if then offered for sale in the open market in competition with other similar properties at or near the location of the property, with a reasonable time allowed to find a purchaser.

"You are to assume that the purchaser in such a transaction was desirous of buying the property, but not forced to buy, and that the seller was desirous of selling the property, but not forced to sell; and that both buyer and seller were fully informed on that date as to all circumstances and factors favorable and unfavorable with respect to the property, and as to all uses to which the property was then being put, and as to the highest and best use and all other uses for which the property was at that time actually and potentially suitable and adaptable.

"In arriving at your estimate of fair market value, you should take into account all factors which could fairly be suggested by the seller to increase the price paid, and all counterarguments which the buyer could fairly make to reduce the price to be paid by him, to the extent that you believe such matters would have been considered in the bargaining as to price. Your determination is to be made in the light of all facts affecting value as shown by the evidence, together with any facts which, although not shown by the evidence, are of such general knowledge in the community as not to require proof." (Judge Miller's order of instruction is retained on file in the federal district court for the Middle District of Tennessee.)

[6] *E.g.*, AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS, CONDEMNATION APPRAISAL PRACTICE 4–8 (1961); L. ORGEL, VALUATION UNDER THE LAW OF EMINENT DOMAIN §§ 11–15, 17 (2d ed. 1953).

[7] Even the courts recognize the hardship. *See* United States v. General Motors Corp., 323 U.S. 373, 382 (1945); City of Newark v. Cook, 99 N.J. Eq. 527, 538, 133 A. 875, 879 (Ch. 1926).

During 1963 and 1964, hearings were conducted around the country by the Select Subcommittee on Real Property Acquisition of the Committee of Public Works of the United States House of Representatives. These hearings, dealing with real property acquisition practices and adequacy of compensation in federal and federally assisted programs, revealed a deep, pervasive distrust of governmental motives and practices in land acquisition programs. *See Hearings on Real Property Acquisition Practices and Adequacy of Compensation in Federal and Federally Assisted Programs Before the Select Subcomm. on Real Property Acquisition of the House Comm. on Public Works*, 88th Cong., 2d Sess. (1964). The study, a considerable portion of which is reproduced in PRACTICING LAW INSTITUTE, REAL ESTATE VALUE IN CONDEMNATION 255–98 (1969), points out that present practices are not doing substantial justice to the condemnees, and it suggests that the market value standards limiting compensation to the value of the property taken were adopted by the courts in a comparatively uncomplicated time in our nation's history when land was plentiful and government acquisitions skirted cities and by-passed homes and businesses, causing few displacements and relatively little damage. The gist of the report is that it is the responsibility of the Congress to determine whether other losses suffered by public owners or tenants should be absorbed by the public. *See also* Slaritt, *More Inequities and Injustices of Condemnation Practice*, 43 CONN. B.J. 89 (1969).

[8] For a vivid description of the adverse psychological effect see Fried, *Grieving for a Lost Home: Psychological Costs of Relocation* in J. WILSON, URBAN RENEWAL: THE RECORD AND THE CONTROVERSY 359 (1966). *See also* Weisl & Cohen, *Federal Condemnation Law and the Public Interest*, in 1968 INSTITUTE ON EMINENT DOMAIN 45. Not all of the dissatisfaction, however, lies with the landowners. Governmental officials sometimes believe that the public is forced to pay *more* for the property than is fair. *See, e.g.*, United States v. Merchants Matrix Cut Syndicate, Inc., 219 F.2d 90 (7th Cir.), *cert. denied*, 349 U.S. 945 (1955); United States v. 0.84 Acres of Land, 112 F. Supp. 828 (N.D. Cal. 1953). Then, too, courts themselves are becoming aware that present condemnation practices and damage-measuring procedures do not even approximate the rendering of justice:

"In this era of the law explosion no phase of judicial administration is more ripe for reform than eminent domain valuation. Trial judges, lawyers and appraisers are willy-nilly players in a super-charged psychodrama designed to lure twelve mystified citizens into a technical decision transcending their common denominator of capacity and experience. The victor's profit is often less than the public's cost of maintaining the court during the days and weeks of trial." State v. Wherity, 275 Cal. App. 2d 279, 290, 79 Cal. Reptr. 591, 598 (Ct. App. 1969) (Friedman, J., dissenting).

[9] United States v. Miller, 317 U.S. 369 (1943).

[10] Omnia Commercial Co. v. United States, 261, U.S. 502 (1923); Bothwell v. United States, 254 U.S. 231 (1920); United States v. Honolulu Plantation Co., 182 F.2d 172 (9th Cir. 1950).

[11] *See generally* United States v. Petty Motor Co., 327 U.S. 372 (1946); Mitchell v. United States, 267 U.S. 341 (1925).

[12] Monongahela Navigation Co. v. United States, 148 U.S. 312 (1893).

[13] Chamber of Commerce v. City of Boston, 217 U.S. 189, 195 (1910).

[14] There are many losses to redistribute. For example, the cost of the rights of way on the 41,000 mile interstate highway system has been conservatively estimated to be 5 billion dollars. H.R. Doc. No. 300, 85th Cong., 2d Sess. 1, 6 (1958)

[15] Attorney General Clark's statement is reprinted in Weisl & Cohen, *Federal Condemnation Law and the Public Interest*, in PROCEEDINGS OF THE EIGHTH INSTITUTE ON EMINENT DOMAIN 45 (1968).

[16] Weisl & Cohen, *supra* note 15, at 51.

[17] 219 F.2d 90, 98 (7th Cir.), *cert. denied*, 349 U.S. 945 (1955). Anthony Lewis has recently described, from his English perspective, the unhappy experiences of public officials in their attempt to obtain the so called "Burling Park" on the Virginia palisade of the Potomac in Fairfax, Virginia. Lewis, *The Making of a Park*, N.Y. Times, Sept. 28, 1970, at 41, col. 1 (city ed.).

[18] For a description of the pervasive effect of long-range planning of land use patterns in England see text accompanying notes 65–67 *infra*.

[19] For an excellent discussion of "highest and best use" see Crouch, *A Perspective Look at Highest and Best Use*, 34 APPRAISAL J. 166 (1966).

[20] *See, e.g.*, Olson v. United States, 292 U.S. 246 (1934).

[21] *Id.* For many years in England a landowner was entitled to an eminent domain proceeding to receive the value of the land to him. G. CHALLIES, THE LAW OF EXPROPRIATION 87 (2d ed. 1963). Similarly there has been recognition, in Canada and elsewhere, that a condemnee is entitled to a premium merely because he is an unwilling seller. *See* e.g., Lock v. Furze, 19 C.B. (N .S.) 96 (1865); *In re* Wilkes' Estate, 16 Ch. D. 597 (1880). In recent years the Congress of the United States has given statutory recognition to the legitimacy of such claims. For an excellent discussion of federal statutes of this nature see Note, *The Interest in Rootedness: Family Relocation and an Approach to Full Indemnity*, 21 STAN. L. REV. 801 (1969). *See also* PRACTICING LAW INSTITUTE, REAL ESTATE VALUATION IN CONDEMNATION 191–253, 301–405 (1969). With regard to state condemnations, however, the picture is much less attractive.

[22] Perhaps the best known discussion is Michelman, *Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law*, 80 HARV. L. REV. 1165 (1967). *See also* Dunham, *Griggs* v. *Allegheny County in Perspective: Thirty Years of Supreme Court Expropriation Law*, 1962 SUP. CT. REV. 63; Fried, *Two Concepts of Interests: Some Reflections on the Supreme Court's Balancing Test*, 76 HARV. L. REV. 755 (1963); Kratovil & Harrison, *Eminent Domain—Policy and Concept*, 42 CALIF. L. REV. 596 (1954). For cases dealing with the balancing concept see Malman v. Village of Lincolnwood, 61 Ill. App. 2d 55, 208 N.E.2d 884 (1965) and Rochester Business Institute Inc. v. City of Rochester, 25 App. Div. 2d 97, 267 N.Y.S.2d 274 (1966).

[23] Michelman, *supra* note 22. A very plausible argument can be made that, even if we are to adhere to the "fair market value" test as a constitutionally sufficient standard for governmental expropriations, when quasi-public agencies such as utilities, railroads and universities are granted the power of eminent domain, all losses must be compensated. The exception would be justifiable on the ground that, although the quasi-public agencies are serving a vital public function, they are nevertheless profit-making organizations whose publicly established rate structures can be, and are, adjusted to give a reasonable return on investment. It is considerably more difficult, however, to explain why "just compensation" is not the same in both cases, since the fifth amendment addresses itself specifically to the *government's* deprivations.

[24] *See* L. WALLSTEIN, REPORT ON LAW AND PROCEDURE IN CONDEMNATION (1932). A Mas-

sachusetts study described in Note, *Eminent Domain Valuations in an Age of Redevelopment Incidental Losses*, 67 Yale L.J. 61, 73, 87 (1957) suggested that jury trials usually do not materially increase the amount available to the property owner over what he would have obtained in a settlement. On the other hand, there are many cases in which juries appear to have acted arbitrarily to give compensation for incidental losses, despite directions to the contrary. *E.g.*, Reeves v. City of Dallas, 195 S.W. 575 (Tex. Civ. App. 1946).

[25] It has been suggested that the price of "splitting the difference," generally followed in the trial of eminent domain cases before juries, makes it possible "to adjust the rigid rules of law to the requirements of justice and indemnity in each particular case." Park Comm'n v. United States, 143 F.2d 688 (2d Cir. 1944), *quoting* L. ORGEL, VALUATION UNDER THE LAW OF EMINENT DOMAIN 810, 837 (1st ed. 1936). It seems more likely that dispensing this kind of "fireside equity" will result in injustice.

[26] *See* United States v. 329.05 Acres of Land, 156 F. Supp. 67 (S.D.N.Y. 1957), *aff'd sub nom.* United States v. Kopperman, 263 F.2d 331 (2d Cir. 1959) ("[s]ales of the same property or those of comparable character in the same neighborhood in recent times constitute the best evidence upon which to establish value in a condemnation proceeding"). *See also*, United States v. 5139.5 Acres of Land, 200 F. 2d 659 (4th Cir. 1952); United States v. 70.39 Acres of Land, 164 F. Supp. 451 (S.D. Cal. 1958); Dolan, *Federal Condemnation Practice General Aspects*, 27 Appraisal J. 15 (1959).

[27] There are inadequacies in the market data technique. These have been summarized from an appraiser's perspective as follows:

"1. Sales are historical evidences of past actions in the market.

"2. The essence of value is the relationship between people and property. The actual transactions reflect not only the influence of the individual property but also the personalities and motives of the buyer and seller. The probable behavior and performance of individuals is not subject to exact prediction.

"3. No comparison can be expected to furnish the exact dollar value for the subject property . . . .

"4. There are differences in physical similarities in market circumstances in the 'justified' and 'actual' sales. Distinction between the two must be recognized in their respective interpretation of the fair market value. . . .

"5. The mathematically adjusted indications are not true market conditions. They are unrealistic and conjectural based on ephemeral assumptions and not reflective of true market conditions.

"6. Each property has its own specifics, individuality, character and capacity. No two pieces of property are alike. . . .

"7. The assignment of percentage values to each of the factors can become arbitrary, unrealistic, and theoretical in nature and relegates itself under the realm of mysticism.

"8. Piecemeal adjustments by mathematical percentages of the so-called 'comparables' tend to invalidate the composite evidentiary picture of the transactions by increasing the chances for error or judgment by omission or exception." Lum, *Comparison and Use of Market Data in Preparation for Expert Testimony*, 31 APPRAISAL J. 178, 181 (1963).

[28] For a general discussion of the comparability problem see Sengstock & McAuliffe, *What Is the Price of Eminent Domain?*, 44 J. URBAN L. 185, 197–206 (1966).

[29] 3 CAL. L. REVISION COMM'N REP., RECOMMENDATIONS & STUDIES A–25 to –26 (1961).

[30] *See, e.g.*, Old Dominion Land Co. v. United States, 269 U.S. 55 (1925); United States v. Brooklyn Union Gas Co., 168 F.2d 391 (2d Cir. 1948); County of Los Angeles v. Hoe, 138 Cal. App. 2d 74, 291 P.2d 98 (Dist. Ct. App. 1955); Dolan, *supra* note 26.

[31] 3 CAL. L. REVISION COMM'N REP., RECOMMENDATIONS & STUDIES A–37 (1961).

[32] *See* 5 P. NICHOLS, *supra* note 1, §§ 21.3[1], .4[1]; 1 L. ORGEL, VALUATION UNDER THE LAW OF EMINENT DOMAIN § 147 (2d ed. 1953); Annot., 174 A.L.R. 386 (1948).

[33] Blick v. Ozaukee County, 180 Wisc. 45, 48, 192 N.W. 380, 381 (1923).

[34] At least one state has recently held that evidence of sales to the condemnor is admissible to prove value, notwithstanding the coercion allegedly inherent in such transactions. *See* County of Los Angeles v. Faus, 48 Cal. 2d 672, 312 P. 2d 680 (1957).

[35] *See, e.g.*, Redevelopment Land Agency v. 61 Parcels of Land, 235 F. 2d 864 (D.C. Cir. 1956); Baetjer v. United States, 143 F. 2d 391 (1st Cir. 1944); Wyman v. Lexington & W.C.R.R., 54 Mass. 316 (1847).

[36] *Cf.* Hickey v. United States, 208 F. 2d 269 (3d Cir. 1953), *cert. denied*, 347 U.S. 919 (1954) (attempting to expand the area of forced sales and excluding even the private business sale when made under compulsion).

[37] *See, e.g.*, Sharp v. United States, 191 U.S. 341 (1903), *See also* Annot., 7 A.L.R. 2d 781 (1949); 1 L. ORGEL, *supra* note 32, § 148; Note, *Methods of Proving Land Value*, 43 IOWA L. REV. 270 (1958).

[38] 2 J. WIGMORE, EVIDENCE § 463, at 503 (3d ed. 1940). *See also* County of Los Angeles v. Faus, 48 Cal. 2d 672, 677, 313 P. 2d 680, 683 (1957).

[39] The following quotation from Los Angeles City High School Dist. v. Kita, 169 Cal. App. 2d 655, 663, 338 P. 2d 60, 65 (Dist. Ct. App. 1959) expresses the conventional view:

"Much has been said about the propriety of receiving in evidence unaccepted offers to buy similar property. An offer to pay a certain amount does not necessarily involve an estimate that such is its full value and should have been taken into consideration in forming an opinion of market value. At best, such offers are but expressions of opinion. They are a species of indirect evidence of the opinion of the offerer as to the value of land. An unaccepted offer places before the jury an absent person's declaration or opinion of value while depriving the adverse party of the benefit of cross-examination. The offerer may have such slight knowledge on the subject as to render his opinion of no value. He may have wanted the land for some particular purpose disconnected with its value. Pure speculation may have induced the offer, a willingness to take chances that some new use of the land might later prove profitable. The person making the offer may not have been competent in a legal sense to express an opinion on the subject. Offers may be glibly made without serious intention or the required resources. The offer may contain contingencies, as in the present case. The area for collateral inquiry is far broader than in the case of consummated sales, as is also the opportunity for collusion and fraud. The assertion that the offerer tendered his money might give such hearsay opinion more weight with the jury than an opinion given by a witness before them, not thus supported. If evidence of an unaccepted offer is to be received, it is important to know whether the offer was bona fide and made by a man of good judgment acquainted with the value of the property, and whether made with reference to market value or to supply a particular need or to gratify a fancy. Unaccepted offers are unsatisfactory, easy of fabrication, and even may be dangerous in their character."

[40] "To require the defendants in this case to pay any portion of their costs necessarily incidental to the trial of the issues on their part, or any part of the costs of the [condemnor], would reduce the just compensation awarded by the jury, by a sum equal to that paid by them for such costs." City & County of San Francisco v. Collins, 98 Cal. 259, 262, 33 P. 56, 57 (1893).

The best study of this problem is contained in Note, *Attorneys' Fees in Condemnation Proceedings*, 20 HASTINGS L.J. 694 (1969).

[41] Even when there is a legitimate difference of opinion between the experts employed by the landowner and those used by the condemning authority, the net compensation received by the landowner, if it develops that he is correct and the agency is wrong, must be diminished by the attorney's fee and other expenses. A few states have enacted statutes which grant the landowner a measure of protection as to his attorney's fees, most notably Florida, North Dakota, Iowa and Oregon. For citations to the relevant statutes in these states see Note, *supra* note 40, at 704–08.

Florida's statute is of special interest:

"The petitioner shall pay all reasonable costs of the proceedings in the circuit court including a reasonable attorney's fee to be assessed by that court." FLA. STAT. ANN. § 73.091 (Supp. 1970).

"The petitioner shall pay all reasonable costs of the proceedings in the appellate court, including a reasonable attorney's fee to be assessed by that court, except upon an appeal taken by a defendant in which the judgment of the trial court shall be affirmed." *Id.* § 73–131(2).

[42] *See Hearings on S. 1351 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 90th Cong., 2d Sess. 26, 36–38 (1968); *Hearings on Real Property Acquisition Practices and Adequacy of Compensation in Federal and Federally Assisted Programs Before the Select Subcomm. on Real Property Acquisition of the House Comm. on Public Works*, 88th Cong., 1st Sess. 368–81, 383–91 (1963); Berger & Rohan, *The Nassau County Study: An Empirical Look Into the Practices of Condemnation*, 67 COLUM. L. REV. 430 (1967).

Section 504 E of the proposed Model Eminent Domain Code under consideration by the Committee on Condemnation Law of the Real Property, Probate and Trust Section provides:

"Where the ultimate award is more than the offer of the condemnor, the Trial Judge shall have the authority to cause the condemnor to reimburse the condemnee for his . . . attorneys' fees and other reasonable expense, but his authority shall exist only in those instances where the Trial Judge finds affirmatively that to do otherwise would invoke serious hardship on the condemnee. . . ."

[43] *See* City of Chicago v. Harrison-Halsted Bldg. Corp. 11 Ill. 2d 431, 143 N.E.2d 40 (1957). *But cf.* United States v. Meyer, 398 F.2d 66 (9th Cir. 1968). *See also* Varney, *The Use of Prior Appraisals in Condemnation Cases* in ABA SECTION OF LOCAL GOVERNMENT LAW, REPORT OF COMMITTEE ON CONDEMNATION AND CONDEMNATION PROCEDURE 377 (1968). A California study has shown that unless the award exceeds the offer by $3,000 to $5,000, the unrecoverable costs of defending such a case will exceed the increase in compensation. 1969 CAL. L. REVISION COMM'N REP. 128 n. 10.

[44] Unlike "public defenders" for criminal cases, a condemnation proctor inevitably would develop the type of close working relationship with the condemning authority and local appraisers that makes neutrality impossible.

[45] *See* Berger & Rohan, *supra* note 2, at 440. At least one type of federal condemnation proceeding, that of the Tennessee Valley Authority (TVA), has partially moved from a commission type hearing to a jury trial procedure. Section 25 of the Tennessee Valley Authority Act was amended to abolish the commission system as the sole method for determining just compensation for TVA takings. Act of September 28, 1968, Pub. L. No. 90–536, 80 Stat. 885, *amending* 16 U.S.C. 831x (1964). Since TVA takings are now on the same basis as all other federal condemnation,

if the requisite findings can be made, the federal district judge can appoint a commission under FED. R. CIV. P. 71A(h).

[46] AMERICAN ARBITRATION ASSOCIATION, EMINENT DOMAIN ARBITRATION RULES (1968).

[47] 1969 CAL. L. REVISION COMM'N REP. 131.

[48] Beginning in 1951, bills have been introduced in Congress from time to time to strip the district court of its discretionary power to deny a demand for a jury trial. In support of such legislation, the American Bar Association argues that jury trial had been enjoyed under the old conformity act and was improperly taken away by rule 71A. *See* ABA, *Report of the Committee on Amendment of Rule 71A of Federal Rules of Civil Procedure*, 81 A.B.A. REP. 386 (1956). Interestingly enough, however, the cases that have reached the appellate courts indicate that it is usually the government, not the landowner, that complains of denial of a jury trial. *See, e.g.*, United States v. Leavell & Ponder, Inc., 286 F.2d 398 (5th Cir. 1961); United States v. Chamberlain Wholesale Grocery Co., 226 F.2d 492 (8th Cir. 1955).

[49] 376 U.S. 192 (1964).

[50] *Id.* at 197-200.

[51] "The right to appeal [from the commission's finding] shall be absolute and the trial shall be de novo." Model Code on Eminent Domain § 504 (Prelim. Draft, 1968).

[52] G. CHALLIES, THE LAW OF EXPROPRIATION 75 (2d ed. 1963).

[53] *See e.g.*, Woods Mfg. Co. v. The King, [1951] 2 D.L.R. 465; Belanger v. The King, [1918] 42 D.L.R. 138, Lucas v. Chesterfield Gas & Water Bd., [1909] 1 K.B. 16 (C.A. 1908).

[54] Lucas v. Chesterfield Gas & Water Bd., [1909] 1 K.B. 16 (C.A. 1908), *quoted in* G. CHALLIES, *supra* note 52, at 87.

[55] [1967] 2 O.R. 185, 187.

[56] Diggon-Hibben Ltd. v. The King, [1949] 4 D.L.R. 785, 787: "The owner at the moment of expropriation is to be deemed as without title, but all else remaining the same, and the question is what would be, as a prudent man, at that moment, pay for the property rather than be ejected from it."

[57] G. CHALLIES, *supra* note 52, at 153.

[58] *See* Drew v. The Queen, [1961] 29 D.L.R. 2d 114; Todd, *The 10% Allowance in Assessing Compensation Payable for Property Expropriated Under Statutory Authority*, 2 U.B. C.L. REV. 623 (1958). For a thorough discussion of the "allowance," sometimes called "indemnity for forceable dispossessions" see G. CHALLIS, *supra* note 52, at 206.

[59] This is another name for severance damages, or, as they are sometimes referred to in Canada, "consequential damages." *See* G. CHALLIES, *supra* note 52, at 131.

[60] The earliest case in which the "allowance," as import from England where it was abandoned in 1910, appeared was Symonds v. Rex, 8 Can. Exch. 319 (1904).

[61] Drew v. Regina, [1961] Can. S. Ct. 614, *discussed in* G. CHALLIES, *supra* note 52, at 207.

[62] *See* Safian, *Bill C200: Federal Expropriation Bill*, 34 SASK. L. REV. 299 (1969).

[63] Acquisition of Land (Assessment of Compensation) Act of 1919, 9 & 10 Geo. 5, c. 57, § 2, 2. Indeed, English cases prior to 1919 are freely cited by the Canadian federal and provincial courts. 3 CAL. L. REVISION COMM'N. REP., RECOMMENDATIONS & STUDIES A-17 (1961).

[64] Acquisition of Land (Assessment of Compensation) Act of 1919, 9 & 10 Geo. 5, c. 57, § 2, rule 2. It has been suggested that the "value to the owner" rule may be for various reasons, more realistic in Canada than in England, Safian, *supra* note 62, at 307.

[65] *See* Megarry, *Compensation for Compulsory Acquisition of Land in England*, in LAW AND LAND 212 (C. Haar ed. 1964).

[66] 10 & 11 Geo. 6, c. 51.

[67] Megarry, *supra* note 65, at 221.

[68] *Id.* at 222-23.

[69] *Id.*

[70] Law of May 12, 1917, concerning the Law on Expropriation, [1969] Sveriges Rikes Lag B114-30 (Swed.). *See generally* V. Ollikainen. Regulation of Eminent Domain in Sweden, December 1969 (unpublished private study on file with the *Vanderbilt Law Review*).

[71] M. HERNMARCK, LÖSESKILLING VID EXPROPRIATION FOR TATBEBYGGELSE 103 (2d ed. 1967).

[72] *Id.* at 110.

[73] V. Ollikainen, *supra* note 70, at 2-3.

[74] SVENSKA KOMMUNAL-TEKNISKA FÖRENINGEN, EXPROPRIATIONS TEKNIK 375 (1968).

[75] Practice attempts are made to calculate the net losses the business may suffer. V. Ollikainen, *supra* note 70, at 4.

[76] For a discussion of the expropriation courts see V. Ollikainen, *supra* note 70, at 5. Prior to 1950, article 7 of the Law of Expropriation required that "just compensation "be paid for the voluntary taking of real property. It is generally believed, however, that the change in the wording of article 7 has not resulted in a change in the basis for estimated compensation. 1948 STATENS OFFENLIGA UTREDNINGAR No. 4, 85.

[77] J. BRISSAUD, A HISTORY OF FRENCH PUBLIC LAW 545 (1915).

[78] *See* D. Krivickas, Regulation of Eminent Domain in France 1 & n.3, December 1969 (unpublished study on file with the *Vanderbilt Law Review*).

[79] For a complete study of these rules see D. Krivickas, *supra* note 78.

[80] D. MUSSO, LE NOUVEAU REGIME DE L'EXPROPRIATION ET SES. MODALITES D'APPLICATION M1 (2d ed. 1965).

[81] J. M. AUBY, L'EXPROPRIATION POUR LA CAUSE D'UTILITE PUBLIQUE 20 (1968). For an extensive discussion of evaluation methods in France see F. FERBES & G. SALLES, EXPROPRIATION ET EVALUATION DES BIENS (2d ed. 1969).

[82] A considerable portion of this study is based upon K. Vokopola, Regulation of Eminent Domain in Italy, December 1969 (unpublished study on file with the *Vanderbilt Law Review*).

[83] The expression "just indemnity," coming immediately after the other preconditions concerning the declaration of the public interest makes it clear that such payment is the *sine qua non* for a lawful exercise of the power of eminent domain.

[84] Under Italian legal doctrine it is commonly held that an indemnity for the expropriation of private property for a declared public interest and need is not a "price," and therefore, does not constitute a valuable consideration in a transaction of exchange.

[85] There is some authority for the later viewpoint. Constitutional Court Decision No. 61, *reported in* 2 REVISTA DI DIRITTO AGRARIO 250 (1957).

[86] K. Vokopola, *supra* note 82, at 5.

[87] P. CARUGNO, ESPROPRIAZONE PER PUBBLICA UTILITÁ 309 (6th ed. 1967).

[88] K. Vokopola, *supra* note 82, at 6. *See also* P. CARUGNO, *supra* note 87, at 265. There has been special legislation, frequently applied in connection with slum clearance. The determination of the just price contained in this legislation states that the "indemnity due the owners of expropriated property shall be determined on the basis of the average commercial value or of the rents for the past ten years." P. CARUGNO, *supra* note 87, at 309.

[89] The Bonn Constitution, Washington, D.C. U.S. Government Printing Office, 1949. For a general study of evaluation problems in Germany see W. Sólyom-Fekete, Regulation of Eminent Domain in the Federal Republic of Germany, December 1969 (unpublished study on file with the *Vanderbilt Law Review*). According to Sólyom-Fekete, "the literal translation of the term 'Bundesbaugesetz' would be Federal Law on Construction. This Law is a comprehensive code of urban development planning, and will be referred to as the 'Code'." *Id* at 1 n.4.

[90] The text of the Code, commentaries thereto, and its implementing statutes may be found in S. HEITZER & E. OESTREICHER, BUNDESBAUGESETZ (1968).

[91] The tone of the section is set by a provision that "compensation shall be determined after just consideration of the interests of the public and the affected parties." BGB1 § 96, 1, at 341 (1960).

[92] *Id.* § 141.

[93] W. Sólyom-Fekete, *supra* note 89, at 7-8.

[94] For a thorough study of expropriation problems in Belgium see V. Stoicoiu, Regulation of Eminent Domain in Belgium, December 1969 (unpublished study on file with the Vanderbilt Law Review).

[95] *See* note 77 *supra* and accompanying text.

[96] V. Stoicoiu, *supra* note 94, at 1-2.

[97] M. VAUTHIER, PRECIS DU DROIT ADMINISTRATIF DE LA BELGIQUE ¶ 239, at 290 (1928).

[98] L. BELVA, L'EXPROPRIATION POUR CAUSE D'UTILITÉ PUBLIQUE ¶ 987 (1955).

[99] V. Stoicoiu, *supra note* 94, at 8. Compensation must not include more than the prejudices that are an "immediate and direct" consequence of the expropriation; here the antecedents in French law are obvious. *See* V. Stoicoiu, *supra note* 94, at 8.

[100] 5 REPERTOIRE PRATIQUE DU DROITE BELGE No. 571, ¶ 2 (1950), *quoted in* V. Stoicoiu, *supra note* 94, at 9.

[101] V. Stoicoiu, *supra* note 94, at 9.

[102] *Id.* at 10.

[103] *Id.*

[104] *Id.* at 11.

[105] *Id.* at 12.

[106] *Id.* at 14.

[107] *Id.* at 15.

[108] *See, e.g.*, United States v. Petty Motor Co., 327 U.S. 372, 377-78 (1946). *See also* 1 L. ORGEL, VALUATION UNDER THE LAW OF EMINENT DOMAIN § 39 (2d ed. 1953); Weisl & Cohen, *Federal Condemnation Law and the Public Interest*, in 1968 INSTITUTE ON EMINENT DOMAIN 45.

[109] V. Stoicoiu, *supra* note 94, at 15-17. If a landowner excepts to the administrative determination of the amount to be paid for his land and appeals to the courts, the costs in courts of first instance are paid by the state; but if he appeals further and loses, he must bear the court costs and other expenses. *Id.* at 21. Although it has been argued to the contrary, courts have held that attorneys' fees are not "costs," and that the hiring of a lawyer is purely a voluntary act of the owner. *Id.* at 23.

By Mr. STAFFORD:

S. 3448. A bill to amend the Tariff Act of 1930 to permit the informal entry of merchandise not exceeding $500 in value. Referred to the Committee on Finance.

Mr. STAFFORD. Mr. President, the bill I am introducing today is a simple proposal designed to raise the value of merchandise subject to informal entry into the United States to $500 to compensate for present day prices and to reduce the paper workload on Customs personnel as well as on American businessmen.

At present, in most cases merchandise with a value of more than $250 is required to go through a formal entry basis when entering the United States. This $250 level has been in effect for many years, while inflation has long since made that figure unrealistic in terms of its original intention.

The bill I introduce today would merely amend the Tariff Act of 1930 to permit the informal entry of merchandise not exceeding $500 in value.

By Mr. STAFFORD:

S. 3449. A bill to amend the act of June 21, 1940, as amended, to remove

the ninety day requirement for the submission of general plans and specifications for altering a bridge in accordance with an order of the Secretary of Transportation; and

S. 3450. A bill to amend the act of August 18, 1894, the act of March 3, 1899, the Bridge Act of 1906 and the General Bridge Act of 1946, to provide for civil penalties in certain circumstances, and for other purposes. Referred to the Committee on Public Works.

Mr. STAFFORD. Mr. President, I am introducing today two bills, proposed by the administration and intended to enable the Coast Guard to oversee more effectively its responsibilities regarding bridges over navigable waterways.

The first of these bills would amend an existing statute under which the Coast Guard can direct the owner of a bridge to altar the bridge if it acts as an obstruction to marine navigation. Such orders usually occur on older bridges subsequent to dredging of the river channel and the use of larger tugs and barges.

Once such an alteration order is issued, provisions of the Truman-Hobbs Acts are available to assist financially in the necessary alterations.

Under present law, the bridge owner is required to submit specific alteration plans and specifications to the Coast Guard within 90 days of the order. The Coast Guard says that period of time is wholly unrealistic. Bridge owners simply cannot do all the necessary engineering work in that brief period. This results in a general disregard of that provision of law, forcing the Coast Guard to grant extensions.

The first bill would grant to the Coast Guard discretion in setting a time period for submission of alteration plans. The Coast Guard informs me that it anticipates that this period in most cases will be about 6 months.

The second bill would establish a civil remedy enabling the Coast Guard to bring actions against operator of draw bridges for improper operation of a draw bridge.

Clearly, a criminal penalty is far too extreme as a remedy for sloppy operations of a drawbridge that may involve leaving it open too long or failing to be on hand when a vessel is ready to pass underneath.

The Coast Guard and the Justice Department have neglected to initiate actions, even in the rare incidents of flagrant violators. The creation of a second remedy—a civil citation and administrative penalty—should enable the Coast Guard to induce better performance, where necessary.

Mr. President, I believe these two administration bills merit the attention of the Senate. I ask that copies of the bills, as well as letters accompanying each, be printed at this point in the CONGRESSIONAL RECORD.

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

S. 3449

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 4 of the Act of June 21, 1940 (54 Stat. 498), as amended (33 U.S.C. 514) is further amended as follows:

By deleting the phrase "ninety days" from line 2; and inserting in lieu thereof the phrase "such reasonable times as the Secretary may prescribe".

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., April 27, 1973.

HON. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is transmitted herewith a draft of a proposed bill, "To amend the Act of June 21, 1940, as amended to remove the ninety day requirement for the submission of general plans and specifications for altering a bridge in accordance with an order of the Secretary of Transportation."

The proposed bill would amend Section 4 of the Act of June 21, 1940 (54 Stat. 498), as amended (33 United States Code 514) to permit the Secretary of Transportation, after service of an order on a bridge owner to alter his bridge, to prescribe a reasonable period of time after service of such order for the submission of general plans and specifications to carry out the required alteration.

Currently, the bridge owner must submit alteration plans and specifications within ninety days after service of the Secretary's order upon him. Past experience has shown that ninety days is an insufficient period of time in which to expect the bridge owner to accomplish this task. This is primarily due to the time needed to select an engineering consultant, obtain a proposal from him, and submit it to the Coast Guard for review and approval prior to proceeding with the design phase of the needed alteration. This preliminary procedure itself usually takes approximately ninety days at a minimum; thus insufficient time is left under current requirements for the consultant to conduct site investigations and to prepare satisfactory outline plans and design criteria for submission. In realization of these difficulties, requests by bridge owners for extensions of time have routinely been granted.

Willful failure or refusal to proceed with the preparation of plans and specifications by bridge owners has not been a problem in the past. In recent years, however, some owners have not proceeded diligently in this matter in spite of persistent urgings to do so. The criminal sanctions for failure to comply with the ninety day requirement have not been invoked in the past due, in part, to the realization that the requirement is impractical. Allowing the Secretary to specify a reasonable time for the submission of general plans and specifications, and eliminating the rigid ninety day rule, will remove a major obstacle toward ensuring compliance with the Secretary's order.

It would be appreciated if you would lay this proposal before the Senate. A similar proposal has been submitted to the Speaker of the House of Representatives.

The Office of Management and Budget has advised that there is no objection from the standpoint of the administration's program to the submission of this proposed legislation to the Congress.

Sincerely,

CLAUDE S. BRINEGAR.

COMPARATIVE TYPE SHOWING CHANGES IN EXISTING LAW MADE BY THE PROPOSED BILL

(Matter proposed to be omitted is enclosed in brackets; new matter is italics.)

TITLE 33

§ 514. Submission and approval of general plans and specifications

It shall be the duty of the bridge owner to prepare and submit to the Secretary, within [ninety days] *such reasonable times as the Secretary may prescribe* after service of his order, general plans and specifications to provide for the alteration of such bridge in accordance with such order, and for such additional alteration of such bridge as the bridge owner may desire to meet the necessities of railroad or highway traffic, or both. The Secretary may approve or reject such general plans and specifications, in whole or in part, and may require the submission of new or additional plans and specifications, but when the Secretary shall have approved general plans and specifications, they shall be final and binding upon all parties unless changes theren be afterward approved by the Secretary and the bridge owner.

S. 3450

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of August 18, 1894 (28 Stat. 362), as amended, is amended as follows:

(A) Section 5 (33 U.S.C. 499) is amended—

(1) By redesignating the present section as subsection "(a)",

(2) By striking the following clause from the second sentence of subsection (a): ", or who shall unreasonably delay the opening of said draw after reasonable signal shall have been given," and

(3) By striking the word "section" wherever it appears between the words "this" and "may" in new subsection (a), and inserting in lieu thereof the word "subsection".

(B) By adding a new subsection (b) to section 5 as follows:

"(b) Whoever violates any rule or regulation issued under subsection (a), or whoever shall unreasonably delay the opening of said draw after reasonable signal shall have been given as provided in such rules or regulations, shall be liable to a civil penalty of not more than $1,000. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, remit, mitigate, or compromise any such penalty. Upon failure to collect or compromise a penalty under this subsection, the Secretary of Transportation may request the Attorney General to commence an action for the penalty prescribed by this subsection in any district court of the United States."

SEC. 2. That the Act of March 3, 1899 (30 Stat. 1151), as amended, is amended as follows:

(A) Section 9 (33 U.S.C. 401) is amended by redesignating the present section as subsection "(a)".

(B) By adding a new subsection (b) to section 9 as follows:

"(b) It shall not be lawful for any bridge, drawbridge or causeway to obstruct, hazard or endanger the free navigation of any navigable waters of the United States, when such obstruction, hazard or danger results from a failure to keep the bridge, drawbridge or causeway and their accessory works in proper repair.".

(C) Section 12 (33 U.S.C. 406) is amended by redesignating the present section as subsection "(a)".

(D) By adding a new subsection (b) to section 12 as follows:

"(b) Every person and every corporation that shall violate any of the provisions of section 9(b) of this Act shall be liable to a civil penalty of not more than $1,000; and every month such violation continues thereafter shall be deemed a new offense and subject such person and corporation to additional penalties therefor. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, remit, mitigate, or compromise any such penalty. Upon failure to collect or compromise a penalty under this subsection, the Secretary of Transportation may request the Attorney General to commence an action for the penalty prescribed

by this subsection in any district court of the United States.".

SEC. 3. That the Bridge Act of 1906 (34 Stat. 85), as amended, is amended as follows:

(A) Section 5 (33 U.S.C. 495) is amended—

(1) by redesignating the present section as subsection "(a)"; and

(2) in new subsection (a)—

(i) by adding the word "willfully" between the words "shall" and "fail",

(ii) by striking the phrase ", shall be deemed guilty of a violation of said sections, and any persons who shall be guilty of a violation of said sections,"; and

(iii) by striking the word "civil" between the words "on" and "conviction".

(B) By adding a new subsection (b) to section 5 as follows:

"(b) Whoever violates any of the provisions of this Act, or any order, rule, or regulation issued thereunder shall be liable to a civil penalty of not more than $1,000; and every month such violation continues thereafter shall be deemed a new offense and subject such person to additional penalties therefor. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, remit, mitigate, or compromise any such penalty. Upon failure to collect or compromise a penalty under this subsection, the Secretary of Transportation may request the Attorney General to commence an action for the penalty prescribed by this subsection in any district court of the United States.".

SEC. 4. That the General Bridge Act of 1946 (60 Stat. 847), as amended, is amended as follows:

(A) Section 510 (33 U.S.C. 533) is amended—

(1) by redesignating the present section as subsection "(a)"; and

(2) in new subsection (a) by adding the word "willfully"—

(i) between the words "who" and "fails" wherever they appear,

(ii) between the words "who" and "refuses"; and

(iii) between the words "otherwise" and "violates"

(B) By adding a new subsection (b) to section 510 as follows:

"(b) Any person who violates any of the provisions of this Act, or any order, rule, or regulation issued thereunder shall be liable to a civil penalty of not more than $1,000; and every month such violation continues thereafter shall be deemed a new offense and subject such person to additional penalties therefor. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, remit, mitigate, or compromise any such penalty. Upon failure to collect or compromise a penalty under this subsection, the Secretary of Transportation may request the Attorney General to commence an action for the penalty prescribed by this subsection in any district court of the United States.".

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., December 21, 1973.

Hon. GERALD R. FORD,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is transmitted herewith a comparative type showing changes made in the existing law, and a draft of a proposed bill "To amend the Act of August 18, 1894, the Act of March 3, 1899, the Bridge Act of 1906 and the General Bridge Act of 1946, to provide for civil penalties in certain circumstances, and for other purposes.

The proposed legislation would amend several sections of title 33, United States Code to provide for civil penalties in addition to the criminal sanctions currently authorized. The sections, in general, concern penalties for violating orders or regulations dealing with the construction, alteration, repair or operation of bridges and drawbridges. In addition, the bill would amend title 33, United States Code to clearly require owners to keep their bridges, drawbridges, or causeways; or the accessory works of any of them in proper repair, to the end that marine traffic will not be obstructed, endangered or placed in hazard while making reasonable use of the navigable waters over which they are built. In the past, bridge owners have been informed that they were in violation of the terms of their construction permit when necessary repairs to the bridge or drawbridge pier protection work (primarily sheer fencing and fenders) were neglected. The criminal sanctions available for enforcement in this area have proved to be both cumbersome and ineffective.

A somewhat similar situation has occurred in regard to some drawbridge operations, where the number of complaints from the boating public and others concerning improper drawbridge operation has been steadily growing. Due primarily to the difficulty encountered in establishing criminal intent as an element of the act complained of, the criminal sanctions available for enforcement in this area have also been essentially ineffective as well. This factor, coupled with the increased pressure of land traffic across both highway and railway bridges, may well be encouraging some bridge owners or drawbridge operators to be less responsive to the needs of marine traffic.

The addition of these civil penalty authorities as enforcement devices should serve to prompt bridge, drawbridge and causeway owners and operators to be more attentive to both the condition and the operation of their facility. There are no cost implications included with this proposal.

It would be appreciated if you would lay this proposed bill before the House of Representatives. A similar bill has been transmitted to the President of the Senate.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this proposed legislation to the Congress.

Sincerely,

CLAUDE S. BRINEGAR.

COMPARATIVE TYPE SHOWING CHANGES IN EXISTING LAW MADE BY THE PROPOSED BILL

(Matter proposed to be omitted is enclosed in brackets; new matter is in italics.)

TITLE 33

§ 499. Regulations for drawbridges; penalties for violation; enforcement

(*a*) It shall be the duty of all persons owning, operating, and tending the drawbridges built prior to August 18, 1894, or which may thereafter be built across the navigable rivers and other waters of the United States, to open, or cause to be opened, the draws of such bridges under such rules and regulations as in the opinion of the Secretary of Transportation the public interests require to govern the opening of drawbridges for the passage of vessels and other water crafts, and such rules and regulations, when so made and published, shall have the force of law. Every such person who shall willfully fail or refuse to open, or cause to be opened, the draw of any such bridge for the passage of a boat or boats [, or who shall unreasonably delay the opening of said draw after reasonable signal shall have been given,] as provided in such regulations shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than $2,000 nor less than $1,000, or by imprisonment (in the case of a natural person) for not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: Provided, That the proper action to enforce the provisions of this [section] *subsection* may be commenced before any commissioner, judge, or court of the United States, and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States: Provided further, That whenever, in the opinion of the Secretary of Transportation, the public interests require it, he may make rules and regulations to govern the opening of drawbridges for the passage of vessels and other water crafts, and such rules and regulations, when so made and published, shall have the force of law and any violation thereof shall be punished as hereinbefore provided: Provided further, That any regulations made in pursuance of this [section] *subsection* may be enforced as provided in section 413 of this title, the provisions whereof are made applicable to the said regulations.

(*b*) *Whoever violates any rule or regulation issued under subsection (a), or whoever shall unreasonably delay the opening of said draw after reasonable signal shall have been given as provided in such rules or regulations, shall be liable to a civil penalty of not more than $1,000. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, remit, mitigate, or compromise any such penalty. Upon failure to collect or compromise a penalty under this subsection, the Secretary of Transportation may request the Attorney General to commence an action for the penalty prescribed by this subsection in any district court of the United States.*

§ 401. Construction of bridges, causeways, dams or dikes generally

(*a*) It shall not be lawful to construct or commence the construction of any bridge, dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of the Army: *Provided,* That such structures may be built under authority of the legislature of a State across rivers and other waterways the navigable portions of which lie wholly within the limits of a single State, provided the location and plans therefore are submitted to and approved by the Chief of Engineers and by the Secretary of the Army before construction is commenced: *And provided further,* That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of the Army, it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of the Army.

(*b*) *It shall not be lawful for any bridge, drawbridge or causeway to obstruct, hazard or endanger the free navigation of any navigable waters of the United States, when such obstruction, hazard or danger results from a failure to keep the bridge, drawbridge or causeway and its accessory works in proper repair.*

§ 406. Penalty for wrongful construction of bridges, piers, etc., removal of structures

(*a*) Every person and every corporation that shall violate any of the provisions of sections 401, 403, and 404 of this title or any rule or regulation made by the Secretary of the Army, in pursuance of the provisions of section 404 of this title shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $2,500 or less than $500, or by imprisonment (in the case of a natural person) not

exceeding one year, or both such punishments, in the discretion of the court. And further, the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any district court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States.

(b) *Every person and every corporation that shall violate any of the provisions of section 401(b) of this title shall be liable to a civil penalty of not more than $1,000; and every month such violation continues thereafter shall be deemed a new offense and subject such person and corporation to additional penalties therefore. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, remit, mitigate, or compromise any such penalty. Upon failure to collect or compromise a penalty under this subsection, the Secretary of Transportation may request the Attorney General to commence an action for the penalty prescribed by this subsection in any district court of the United States.*

§ 495. Failure to comply with regulations; penalty; removal of bridge

(a) Any persons who shall *willfully* fail or refuse to comply with the lawful order of the Secretary of the Army or the Chief of Engineers, made in accordance with the provisions of sections 491 to 498 of this title [, shall be deemed guilty of a violation of said sections, and any persons who shall be guilty of a violation of said sections,] shall be deemed guilty of a misdemeanor and on [civil] conviction thereof shall be punished in any court of competent jurisdiction by a fine not exceeding $5,000, and every month such persons shall remain in default shall be deemed a new offense and subject such persons to additional penalties therefore; and in addition to the penalties above described the Secretary of the Army and the Chief of Engineers may, upon refusal of the persons owning or controlling any such bridge and accessory works to comply with any lawful order issued by the Secretary of the Army or Chief of Engineers in regard thereto, cause the removal of such bridge and accessory works at the expense of the persons owning or controlling such bridge, and suit for such expense may be brought in the name of the United States against such persons, and recovery had for such expense in any court of competent jurisdiction; and the removal of any structures erected or maintained in violation of the provisions of said sections, or the order or direction of the Secretary of the Army or Chief of Engineers made in pursuance thereof may be enforced by injunction, mandamus, or other summary process, upon application to the district court in the district in which such structure may, in whole or in part, exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States at the request of the Secretary of the Army; and in case of any litigation arising from any obstruction or alleged obstruction to navigation created by the construction of any bridge under said sections, the cause or question arising may be tried before the district court of the United States in any district which any portion of said obstruction or bridge touches.

(b) *Whoever violates any of the provisions of sections 491 and 498 of this title, or any order, rule, or regulation issued thereunder shall be liable to a civil penalty of not more than $1,000; and every month such violation continues thereafter shall be deemed a new offense and subject such person to additional penalties therefore. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, remit, mitigate, or compromise any such penalty. Upon failure to collect or compromise a penalty under this subsection, the Secretary of Transportation may request the Attorney General to commence an action for the penalty prescribed by this subsection in any district court of the United States.*

§ 533. Penalties

(a) Any person who *willfully* fails or refuses to comply with any lawful order of the Secretary of the Army or the Chief of Engineers issued under the provisions of sections 525 to 533 of this title, or who *willfully* fails to comply with any specific condition imposed by the Chief of Engineers and the Secretary of the Army relating to the maintenance and operation of bridges, or who *willfully* refuses to produce books, papers, or documents in obedience to a subpena or other lawful requirement under said sections, or who otherwise *willfully* violates any provisions of said sections, shall, upon a conviction thereof, be punished by a fine of not to exceed $5,000 or by imprisonment for not more than one year, or by both such fine and imprisonment.

(b) *Any person who violates any of the provisions of sections 525 to 533 of this title, or any order, rule, or regulation issued thereunder shall be liable to a civil penalty of not more than $1,000; and every month such violation continues thereafter shall be deemed a new offense and subject such person to additional penalties therefore. The Secretary of Transportation may assess and collect any civil penalty incurred under this subsection and, in his discretion, remit, mitigate, or compromise any such penalty. Upon failure to collect or compromise a penalty under this subsection, the Secretary of Transportation may request the Attorney General to commence an action for the penalty prescribed by this subsection in any district court of the United States.*

By Mr. MAGNUSON (for himself and Mr. COTTON) (by request):

S. 3453. A bill to amend certain provisions of the Communications Satellite Act of 1962, as amended. Referred to the Committee on Commerce.

Mr. MAGNUSON. Mr. President, I introduce by request, for appropriate reference, a bill to amend certain provisions of the Communications Satellite Act of 1962, as amended, and ask unanimous consent that the letter of transmittal, section-by-section analysis and comparison with existing law be printed in the RECORD with the text of the bill.

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

S. 3453

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

That this Act may be cited as the "International Satellite Communications Act of 1974."

SEC. 101. Section 201(a) of the Communications Satellite Act of 1962, as amended, is amended as follows:

(a) The following paragraph is inserted after paragraph (7): "(8) aid in the planning and development of additional communications satellite systems which are developed pursuant to any agreement, understanding or other arrangement between the United States and foreign countries; and in conjunction therewith, provide for continuous review of all phases of the development and operation of such systems, coordinate the activities of governmental agencies with responsibilities in the field of telecommunication, and carry out the functions set forth in subsections (a)(4) through (a)(7) of this section with respect to such systems and with respect to the corporation or any other communications common carrier or other entity which participates in the establishment, ownership, or operation of such systems".

SEC. 102. Section 201(c) of the Communications Satellite Act of 1962, as amended, is amended as follows:

(a) Section 201(c)(8) is deleted.

(b) Sections 201 (c)(9), (c)(10), and (c)(11) are designated 201 (c)(8), (c)(9), and (c)(10) respectively.

SEC. 103. Section 301 of the Communications Satellite Act of 1962, as amended, is amended by striking the words "to the District of Columbia Business Corporation Act." and substituting therefor the words "to the laws governing corporations in the jurisdiction within the United States in which it is incorporated."

SEC. 104. Section 303(a) of the Communications Satellite Act of 1962, as amended, is amended as follows:

(a) by striking all except the last three sentences of section 303(a) and substituting therefor the words "The corporation shall have a board of directors who shall be elected annually by the stockholders. All board members shall be citizens of the United States, and one board member shall be elected annually by the board to serve as chairman: *Provided, however*, That effective one year after this Act takes effect no directors incumbent shall be eligible to hold office as members of the board unless elected in accordance with this section."

(b) by striking, in the antepenultimate sentence of section 303(a), the words "Subject to the foregoing limitations, the" and substituting therefor the word "The".

(c) by striking, in the antepenultimate and penultimate sentences of section 303(a), the words "under section 27(d) of the District of Columbia Business Corporation Act (D.C. Code, sec. 29–911(d)). The articles of incorporation of the corporation" and substituting therefor a comma followed by the word "and, in the manner prescribed by the laws governing corporations in the jurisdiction in which the corporation is incorporated,".

(d) by striking, in the penultimate sentence of section 303(a), the words "of not less than 66⅔ per centum".

(e) by striking, in the last sentence of Section 303(a), the words "section 36 of the District of Columbia Business Corporation Act (D.C. Code, sec. 29–916(d))," and substituting therefor the words "the law of any State or of the District of Columbia,".

SEC. 105. Section 304 of the Communications Satellite Act of 1962, as amended, is amended as follows:

(a) by adding in section 304(a) the words "with or" before "without par value".

(b) by striking the second sentence in Section 304(b)(2).

(c) by striking in section 304(b)(2) the number "50" and substituting therefor "5".

(d) by striking in the third sentence of section 304(b)(2) the words "after the initial issue is completed" and substituting therefor "after the effective date of this Act".

(e) By striking in section 304(d) the words "which are held by holders other than authorized carrier".

(f) by striking the present language of section 304(e) and substituting therefor the words "Any record holder of the stock of the corporation, without regard to the percentage of stock so held, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, the corporation's record of shareholders and to make extracts therefrom."

SEC. 106. Section 305 of the Communica-

tions Satellite Act of 1962, as amended, is amended as follows:

(a) The following is added after section 305(b)(5):

"(c) Nothing herein shall be deemed to vest in the corporation the exclusive right to establish, own or operate communications satellite systems or associated equipment and facilities separate from those used in conjunction with the global system referred to in section 102(a) of this Act, nor to preclude the corporation from establishing, owning or operating such facilities."

(b) Section 305(c) is redesignated as 305 (d) and is amended by striking the words "District of Columbia Business Corporation Act." and substituting therefor the words "laws of the jurisdiction in which it is incorporated."

SEC. 107. Section 402 of the Communications Satellite Act of 1962, as amended, is amended as follows:

(a) by striking the words "the corporation" following the word "Whenever" in the first sentence of section 402 and substituting therefor the words "any communications common carrier or other entity which participates in the establishment, ownership and operation of a communications satellite system which is developed pursuant to an agreement, understanding or other arrangement between the United States and foreign countries".

(b) by striking the words "authorized by this Act" in the first sentence of section 402 and substituting therefor the words "related to such system".

(c) by striking the word "corporation" following the words "advise the" in the first sentence of section 402 and substituting therefor the words "carrier or other entity".

(d) by striking the word "corporation" in the second sentence of section 402 and substituting therefor the words "carrier or other entity".

(e) by striking the word "corporation" in the third sentence of section 402 and substituting therefor the words "carrier or other entity".

SEC. 108. Section 403(c) of the Communications Satellite Act of 1962, as amended, is amended by inserting the words "or other entities" after the words "communications common carriers".

SEC. 109. Section 404(a) of the Communications Satellite Act of 1962, as amended, is amended as follows:

(a by striking the word "and" after the words "objectives of this Act" and substituting therefor a comma; and

(b) by striking the period at the end of section 404(a) and substituting therefor the words "and, where appropriate, a summary of activities and accomplishments with respect to communications satellite systems referred to in section 201(a)(8)."

OFFICE OF TELECOMMUNICATIONS POLICY,
Washington, D.C., April 5, 1974.

Hon. GERALD R. FORD,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed for the consideration of the Congress is a draft bill to amend the Communications Satellite Act of 1962. These amendments are designed to update the Act to reflect current conditions in international satellite communications; they do not change the basic policy premises underlying the original legislation.

In 1962, there were a number of technical and operational uncertainties regarding the creation of the Communications Satellite Corporation (Comsat) to serve as the chosen instrument of the United States in a global system. These uncertainties gave rise to the inclusion of several special provisions in the Act relating to Comsat's ownership and the conduct of its affairs, provisions not normally associated with a private communications common carrier enterprise. With the successful establishment of the International Telecommunications Satellite Organization (INTELSAT) global communications satellite system and the emergence of Comsat as an established and mature corporation, it is appropriate to remove a number of these special provisions.

COMMON CARRIER OWNERSHIP

The need for operational expertise and technical know-how in the establishment of Comsat led to special provisions for participation by other common carriers in Comsat's financing and management. The need for this expertise has diminished, however, as Comsat has gained operating experience over the years. Moreover, most of the carriers for various reasons have now sold their interests in Comsat so that the special carrier ownership provisions are no longer relevant. The proposed bill would eliminate the special class of Comsat stock reserved for common carriers, reduce the aggregate amount of Comsat's outstanding shares that may be held by such carriers from 50 percent to 5 percent, and eliminate the special provision for common carrier directors on Comsat's board.

PRESIDENTIAL DIRECTORS

The present Act requires Comsat's Board of Directors to include three directors appointed by the President. The proposed bill would eliminate this requirement. While public interest considerations may have justified this special class of directors during the initial years of the Corporation's development, this requirement no longer appears warranted. As a communications common carrier, Comsat is subject to regulation by the Federal Communications Commission and, as the U.S. participant in INTELSAT, is subject to Executive Branch oversight. Thus, public interest considerations are adequately protected without retaining a special class of Presidentially-appointed directors.

FCC AUTHORITY OVER COMSAT FINANCING

The amendments would also repeal the provision requiring Comsat to obtain FCC approval prior to obtaining additional capital. The FCC does not exercise similar financial control over other common carriers, and the technological and operational uncertainties which originally warranted this departure from normal procedures are no longer present. This change would, of course, leave intact current FCC procedures regarding the licensing of Comsat's facilities and regulation of its common carrier activities.

CORPORATE SITUS AND PAR VALUE STOCK

The amendments would permit Comsat to incorporate in jurisdictions other than the District of Columbia and would allow the Corporation to issue stock having par value. These changes will afford Comsat the same flexibility as any other common carrier in decisions regarding place of incorporation and par valuation of stock.

NEW INTERNATIONAL SATELLITE SYSTEMS

In addition to updating the Act as discussed above, the amendments also deal with the possible emergence of specialized international satellite systems that would be separate from the INTELSAT system. Discussions have been taking place among various foreign governments and the United States regarding the possibility of implementing such specialized systems for aeronautical and maritime communications purposes. One amendment would make explicit that Comsat could participate in any such new international systems, on a non-exclusive basis, thus legislatively affirming an FCC rulemaking decision to the same effect in the context of domestic satellite systems.

Another relates to the clarification of the Executive Branch role in the planning, implementation and operation of new international satellite systems that are developed pursuant to intergovernmental agreements to which the United States is a party. Specifically, the Presidential responsibilities set forth in Sections 201(a)(1) through 201(a)(7) of the present Act, and the State Department role specified in Section 402 of the Act, would be made applicable to such systems. Presidental oversight and coordination would assure that international arrangements and operational procedures with respect to these new systems are responsive to the national interest and consistent with the foreign policy objectives and commitments of the United States.

The Office of Management and Budget advises that the enactment of the proposed legislation would be consistent with the program of the President.

A similar letter is being sent to the Speaker of the House of Representatives.

Sincerely,

CLAY T. WHITEHEAD.

SECTION-BY-SECTION ANALYSIS OF THE "INTERNATIONAL SATELLITE COMMUNICATIONS ACT OF 1974"

Section 101. Subsections 201(a)(1) through 201(a)(7) of the Communications Satellite Act of 1962 provide for Executive Branch involvement in the organization, implementation and development of the global communications satellite system (INTELSAT). Additional international systems, separate from the INTELSAT system, are permitted under Section 102(d) of the Act, if required to meet unique governmental needs or if otherwise required by the national interest. Discussions have been taking place among various foreign governments and the United States regarding the possibility of creating new specialized systems for aeronautical and maritime communications purposes.

As was the case with INTELSAT, the organization, implementation and operation of these systems would require a high level of government-to-government cooperation and accord; the foreign policy implications of systems serving the interests of a large number of countries call for clearly defined Executive Branch responsibility. Accordingly, a new subsection is added to Section 201(a) whereby the Executive Branch would aid in the planning, development, coordination and review of additional international communication satellite systems that are developed and operated pursuant to intergovernmental agreements to which the United States is a party. Presidential oversight and coordination will assure that institutional arrangements and operational procedures are responsive to the national interest and consistent with the foreign policy objectives and commitments of the United States. Responsibilities similar to those vested in the Executive Branch with respect to Comsat as the U.S. participant in INTELSAT are extended to include any communications common carrier or other entity (*e.g.*, a consortium of U.S. users, a private non-carrier corporation, etc.) which serves as the U.S. participant in any new international systems that are developed and operate pursuant to intergovernmental agreements to which the U.S. is a party.

Section 102. Section 201(c)(8), which requires Comsat to receive authorization from the Federal Communications Commission prior to the issuance of any debt or equity securities, is repealed. The need for such close regulation of Comsat's financing, originally warranted by the uncertainties and business risks associated with an unprecedented venture, no longer exists. The FCC does not possess similar authority over the equity and debt of any other communications common carrier. This amendment would in no way affect normal FCC pro-

cedures with respect to licensing of facilities and regulation of Comsat's common carrier activities.

Section 103. Section 301 is amended to eliminate the requirement of incorporation in the District of Columbia, thus giving Comsat the same flexibility as any other common carrier regarding selection of its place of incorporation.

Section 104. Section 303(a) is amended to eliminate Presidentially-appointed and common-carrier elected directors. The factors which originally warranted such representation on the Comsat board of directors, i.e., the need to provide formally for common carrier experience on the Board and the need for close governmental guidance, are no longer present, and the continued provision for such representation serves no meaningful purpose now that Comsat is a mature, viable commercial enterprise. The effect of this amendment would be to treat Comsat in the same manner as any other communications common carrier is treated with respect to its board of directors.

The deletion of the reference in Section 303(a) to the District of Columbia Business Corporation Act is a consequent editorial change resulting from the amendment to Section 301.

Section 303(a) is also amended to delete the requirement of a 66⅔ vote for amendment to Comsat's articles of incorporation. This requirement was originally included in the Act because a vote of that percentage was required under the District of Columbia Business Corporation Act. Elimination of this requirement is appropriate in view of the amendment permitting Comsat to incorporate in another jurisdiction, which may have a different statutory voting requirement.

Section 105. Section 302(a) is amended to permit Comsat to issue stock having par value. This affords the corporation the same flexibility as any other common carrier in determining whether to issue stock with or without par value and thereby obtain comparable tax treatment. Other Congressionally-created stock corporations modeled after Comsat are not subject to the no par stock requirement.

Section 304(b)(2) is amended to eliminate a special class of stock for common carriers and reduce the aggregate amount of shares that may be held by such carriers from 50 percent to 5 percent of Comsat's outstanding shares. With the passage of time the carriers, for various reasons, have sold their stock and no longer have any significant ownership interest in the corporation. The requirement that shares should be reserved for such carriers in any future issue no longer serves any practical purpose. The proposed 5 percent ceiling is sufficient to accommodate present carrier holdings and any foreseeable purchases by independent carriers.

The amendment of Section 304(d) is a consequent editorial change.

Section 304(e) is amended to eliminate reference to the District of Columbia Business Corporation Act, while retaining the substantive shareholder inspection rights that were intended by the 1962 Act.

Section 106. The right of Comsat to participate in satellite systems that are separate from the INTELSAT system is clarified in new Section 305(c). In addition, this section makes it clear that Comsat does not have exclusive statutory authority to operate such additional systems. Both of these points were implicit in the original Act, as interpreted by the FCC, and this section affirms the Commission's conclusions.

Section 305(c) is redesignated as Section 305(d). The amendment of this section is a consequent editorial change resulting from the amendment of Section 301 relating to the District of Columbia Business Corporation Act.

Section 107. As a result of this amendment, the State Department role specified in Section 402 of the Act is made applicable to new international satellite systems that are developed and operate pursuant to intergovernmental agreements to which the United States is a party. This amendment complements the addition of Section 201(c)(8) regarding the Executive Branch role in the planning, implementation and operation of these new international satellite systems.

Section 108. The amendment to Section 403(c) is a consequent editorial change resulting from the addition of Section 201(a)(8).

Section 109. The amendment to Section 404(a) requires the President to transmit to the Congress a summary of activities and accomplishments regarding additional international communications satellite systems which are encompassed by Section 201(a)(8).

COMPARISON WITH EXISTING LAW

TITLE I—SHORT TITLE, DECLARATION OF POLICY AND DEFINITIONS

SHORT TITLE

DECLARATION OF POLICY AND PURPOSE

SEC. 102 (a) The Congress hereby declares that it is the policy of the United States to establish, in conjunction and in cooperation with other countries, as expeditiously as practicable a commercial communications satellite system, as part of an improved global communications network, which will be responsive to public needs and national objectives, which will serve the communication needs of the United States and other countries, and which will contribute to world peace and understanding.

(b) The new and expanded telecommunication services are to be made available as promptly as possible and are to be extended to provide global coverage at the earliest practicable date. In effectuating this program, care and attention will be directed toward providing such services to economically less developed countries and areas as well as those more highly developed, toward efficient and economical use of the electromagnetic frequency spectrum, and toward the reflection of the benefits of this new technology in both quality of services and charges for such services.

(c) In order to facilitate this development and to provide for the widest possible participation by private enterprise, United States participation in the global system shall be in the form of a private corporation, subject to appropriate governmental regulation. It is the intent of Congress that all authorized users shall have nondiscriminatory access to the system; that maximum competition be maintained in the provision of equipment and services utilized by the system; that the corporation created under this Act be so organized and operated as to maintain and strengthen competition in the provision of communications services to the public; and that the activities of the corporation created under this Act and of the persons or companies participating in the ownership of the corporation shall be consistent with the Federal antitrust laws.

(d) It is not the intent of Congress by this Act to preclude the use of the communications satellite system for domestic communication services where consistent with the provisions of this Act nor to preclude the creation of additional communications satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest.

DEFINITIONS

SEC. 103. As used in this Act, and unless the context otherwise requires—

(1) the term "communications satellite system" refers to a system of communications satellites in space whose purpose is to relay telecommunication information between satellite terminal stations, together with such associated equipment and facilities for tracking, guidance, control, and command functions as are not part of the generalized launching, tracking, control, and command facilities for all space purposes;

(2) the term "satellite terminal station" refers to a complex of communication equipment located on the earth's surface, operationally connected with one or more terrestrial communication systems, and capable of transmitting telecommunications to or receiving telecommunications from a communications satellite system.

(3) the term "communications satellite" means an earth satellite which is intentionally used to relay telecommunication information;

(4) the term "associated equipment and facilities" refers to facilities other than satellite terminal stations and communications satellites, to be constructed and operated for the primary purpose of a communications satellite system, whether for administration and management, for research and development, or for direct support of space operations;

(5) term "research and development" refers to the conception, design, and first creation of experimental or prototype operational devices for the operation of a communications satellite system, including the assembly of separate components into a working whole, as distinguished from the term "production" which relates to the construction of such devices to fixed specifications compatible with repetitive duplication for operational applications; and

(6) the term "telecommunication" means any transmission, emission or reception of signs, signals, writings, images, and sounds or intelligence of any nature by wire, radio, optical, or other electromagnetic systems.

(7) the term "communications common carrier" has the same meaning as the term "common carrier" has when used in the Communications Act of 1934, as amended, and in addition includes, but only for purposes of sections 303 and 304, any individual, partnership, association, jointstock company, trust, corporation, or other entity which owns or controls, directly or indirectly or is under direct or indirect common control with, any such carrier; and the term "authorized carrier", except as otherwise provided for purposes of section 304 by section 304(b)(1), means a communications common carrier which has been authorized by the Federal Communications Commission under the Communications Act of 1934, as amended, to provide services by means of communications satellites;

(8) the term "corporation" means the corporation authorized by title III of this Act.

(9) the term "Administration" means the National Aeronautics and Space Administration; and

(10) the term "Commission" means the Federal Communications Commission.

TITLE II—FEDERAL COORDINATION, PLANNING, AND REGULATION

IMPLEMENTATION OF POLICY

SEC. 201. In order to achieve the objectives and to carry out the purposes of this Act—

(a) the President shall—

(1) aid in the planning and development and foster the execution of a national program for the establishment and operation, as expeditiously as possible, of a commercial communications satellite system;

(2) provide for continuous review of all phases of the development and operation of such a system, including the activities of a communications satellite corporation authorized under title III of this Act;

(3) coordinate the activities of governmental agencies with responsibilities in the field of telecommunication, so as to insure that there is full and effective compliance at all times with the policies set forth in this Act;

(4) exercise such supervision over rela-

tionships of the corporation with foreign governments or entities or with international bodies as may be appropriate to assure that such relationships shall be consistent with the national interest and foreign policy of the United States;

(5) insure that timely arrangements are made under which there can be foreign participation in the establishment and use of a communications satellite system;

(6) take all necessary steps to insure the availability and appropriate utilization of the communications satellite system for general governmental purposes except where a separate communications satellite system is required to meet unique governmental needs, or is otherwise required in the national interest; and

(7) so exercise his authority as to help attain coordinated and efficient use of the electromagnetic spectrum and the technical compatibility of the system with existing communications facilities both in the United States and abroad;

(8) aid in the planning and development of additional communications satellite systems which are developed pursuant to any agreement, understanding, or other arrangement between the United States and foreign countries; and in conjunction therewith, provide for continuous review of all phases of the development and operation of such systems, coordinate the activities of governmental agencies with responsibilities in the field of telecommunication, and carry out the functions set forth in subsections (a)(4) through (a)(7) of this section with respect to such systems and with respect to the corporation or any other communications common carrier or other entity which participates in the establishment, ownership, or operation of such systems.

(b) the National Aeronautics and Space Administration shall—

(1) advise the Commission on technical characteristics of the communications satellite system;

(2) cooperate with the corporation in research and development to the extent deemed appropriate by the Administration in the public interest;

(3) assist the corporation in the conduct of its research and development program by furnishing to the corporation, when requested, on a reimbursable basis, such satellite launching and associated services as the Administration deems necessary for the most expeditious and economical development of the communications satellite system;

(4) consult with the corporation with respect to the technical characteristics of the communications satellite system;

(5) furnish to the corporation, on request and on a reimbursable basis, satellite launching and associated services required for the establishment, operation, and maintenance of the communications satellite system approved by the Commission; and

(6) to the extent feasible, furnish other services, on a reimbursable basis, to the corporation in connection with the establishment and operation of the system.

(c) the Federal Communications Commission, in its administration of the provisions of the Communications Act of 1934, as amended, and as supplemented by this Act, shall—

(1) insure effective competition, including the use of competitive bidding where appropriate, in the procurement by the corporation and communications common carriers of apparatus, equipment, and services required for the establishment and operation of the communications satellite system and satellite terminal stations; and the Commission shall consult with the Small Business Administration and solicit its recommendations on measures and procedures which will insure that small business concerns are given an equitable opportunity to share in the procurement program of the corporation for property and services, including but not limited to research, development, construction, maintenance, and repair.

(2) insure that all present and future authorized carriers shall have nondiscriminatory use of, and equitable access to, the communications satellite system and satellite terminal stations under just and reasonable charges, classifications, practices, regulations, and other terms and conditions and regulate the manner in which available facilities of the system and stations are allocated among such users thereof;

(3) in any case where the Secretary of State, after obtaining the advice of the Administration as to technical feasibility, has advised that commercial communications to a particular foreign point by means of the communications satellite system and satellite terminal stations should be established in the national interest, institute forthwith appropriate proceedings under section 214(d) of the Communications Act of 1934, as amended, to require the establishment of such communication by the corporation and the appropriate common carrier or carriers;

(4) insure that facilities of the communications satellite system and satellite terminal stations are technically compatible and interconnected operationally with each other and with existing communications facilities;

(5) prescribe such accounting regulations and systems and engage in such ratemaking procedures as will insure that any economies made possible by a communications satellite system are appropriately reflected in rates for public communication services;

(6) approve technical characteristics of the operational communications satellite system to be employed by the corporation and of the satellite terminal stations: and

(7) grant appropriate authorizations for the construction and operation of each satellite terminal station, either to the corporation or to one or more authorized carriers or to the corporation and one or more such carriers jointly, as will best serve the public interest, convenience, and necessity. In determining the public interest, convenience, and necessity the Commission shall authorize the construction and operation of such stations by communications common carriers or the corporation, without preference to either;

[(8) authorize the corporation to issue any shares of capital stock, except the initial issue of capital stock referred to in section 304(a), or to borrow any moneys, or to assume any obligation in respect of the securities of any other person, upon a finding that such issuance, borrowing, or assumption is compatible with the public interest, convenience, and necessity and is necessary or appropriate for or consistent with carrying out the purposes and objectives of this Act by the corporation;

[(9)] *(8)* insure that no substantial additions are made by the corporation or carriers with respect to facilities of the system or satellite terminal stations unless such additions are required by the public interest, convenience, and necessity;

[(10)] *(9)* require, in accordance with the procedural requirements of section 214 of the Communications Act of 1934, as amended, that additions be made by the corporation or carriers with respect to facilities of the system or satellite terminal stations where such additions would serve the public interest, convenience, and necessity; and

[(11)] *(10)* make rules and regulations to carry out the provisions of this Act.

TITLE III—CREATION OF A COMMUNICATIONS SATELLITE CORPORATION

CREATION OF CORPORATION

SEC. 301. There is hereby authorized to be created a communications satellite corporation for profit which will not be an agency or establishment of the United States Government. The corporation shall be subject to the provisions of this Act and, to the extent consistent with this Act, [to the District of Columbia Business Corporation Act.] *to the laws governing corporations in the jurisdiction within the United States in which it is incorporated.* The right to repeal, alter, or amend this Act at any time is expressly reserved.

PROCESS OF ORGANIZATION

SEC. 302. The President of the United States shall appoint incorporators, by and with the advice and consent of the Senate, who shall serve as the initial board of directors until the first annual meeting of stockholders or until their successors are elected and qualified. Such incorporators shall arrange for an initial stock offering and take whatever other actions are necessary to establish the corporation, including the filing of articles of incorporation, as approved by the President.

SEC. 303. (a) [The corporation shall have a board of directors consisting of fifteen individuals who are citizens of the United States, of who one shall be elected annually by the board to serve as chairman. Three members of the board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, effective the date on which the other members are elected, and for terms of three years or until their successors have been appointed and qualified, and any member so appointed to fill a vacancy shall be appointed only for the unexpired term of the director whom he succeeds. The remaining twelve members of the record date for the annual meeting of stockholders is less than 45 per centum of the total number of shares of the voting capital stock of the corporation issued and outstanding, the number of members to be elected at such meeting by each group of stockholders shall be determined in accordance with the following table:

[When the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers is less than—]	[But not less than—]	[The number of members which stockholders who are communications common carriers are entitled to elect shall be—]	[And the number of members which other stockholders are entitled to elect shall be—]
[45 per centum	[40 per centum	[5	[7
40 per centum	35 per centum	4	8
35 per centum	25 per centum	3	9
25 per centum	15 per centum	2	10
15 per centum	0 per centum]	1	11
0 per centum]		0]	12]

[No stockholder who is a communications common carrier and no trustee for such a stockholder shall vote, either directly or indirectly, through the votes of subsidiaries or affiliated companies, nominees, or any persons subject to his direction or control, for more than three candidates for membership on the board, except that in the event the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers as of the record date for the annual meeting is less than 8 per centum of the total number of shares of the voting capital stock of the corporation issued and outstanding, and stockholder who is a communications common carrier shall be entitled to vote at such meeting for candidates for membership on the board in the same manner as all other stockholders.] *The corporation shall have a board of directors who shall be elected annually by the stockholders. All board members shall be citizens of the United States, and one board member shall be elected annually by the board to serve as chairman: Provided, however, that effective one year after this Act takes effect no directors incumbent shall be eligible to hold office as members of the board unless elected in accordance with this section.* [Subject to the foregoing limitations, the] The articles of incorporation of the corporation shall provide for cumulative voting [under section 27(d) of the District of Columbia Business Corporation Act (D.C. Code, sec. 29-911(d). The articles of incorporation of the corporation,] *and, in the manner prescribed by the laws governing corporations in the jurisdiction in which the corporation is incorporated,* may be amended, altered, changed or repealed by a vote [of not less than 66⅔ per centum] of the outstanding shares of the voting capital stock of the corporation owned by stockholders who are communications common carriers and by stockholders who are not communications common carriers, voting together, if such vote complies with all other requirements of this chapter and of the articles of incorporation of the corporation with respect to the amendment, alteration, change; or repeal of such articles. The corporation may adopt such bylaws as shall, notwithstanding the provisions of [section 36 of the District of Columbia Business Corporation Act (D.C. Code, sec. 29-916d),] *the law of any State or of the District of Columbia,* provide for the continued ability of the board to transact business under such circumstances of national emergency as the President of the United States, or the officer designated by him, may determine after February 18, 1969, would not permit a prompt meeting of a majority of the board to transact business.

(b) The corporation shall have a president, and such other officers as may be named and appointed by the board, at rates of compensation fixed by the board, and serving at the pleasure of the board. No individual other than a citizen of the United States may be an officer of the corporation. No officer of the corporation shall receive any salary from any source other than the corporation during the period of his employment by the corporation.

FINANCING OF THE CORPORATION

SEC. 304. (a) The corporation is authorized to issue and have outstanding, in such amounts as it shall determine, shares of capital stock, *with or* without par value, which shall carry voting rights and be eligible for dividends. The shares of such stock initially offered shall be sold at a price not in excess of $100 for each share and in a manner to encourage the widest distribution to the American public. Subject to the provisions of subsections (b) and (d) of this section, shares of stock offered under this subsection may be issued to and held by any person.

(b)(1) For the purposes of this section the term "authorized carrier" shall mean a communications common carrier which is specifically authorized or which is a member of a class of carriers authorized by the Commission to own shares of stock in the corporation upon a finding that such ownership will be consistent with the public interest, convenience, and necessity.

(2) Only those communications common carriers which are authorized carriers shall own shares of stock in the corporation at any time, and no other communications common carrier shall own shares either directly or indirectly through subsidiaries or affiliated companies, nominees, or any persons subject to its direction or control. [Fifty per centum of the shares of stock authorized for issuance at any time by the corporation shall be reserved for purchase by authorized carriers and such carriers shall in the aggregate be entitled to make purchases of the reserved shares in a total number not exceeding the total number of the nonreserved shares of any issue purchased by any other persons. At no time after the initial issue is completed] *after the effective date of this Act* shall the aggregate of the shares of voting stock of the corporation owned by authorized carriers directly or indirectly through subsidiaries or affiliated companies, nominees, or any persons subject to their direction or control exceed 50 *5* per centum of such shares issued and outstanding.

(3) At no time shall any stockholder who is not an authorized carrier or any syndicate or affiliated group of such stockholders, own more than 10 per centum of the shares of voting stock of the corporation issued and outstanding.

(c) The corporation is authorized to issue, in addition to the stock authorized by subsection (a) of this section, nonvoting securities, bonds, debentures, and other certificates of indebtedness as it may determine. Such nonvoting securities, bonds, debentures, or other certificates of indebtedness of the corporation as a communications common carrier may own shall be eligible for inclusion in the rate base of the carrier to the extent allowed by the Commission. The voting stock of the corporation shall not be eligible for inclusion in the rate base of the carrier.

(d) Not more than an aggregate of 20 per centum of the shares of stock of the corporation authorized by subsection (a) of this section [which are held by holders other than authorized carriers] may be held by persons of the classes described in paragraphs (1), (2), (3), (4), and (5) of section 310(a) of the Communications Act of 1934, as amended (47 U.S.C. 310).

(e) [The requirement of section 45(b) of the District of Columbia Business Corporation Act (D.C. Code, sec. 29-920(b) as to the percentage of stock which a stockholder must hold in order to have the rights of inspection and copying set forth in that subsection shall not be applicable in the case of holders of the stock of the corporation, and they may exercise such rights without regard to the percentage of stock they hold.] *Any record holder of the stock of the corporation, without regard to the percentage of stock so held, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, the corporation's record of shareholders and to make extracts therefrom.*

(f) Upon application to the Commission by any authorized carrier and after notice and hearing, the Commission may compel any other authorized carrier which owns shares of stock in the corporation to transfer to the applicant, for a fair and reasonable consideration, a number of such shares as the Commission determines will advance the public interest and the purposes of this Act. In its determination with respect to ownership of shares of stock in the corporation, the Commission, whenever consistent with the public interest, shall promote the widest possible distribution of stock among the authorized carriers.

PURPOSES AND POWERS OF THE CORPORATION

SEC. 305. (a) In order to achieve the objectives and to carry out the purposes of this Act, the corporation is authorized to—

(1) plan, initiate, construct, own, manage, and operate itself or in conjunction with foreign governments or business entities a commercial communications satellite system;

(2) furnish, for hire, channels of communication to United States communications common carriers and to other authorized entities, foreign and domestic; and

(3) own and operate satellite terminal stations when licensed by the Commission under section 201(c)(7).

(b) Included in the activities authorized to the corporation for accomplishment of the purposes indicated in subsection (a) of this section, are, among others not specifically named—

(1) to conduct or contract for research and development related to its mission;

(2) to acquire the physical facilities, equipment and devices necessary to its operations, including communications satellites and associated equipment and facilities; whether by construction, purchase, or gift;

(3) to purchase satellite launching and related services from the United States Government;

(4) to contract with authorized users, including the United States Government, for the services of the communications satellite system; and

(5) to develop plans for the technical specifications of all elements of the communications satellite system.

(c) *Nothing herein shall be deemed to vest in the corporation the exclusive right to establish, own or operate communications satellite systems or associated equipment and facilities separate from those used in conjunction with the global system referred to in Section 102(a) of this Act, nor to preclude the corporation from establishing, owning or operating such facilities.*

[(e)](*d*) To carry out the foregoing purposes, the corporation shall have the usual powers conferred upon a stock corporation by the [District of Columbia Business Corporation Act.] *laws of the jurisdiction in which it is incorporated.*

TITLE IV—MISCELLANEOUS

APPLICABILITY OF COMMUNICATIONS ACT OF 1934

SEC. 401. The corporation shall be deemed to be a common carrier within the meaning of section 3(h) of the Communications Act of 1934, as amended, and as much shall be fully subject to the provisions of title II and title III of that Act. The provision of satellite terminal station facilities by one communication common carrier to one or more other communications common carriers shall be deemed to be a common carrier activity fully subject to the Communications Act. Whenever the application of the provisions of this Act shall be inconsistent with the application of the provisions of the Communications Act, the provisions of this Act shall govern.

NOTICE OF FOREIGN BUSINESS NEGOTIATIONS

SEC. 402. Whenever [the corporation] *any communications common carrier or other entity which participates in the establishment, ownership and operation of a communications satellite system which is developed pursuant to any agreement, understanding*

or other arrangement between the United States and foreign countries shall enter into business negotiations with respect to facilities, operations, or services authorized by this Act *related to such system* with any international or foreign entity, it shall notify the Department of State of the negotiations, and the Department of State shall advise the corporation *carrier or other entity* of relevant foreign policy considerations. Throughout such negotiations the corporation *carrier or other entity* may request the Department of State to assist in the negotiations, and the Department shall render such assistance as may be appropriate.

SANCTIONS

SEC. 403. (a) If the corporation created pursuant to this Act shall engage in or adhere to any action, practices, or policies inconsistent with the policy and purposes declared in section 102 of this Act, or if the corporation or any other person shall violate any provision of this Act, or shall obstruct or interfere with any activities authorized by this Act, or shall refuse, fail, or neglect to discharge his duties and responsibilities under this Act, or shall threaten any such violation, obstruction, interference, refusal, failure, or neglect, the district court of the United States for any district in which such corporation or other person resides or may be found shall have jurisdiction, except as otherwise prohibited by law, upon petition of the Attorney General of the United States, to grant such equitable relief as may be necessary or appropriate to prevent or terminate such conduct or threat.

(b) Nothing contained in this section shall be construed as relieving any person of any punishment, liability, or sanction which may be imposed otherwise than under this Act.

(c) It shall be the duty of the corporation and all communications common carriers *or other entities* to comply, insofar as applicable, with all provisions of this Act and all rules and regulations promulgated thereunder.

REPORTS TO THE CONGRESS

SEC. 404. (a) The President shall transmit to the Congress in January of each year a report which shall include a comprehensive description of the activities and accomplishments during the preceding calendar year under the national program referred to in section 201(a)(1), together with an evaluation of such activities and accomplishments in terms of the attainment of the objectives of this Act, and any recommendations for additional legislative or other action which the President may consider necessary or desirable for the attainment of such objectives, *and, where appropriate, a summary of activities and accomplishments with respect to communications satellite systems referred to in section 201(a)(8)*.

(b) The corporation shall transmit to the President and the Congress, annually and at such other times as it deems desirable, a comprehensive and detailed report of its operations, activities, and accomplishments under this Act.

(c) The Commission shall transmit to the Congress, annually and at such other times as it deems desirable, (i) a report of its activities and actions on anticompetitive practices as they apply to the communications satellite programs; (ii) an evaluation of such activities and actions taken by it within the scope of its authority with a view to recommending such additional legislation which the Commission may consider necessary in the public interest; and (iii) an evaluation of the capital structure of the corporation so as to assure the Congress that such structure is consistent with the most efficient and economical operation of the corporation.

By Mr. STAFFORD:

S. 3454. A bill to amend the Occupational Safety and Health Act of 1970, to provide the initial onsite inspections not subject to penalties in certain cases, and to provide a more adequate means of voluntary compliance with the provisions of this Act, and for other purposes. Referred to the Committee on Labor and Public Welfare.

Mr. STAFFORD. Mr. President, I introduce, for appropriate reference, a bill to amend the Occupational Safety and Health Act of 1970. I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 3454

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Occupational Safety and Health Amendments of 1974".

SEC. 2. Section 8(g) of the Occupational Safety and Health Act of 1970 is amended by adding at the end thereof the following new paragraph:

"(3) The Secretary, after consultation with the Secretary of Heatlh, Education, and Welfare, shall compile and publish in an appropriate form, not less often that twice a year, a report of the classes of violations of this Act most often occurring in the most recent six month period immediately preceding the issuance of such report, classified by industry and occupation. Upon request, the Secretary shall furnish without charge, a copy of the report required by this paragraph to any trade association or labor organization."

SEC. 3. (a) Section 9(a) of the Occupational Safety and Health Act of 1970 is amended by inserting "(1)" immediately after the subsection designation and by striking out "If" and inserting in lieu thereof the following: "Except as provided in subsection (b) of this Act, if".

(b) Subsection (b) and (c) of section 9 of such Act are redesignated as paragraph (2) and (3), respectively.

(c) Section 9 of such Act is further amended by adding at the end thereof the following new subsection:

"(b)(1) Whenever an employer—

"(A) requests an initial onsite inspection in order to facilitate compliance with the provisions of this Act, and

"(B) has not been cited for a serious violation of the provisions of this Act since its enactment,

the Secretary is authorized to conduct initial onsite inspections and investigations in accordance with the provisions of section 8, of such employer.

"(2) If, after any inspection or investigation conducted under this subsection, the Secretary or his authorized representative finds that an employer has violated a requirement of section 5 of this Act, of any standard, rule or order promulgated pursuant to section 6 of this Act, he shall immediately notify that employer. The Secretary is authorized to establish procedures for the notification and the contents of the notification prescribed by this paragraph. Each such notification shall fix a reasonable time for abatement of the violation except that such reasonable time shall in no event be more than twenty working days from the receipt of such notification.

"(3) At the end of the period of abatement prescribed in the notification under paragraph (2), the Secretary or his authorized representative, shall undertake an inspection or investigation, in accordance with the provisions of section 8 of this Act. If, upon such inspection or investigation, the Secretary or his authorized representative finds that an employer is in violation of a requirement of section 5 of this Act, of any standard, rule or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, he shall immediately issue a citation to that employer under subsection (a) of this section. In considering any penalty to be assessed under section 17 in connection with such a citation, the Secretary shall consider the extent to which temporary measures were taken to abate the violation, and if the Secretary determines that the failure to abate the violation was serious and unjustified, he is authorized to propose a penalty to be assessed from the date of the initial onsite inspection.

"(4) The provisions of the subsection shall apply to each employer only once."

ADDITIONAL COSPONSORS OF BILLS

S. 1539

At the request of Mr. TALMADGE, the Senator from South Carolina (Mr. THURMOND) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of amendment No. 1239 to S. 1539, the Education Amendments of 1974.

S. 2665

At the request of Mr. JAVITS, the Senator from Wyoming (Mr. MCGEE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Illinois (Mr. PERCY), the Senator from Massachusetts (Mr. BROOKE), the Senator from Kansas (Mr. PEARSON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Illinois (Mr. STEVENSON), the Senator from Maryland (Mr. MATHIAS), the Senator from Pennsylvania (Mr. HUGH SCOTT), the Senator from Washington (Mr. JACKSON), the Senator from Michigan (Mr. GRIFFIN), the Senator from Florida (Mr. CHILES), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Utah (Mr. BENNETT), the Senator from Maine (Mr. HATHAWAY) the Senator from Utah (Mr. MOSS), the Senator from California (Mr. CRANSTON), and the Senator from Texas (Mr. TOWER) were added as cosponsors of S. 2665, authorizing U.S. participation in the Fourth Replenishment of the International Development Association—IDA.

S. 3101

At the request of Mr. BROCK, the Senator from Montana (Mr. METCALF) was added as a cosponsor to S. 3101, a bill to prescribe a standard for increasing the money supply.

S. 3215

At the request of Mr. BROCK, the Senator from South Dakota (Mr. MCGOVERN) was added as a cosponsor of S. 3215, a bill to authorize the Secretary of Commerce to enhance and validate certain export expansion activities.

S. 3339

At the request of Mr. HUMPHREY, the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Maine (Mr. HATHAWAY) were added as cosponsors of S. 3339, a bill to amend the program of supplemental security income for the aged, blind, and disabled—established by title XVI of the Social Security Act—to provide for cost-of-living increases in the benefits provided thereunder.

S. 3371

At the request of Mr. ROBERT C. BYRD (for Mr. EASTLAND), the Senator from Florida (Mr. CHILES) was added as a cosponsor of S. 3371, to amend the Forest Pest Control Act of June 25, 1947.

S. 3398

At the request of Mr. HARTKE, the Senator from Rhode Island (Mr. PELL), was added as a cosponsor of S. 3398, to provide a 10-year delimiting period for the pursuit of educational programs by veterans, wives, and widows.

S. 3403

At the request of Mr. DOLE, the Senator from Hawaii (Mr. FONG), the Senator from Wyoming (Mr. MCGEE), and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. 3403, to amend the act of August 31, 1922, to prevent the introduction and spread of diseases and parasites harmful to honeybees.

STANDBY ENERGY EMERGENCY AUTHORITIES ACT—AMENDMENTS

AMENDMENT NO. 1265

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

Mr. DOLE (for himself and Mr. HUGH SCOTT) submitted an amendment, intended to be proposed by them, jointly to the bill (S. 3267) to provide standby emergency authority to assure that the essential energy needs of the United States are met, and for other purposes.

AMENDMENT NO. 1266

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

NATIONAL SPEED LIMIT INCREASE

Mr. DOLE. Mr. President, last fall, when the Arab embargo was at its height, a law was passed to set a national speed limit of 55 miles per hour. This action was taken to conserve precious gasoline at a time when we did not really know how long the embargo would last or how serious the situation would become. So the law was passed, and I believe everyone agrees that it has saved fuel, cut into the growing demand for fuel—and as an additional benefit has saved many lives which might otherwise have been taken in speed-related accidents.

These points are all to the good and should not be ignored or minimized. But there is another side to the coin, and I believe it deserves consideration.

EMBARGO ENDED

In the first place, times and circumstances have changed somewhat. The Arab embargo has been lifted, and most of our supply problems are considerably eased. The prices for this imported oil have not declined significantly, but that is another matter which must be dealt with on a broad front. But the point is that the embargo is ended. We are not in a crisis situation with supplies, and measures—such as the 55 miles per hour limit—which were appropriate to that crisis may require reconsideration now.

NEGATIVE IMPACT

In the second place, some of these measures have impacts which are definitely on the negative side. It may be only a matter of inconvenience in some cases, but in others it may amount to real and serious economic damage.

And I think this is a very important concern here in Kansas. In Washington, D.C., or in New York City, a 55-mile-per-hour limit may mean very little to the average person in terms of his actual highway travel. People in the major urban areas simply do not get out on the highway as often; and when they do, it is usually for relatively short trips, since cities and major urban centers are so close together. And when greater distances have to be covered, there is also a great number of alternative sources of transportation, such as buses, railroads, and airlines available in our major urban areas.

AUTOMOBILES ESSENTIAL IN KANSAS

But here in Kansas the automobile is almost indispensible, and the distances are great. It is some 209 miles between Kansas City and Wichita. Almost exactly the same distance from New York City, you will find Boston and Washington, D.C., with Philadelphia, Wilmington, New Haven, and Providence and tens of millions of people in between.

But in Kansas we do not have the choice of traveling by Metroliner or air shuttle. When most Kansans need to go somewhere, they must use their cars. And I believe that under the present circumstances, requiring the Kansas motorist to go only 55 miles per hour is inappropriate and not absolutely essential to the Nation's welfare.

PROBLEM IN TRUCKING INDUSTRY

There is the additional factor that the 55 mile limit is having an extremely serious impact on the American trucking industry. Time is money to this industry and the new speed limit has cost the Nation's travelers a great deal in lengthened trip times and reduced loads per month while they have faced even higher fuel prices and reduced fuel mileage.

Truckers are frustrated by this situation, and they have threatened to take out their frustrations by staging another nationwide strike on May 13. I believe such an action would be wrong and would be against their interests and those of the entire country. But the situation is there, and I feel every appropriate effort should be made to provide them some relief.

BILL TO SET 60-MILES-PER-HOUR LIMIT

Therefore, I am introducing an amendment to raise the limit to 60. I believe such an increase is justifiable in light of the current fuel supplies. It is consistent with the need to continue some conservation efforts. And it would help make the daily travel requirements of most motorists much more enjoyable and agreeable.

As I have traveled around Kansas visiting with many people, I have come to feel that they consider 60 miles per hour a better and more acceptable speed. It is not that much more costly in terms of fuel use than 55 miles per hour, but it is a limit to which people seem better able to live with and abide by than the present one.

DANGER TO KANSAS BEEF INDUSTRY

As I said, a truck strike would be against the best interests of the entire economy, but of particular concern to me is the Kansas beef industry. Perhaps no other business sector depends on trucks so totally as the beef industry, and it was dealt a devastating blow by the first strike. Many beef processors, feedlots and cattlemen would be ruined and forced to go out of business by another strike. This prospect is already having a grave impact in Kansas where the billion-dollar beef industry is the largest single component of our economy.

Cattle sales are up and prices are down. And if the strike should come to pass it will mean increased beef prices at the supermarket and eventually another round of shortages.

But the trucker's problems cannot be dealt with to the exclusion of other travelers' interests. We could not have a higher speed limit for trucks and a lower one for cars. They must be dealt with together, so I am proposing a uniform 60-miles-per-hour limit for everyone.

So, Mr. President, I offer this amendment for consideration and will welcome the cosponsorship and support of my colleagues.

I will call it up when S. 3267 is considered and believe that it has widespread support among the motoring public in America.

I ask unanimous consent that the amendment be printed in the RECORD.

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

AMENDMENT NO. 1266

At the end of the bill add the following new section:

SEC. —. Section 2 of the Emergency Highway Energy Conservation Act is amended by inserting at the end thereof a new subsection as follows:

"(g) Notwithstanding the provisions of subsection (b), after the sixtieth day after the date of enactment of this subsection, the Secretary of Transportation shall not approve any project under section 106 of title 23 of the United States Code in any State which as (1) a maximum speed limit on any public highway within its jurisdiction in excess of sixty miles per hour, and (2) a speed limit for all types of motor vehicles other than sixty miles per hour on any portion of any public highway within its jurisdiction of four or more traffic lanes, the opposing lanes of which are physically separated by means other than striping, which portion of highway had a speed limit for all types of motor vehicles of sixty miles, or more, per hour on November 1, 1973, and (3) a speed limit on any other portion of a public highway within its jurisdiction which is not uniformly applicable to all types of motor vehicles using such portion of highway, if on November 1, 1973, such portion of highway had a speed limit which was uniformly applicable to all types of motor vehicles using it. A lower speed limit may be established for any vehicle operating under a special permit because of any weight or dimension of such vehicle, including any load thereon. Clauses (2) and (3) of this section shall not apply to any portion of a highway during such time that the condition of the highway, weather, an accident, or other condition creates a temporary hazard to the safety of traffic on such portion of a highway.".

SEC. 2. Subsection (d) of section 2 of the Emergency Highway Energy Conservation Act is amended by striking out "reduction in

speed limits to conserve fuel" and inserting in lieu thereof "change in speed limits pursuant to this section".

AUTHORIZATION OF APPROPRIATIONS FOR CARRYING OUT PROVISIONS OF THE INTERNATIONAL ECONOMIC POLICY ACT OF 1972—AMENDMENT

AMENDMENT NO. 1627

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

Mr. HATHAWAY submitted an amendment, intended to be proposed by him, to the bill (S. 2986) to authorize appropriations for carrying out the provisions of the International Economic Policy Act of 1972, as amended.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 1026

At the request of Mr. MCGOVERN, the Senator from Alaska (Mr. GRAVEL), the Senator from California (Mr. TUNNEY), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Minnesota (Mr. HUMPHREY), the Senators from Montana (Mr. MANSFIELD and Mr. METCALF), the Senator from Nebraska (Mr. HRUSKA), the Senator from New Mexico (Mr. MONTOYA), the Senators from North Dakota (Mr. YOUNG and Mr. BURDICK), the Senator from South Dakota (Mr. ABOUREZK) and the Senator from Washington (Mr. MAGNUSON) were added as cosponsors to amendment No. 1026, relating to Federal assistance to school districts with a high concentration of students whose parents live and work on a Federal installation.

AMENDMENT NO. 1236

At the request of Mr. HUMPHREY, the Senator from Maine (Mr. HATHAWAY), the Senator from Maryland (Mr. MATHIAS), the Senator from Minnesota (Mr. MONDALE) were added as cosponsors of amendment No. 1236 to S. 1539, the Education Amendments of 1974.

NOTICE OF PUBLIC HEARINGS ON PREPAID LEGAL PLANS

Mr. TUNNEY. Mr. President, as chairman of the Subcommittee on Representation of Citizen Interests of the Committee on the Judiciary, I desire to give notice that the subcommittee will hold public hearings on May 14 and 15, 1974 on recent developments in prepaid legal plans. The hearings will commence on May 14, at 9:30 a.m. and on May 15 at 10 a.m. in room 6226, Dirksen Senate Office Building.

The subcommittee consists of members of the Judiciary Committee including Senators SAM ERVIN, JR., CHARLES MCC. MATHIAS, JR., MARLOW W. COOK, BIRCH BAYH and myself.

ANNOUNCEMENT OF HEARINGS ON S. 2008, S. 1029, S. 1772, AND S. 2587

Mr. WILLIAMS. Mr. President, I wish to announce that the Subcommittee on Labor of the Committee on Labor and Public Welfare will hold hearings in Washington, D.C., on S. 2008, S. 1029, S. 1772, and S. 2587. S. 2008, which I introduced with Senator JAVITS, will provide minimum Federal standards for State workers' compensation programs. S. 1029, introduced by Senator TAFT, S. 1772, introduced by Senator SPARKMAN, and S. 2587, introduced by Senator HUMPHREY, all will provide compensation for various respiratory diseases.

The first 2 days will be on Thursday, May 16, 1974, and Friday, May 17, 1974, in room 4232, Dirksen Senate Office Building, at 9:30 a.m. Additional hearings will be scheduled at a later date.

Those persons or groups wishing to testify or to submit testimony for the record should contact Donald Elisburg, counsel of the Labor Subcommittee, room G-237, Dirksen Senate Office Building, or telephone 202-225-3674.

NOTICE CONCERNING NOMINATIONS BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. ROBERT C. BYRD. Mr. President, the following nominations have been referred to and are now pending before the Committee on the Judiciary:

James L. Browning, Jr., of California, to be U.S. attorney for the northern district of California for the term of 4 years. (Reappointment.)

Robert W. Rust, of Florida, to be U.S. attorney for the southern district of Florida for the term of 4 years. (Reappointment.)

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Tuesday, May 14, 1974, any representations or objections they may wish to present concerning the above nominations, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

NOTICE OF JOINT ECONOMIC COMMITTEE HEARINGS ON ECONOMIC OUTLOOK

Mr. HUMPHREY. Mr. President, on Friday, May 10, Dr. Herb Stein, Chairman of the Council of Economic Advisers, will testify before the Joint Economic Committee Subcommittee on Consumer Economics, which I chair.

We have asked Dr. Stein to appear before the subcommittee to give us the administration's current assessment of the state of the economy.

We know that the U.S. economy suffered a recession in the first quarter of this year. Instead of providing an increase in the output of goods and services available for the Nation, the economy produced about $12 billion less.

At the same time inflation continued to accelerate, rising to an incredible 11-percent rate.

In the face of these disastrous economic statistics, the administration continues to say that economic improvement is just around the corner.

The chief objective of the hearing will be to explore whether an economic recovery is developing and when we can expect inflation to moderate. We also expect to review the administration's current economic policies for meeting the twin problems of inflation and recession.

The subcommittee will also hear the testimony of Dr. Gerard F. Adams of the Wharton School of Finance who will testify following Dr. Stein. Dr. Adams will present the most recent Wharton econometric forecast.

The hearing will be held in room 318 of the Russell Senate Office Building beginning at 10 a.m. on Friday, May 10, 1974.

ADDITIONAL STATEMENTS

CRIME

Mr. BROCK. Mr. President, one of the truly critical problems that we still have with us today in these United States is that of crime. There are many, many thousands of dedicated people who work diligently every day to prevent crime and the heartbreak that it ultimately causes. I have just read a most intriguing article by Dr. George L. Kirkham, an assistant professor in Florida State University's School of Criminology.

Dr. Kirkham, not content with his knowledge of the duties and fears of a policeman, decided to become a policeman himself to better understand the trial through which they go each day. His account of his experience is almost unbelievable, and I think every American should read it. Crime is one of our truly mammoth problems and Dr. Kirkham's experiences may help in understanding some of the problems facing our law enforcement officials. I ask unanimous consent, Mr. President, that Dr. Kirkham's article be printed in the RECORD.

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

WHAT A PROFESSOR LEARNED WHEN HE BECAME A "COP"

(By Dr. George L. Kirkham)

Persons such as myself, members of the academic community, have traditionally been quick to find fault with the police.

From isolated incidents reported in the various news media, we have fashioned for ourselves a stereotyped image of the police officer. . . . We see the brutal cop, the racist cop, the grafting cop, the discourteous cop. What we do not see, however, is the image of thousands of dedicated men and women struggling against almost impossible odds to preserve our society and everything in it which we cherish.

For some years, first as a student and later as a professor of criminology, I found myself troubled by the fact that most of us who write books and articles on the police have never been policemen ourselves. . . . I decided to take up this challenge: I would become a policeman myself. . . .

As I write this, I have completed over 100 tours of duty as a patrolman. Although still a rookie officer, so much has happened in the short space of six months that I will never again be either the same man or the same scientist who stood in front of the station on that first day. . . .

I had always personally been of the opinion that police officers greatly exaggerate the amount of verbal disrespect and physical abuse to which they are subjected in the line of duty. . . . As a college professor, I had grown accustomed to being treated with uniform respect and deference by those I encountered. I somehow naively assumed that

this same quality of respect would carry over into my new role as a policeman. . . .

I quickly found that my badge and uniform, rather than serving to shield me from such things as disrespect and violence, only acted as a magnet which drew me toward many individuals who hated what I represented. . . .

Several hours into my first evening on the streets, my partner and I were dispatched to a bar in the downtown area to handle a disturbance complaint. Inside, we encountered a large and boisterous drunk who was arguing with the bartender and loudly refusing to leave.

As someone with considerable experience as a correctional counselor and mental-health worker, I hastened to take charge of the situation. "Excuse me, sir," I smiled pleasantly at the drunk, "but I wonder if I could ask you to step outside and talk with me for a minute?"

The man stared at me through bloodshot eyes in disbelief for a second, raising one hand to scratch the stubble of several days' growth of beard. Then suddenly, without warning, it happened: He swung at me, luckily missing my face and striking me on the right shoulder.

I couldn't believe it. What on earth had I done to provoke such a reaction? Before I could recover from my startled condition, he swung again—this time tearing my whistle chain from a shoulder epaulet. After a brief struggle, we had the still-shouting, cursing man locked in the back of our cruiser. I stood there, breathing heavily with my hair in my eyes as I surveyed the damage to my new uniform and looked in bewilderment at my partner, who only smiled and clapped me affectionately on the back.

"Something is very wrong," I remember thinking to myself in the front seat as we headed for the jail. I had used the same kind of gentle, rapport-building approach with countless offenders in prison and probation settings. It had always worked so well there.

What was so different about being a policeman? In the days and weeks which followed, I was to learn the answer to this question the hard way. As a university professor, I had always sought to convey to students the idea that it is a mistake to exercise authority, to make decisions for other people or rely upon orders and commands to accomplish something.

As a police officer myself, I was forced time and again to do just that. For the first time in my life, I encountered individuals who interpreted kindness as weakness, as an invitation to disrespect or violence. I encountered men, women and children who, in fear, desperation or excitement, looked to the person behind my blue uniform and shield for guidance, control and direction. As someone who had always condemned the exercise of authority, the acceptance of myself as an unavoidable symbol of authority came as a bitter lesson.

I found that there was a world of difference between encountering individuals, as I had, in mental-health or correctional settings and facing them as the patrolman must: when they are violent, hysterical, desperate. When I put the uniform of a police officer on, I lost the luxury of sitting in an air-conditioned office with my pipe and books, calmly discussing with a rapist or armed robber the past problems which had led him into trouble with the law.

Such offenders had seemed so innocent, so harmless in the sterile setting of prison. The often-terrible crimes which they had committed were long since past, reduced like their victims to so many printed words on a page.

Now, as a police officer, I began to encounter the offender for the first time as a very real menace to my personal safety and the security of our society. The felon was no longer a harmless figure sitting in blue denims across my prison desk, a "victim" of society to be treated with compassion and leniency. He became an armed robber fleeing from the scene of a crime, a crazed maniac threatening his family with a gun, someone who might become my killer crouched behind the wheel of a car on a dark street.

Like crime itself, fear quickly ceased to be an impersonal and abstract thing. It became something which I regularly experienced. It was a tightness in my stomach as I approached a warehouse where something had tripped a silent alarm. I could taste it as a dryness in my mouth as we raced with blue lights and siren toward the site of a "Signal Zero" (armed and dangerous) call. For the first time in my life, I came to know—as every policeman knows—the true meaning of fear. . . .

I recall particularly a dramatic lesson in the meaning of fear which took place shortly after I joined the force. My partner and I were on routine patrol one Saturday evening in a deteriorated area of cheap bars and pool halls when we observed a young male double-parked in the middle of the street. I pulled alongside and asked him in a civil manner to either park or drive on, whereupon he began loudly cursing us and shouting that we couldn't make him go anywhere.

An angry crowd began to gather as we got out of our patrol car and approached the man, who was by this time shouting that we were harassing him and calling to bystanders for assistance. As a criminology professor, some months earlier I would have urged that the police officer who was now myself simply leave the car double-parked and move on rather than risk an incident.

As a policeman, however, I had come to realize that an officer can never back down from his responsibility to enforce the law. Whatever the risk to himself, every police officer understands that his ability to back up the lawful authority which he represents is the only thing which stands between civilization and the jungle of lawlessness.

The man continued to curse us and adamantly refused to move his car. As we placed him under arrest and attempted to move him to our cruiser, an unidentified male and female rushed from the crowd which was steadily enlarging and sought to free him. In the ensuing struggle, a hysterical female unsnapped and tried to grab my service revolver, and the now-angry mob began to converge on us.

Suddenly, I was no longer an "ivory-tower" scholar watching typical police "overreaction" to a street incident—but I was part of it and fighting to remain alive and uninjured. I remember the sickening sensation of cold terror which filled my insides as I struggled to reach our car radio. I simultaneously put out a distress call and pressed the hidden electric release button on our shotgun rack as my partner sought to maintain his grip on the prisoner and hold the crowd at bay with his revolver.

How harshly I would have judged the officer who now grabbed the shotgun only a few months before. I rounded the rear of our cruiser with the weapon and shouted at the mob to move back. The memory flashed through my mind that I had always argued that policemen should not be allowed to carry shotguns because of their "offensive" character and the potential damage to community relations as a result of their display.

How readily as a criminology professor I would have condemned the officer who was now myself, trembling with fear and anxiety and menacing an "unarmed" assembly with an "offensive" weapon. But circumstances had dramatically changed my perspective, for now it was *my* life and safety that were in danger, *my* wife and child who might be mourning. Not "a policeman" or Patrolman Smith—but *me*, George Kirkham!

I felt accordingly bitter when I saw the individual who had provoked this near riot back on the streets the next night, laughing as though our charge of "resisting arrest with violence" was a big joke. Like my partner, I found myself feeling angry and frustrated shortly afterward when this same individual was allowed to plead guilty to a reduced charge of "breach of peace."

As someone who had always been greatly concerned about the rights of offenders, I now began to consider for the first time the rights of police officers. As a police officer, I felt that my efforts to protect society and maintain my personal safety were menaced by many of the court decisions and lenient parole-board actions I had always been eager to defend.

An educated man, I could not answer the questions of my fellow officers as to why those who kill and maim policemen, men who are involved in no less honorable an activity than holding our society together, should so often be subjected to minor penalties. I grew weary of carefully following difficult legal restrictions while thugs and hoodlums consistently twisted the law to their own advantage.

I remember standing in the street one evening and reading a heroin pusher his rights, only to have him convulse with laughter halfway through and finish reciting them word for word, from memory. He had been given his "rights" under the law, but what about the rights of those who were the victims of people like himself? For the first time, questions such as these began to bother me.

As a corrections worker and someone raised in a comfortable middle-class home, I had always been insulated from the kind of human misery and tragedy which become part of the policeman's everyday life. Now, the often-terrible sights, sounds and smells of my job began to haunt me hours after I had taken the blue uniform and badge off. . . .

In my new role as a police officer, I found that the victims of crime ceased to be impersonal statistics. As a corrections worker and criminology professor, I had never given much thought to those who are victimized by criminals in our society. Now the sight of so many lives ruthlessly damaged and destroyed by the perpetrators of crime left me preoccupied with the question of society's responsibility to protect the men, women and children who are victimized daily. . . .

The same kinds of daily stresses which affected my fellow officers soon began to take their toll on me. I became sick and tired of being reviled and attacked by criminals who could usually find a most sympathetic audience in judges and jurors eager to understand their side of things and provide them with "another chance." I grew tired of living under the ax of news media and community pressure groups, eager to seize upon the slightest mistake made by myself or a fellow police officer.

As a criminology professor, I had always enjoyed the luxury of having great amounts of time in which to make difficult decisions. As a police officer, however, I found myself forced to make the most-critical choices in a time frame of seconds rather than days: to shoot or not to shoot, to arrest or not to arrest, to give chase or let go—always with the nagging certainty that others, those with great amounts of time in which to analyze and think, stood ready to judge and condemn me for whatever action I might take or fail to take. . . .

I found myself progressively awed by the complexity of tasks faced by men whose work I once thought was fairly simple and straightforward. Indeed, I would like to take the average clinical psychologist or psychiatrist and invite him to function for just a day in the world of the policeman, to confront people whose problems are both serious

and in need of immediate solution. I would invite him to walk, as I have into a smoke-filled pool room where five or six angry men are swinging cues at one another. I would like the prison counselor and parole officer to see their client, Jones—not calm and composed in an office setting but as the street cop sees him: beating his small child with a heavy belt buckle, or kicking his pregnant wife.

I wish that they, and every judge and juror in our country, could see the ravages of crime as the cop on the beat must: innocent people cut, shot, beaten, raped, robbed and murdered. It would, I feel certain, give them a different perspective on crime and criminals, just as it has me.

For all the human misery and suffering which police officers must witness in their work, I found myself amazed at the incredible humanity and compassion which seems to characterize most of them. My own stereotypes of the brutal, sadistic cop were time and again shattered by the sight of humanitarian kindness on the part of the thin blue line. . . .

As a police officer, I found myself repeatedly surprised at the ability of my fellow patrolmen to withstand the often-enormous daily pressures of their work. Long hours, frustration, danger and anxiety—all seemed to be taken in stride as just part of the reality of being a cop. I went eventually through the humbling discovery that I, like the men in blue with whom I worked, was simply a human being with definite limits to the amount of stress I could endure in a given period of time.

I recall in particular one evening when this point was dramatized to me. It had been a long, hard shift—one which ended with a high-speed chase of a stolen car in which we narrowly escaped serious injury when another vehicle pulled in front of our patrol car.

As we checked off duty, I was vaguely aware of feeling tired and tense. My partner and I were headed for a restaurant and a bite of breakfast when we both heard the unmistakable sound of breaking glass coming from a church and spotted two long-haired teen-age boys running from the area. We confronted them, and I asked one for identification, displaying my own police identification. He sneered at me, cursed and turned to walk away.

The next thing I knew I had grabbed the youth by his shirt and spun him around, shouting, "I'm talking to you punk!" I felt my partner's arm on my shoulder and heard his reassuring voice behind me, "Take it easy, Doc!" I released my grip on the adolescent and stood silently for several seconds, unable to accept the inescapable reality that I had "lost my cool."

My mind flashed back to a lecture during which I had told my students, "Any man who is not able to maintain absolute control of his emotions at all times had no business being a police officer." . . .

As a police officer myself, I found that society demands too much of its policemen: not only are they expected to enforce the law but to be curbside psychiatrists, marriage counselors, social workers and even ministers and doctors. . . .

I have often asked myself the questions: "Why does a man become a cop? What makes him stay with it?" . . . The only answer to this question I have been able to arrive at is one based on my own limited experience as a policeman. Night after night, I came home and took off the badge and blue uniform with a sense of satisfaction and contribution to society that I have never known in any other job. . . .

For too long now, we in America's colleges and universities have conveyed to young men and women the subtle message that there is somehow something wrong with "being a cop." It's time for that to stop.

JUVENILE JUSTICE

Mr. BAYH. Mr. President, as chairman of the Subcommittee to Investigate Juvenile Delinquency, I have long felt that solution to the problem of juvenile delinquency must be found at the local level through the involvement and discussions with concerned citizens and organizations. I want to share with you some ideas of youth from my home State of Indiana who have impressed me with their thoughts about the juvenile justice system.

Recently the Coalition for Juvenile Justice of Anderson, Ind., arranged for me to meet with community leaders and active citizens regarding juvenile justice legislation and the effectiveness of youth programs. This meeting was sponsored by the League of Women Voters, the Red Cross, the YMCA, the UAW-CAP Council and many other dedicated individuals and groups. I was gratified by the large turnout of concerned citizens who deal with the problems of youth on a day-to-day basis and from whom I learned about what needs to be done at the community, State and Federal level to meet the needs of children in trouble.

As a follow-up to the meeting the Madison-Hamilton County UAW-CAP Council, led by Hester Vest, president, held an essay contest on the subject "Your Opinion on Juvenile Justice" in the elementary and high schools of Anderson. With the help of many teachers, discussions were held in many classrooms on law relating to youth, juvenile courts and juvenile corrections. I have been very impressed by the originality and usefulness of the essays on these subjects by the many youths who wrote essays in this contest. The thoughtful essays of the following three final winners would be of interest to my colleague in Congress:

Grade school, Linda Gray, College Corner Grade School.

The 7th, 8th, and 9th grade, Sandy Danner, Highland Junior High School.

The 10th, 11th, and 12th grade, Jan Barnes, Highland High School.

I ask unanimous consent that these three essays be printed in the RECORD.

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

MY OPINION ON JUVENILE JUSTICE

(By Sandy Danner)

I think that if a guy or a girl gets in trouble with the police they should be sent to a juvenile court. At the juvenile court I think they should talk to the person in charge to see why they did it and see if they can find out the problem, if there is one. If that doesn't help then I would try maybe to discipline them in some way to make them understand. I wouldn't treat the kids like animals. They are human beings too. I would just sort of make it hard on them, like don't let them do anything they want. Let them prove to you that they can be trusted. I also think that if they don't do what they are told and still cause trouble the boy or girl should be sent to a boys' or girls' school. If the kid doesn't cause trouble and does what he or she is supposed to do they should let up on them because it's not fair for a person who cause trouble and another person who doesn't cause trouble to get to do the same thing. They should be punished if they break any of the rules. They shouldn't baby anybody or treat anybody unfairly.

I think each boy or girl has a right to have a trial, no matter what he or she did. It's only fair and if they did commit the crime they should be punished for it. I don't think they should stay in the juvenile court all their life. They should get out in about 7 or 8 months, but it really depends on what they did. That's my opinion about juvenile justice.

MY OPINION ON JUVENILE JUSTICE

(By Linda Gray)

Juvenile delinquency refers to a juvenile who has broken the law. It includes acts that would be crimes if adults committed them and also acts that are only for boys and girls, like staying out after curfew.

Juvenile delinquency is one of the most critical aspects of the crime problems facing the nation today. Its percentage has risen in the past decade 193% in crimes such as murder, rape, and robbery. As where thefts have increased 99%.

The legal term juvenile delinquent was established to keep young law breakers from a criminal record. In most cases, juveniles are tried in juvenile court, where the main point is to rehabilitate offenders, rather than punish them.

Over 90% of the delinquents of today had unhappy homes and felt unhappy with life circumstances.

Many efforts have been made for programs to prevent delinquency. Some programs provide counseling services to youths who appear to be on the verge of becoming delinquents. Other programs provide youngsters with clubs and recreational centers in an effort to keep them away from situations in which delinquency is likely to happen.

I think it would help to get people of the same age group to counsel the juveniles. Also the person could have some experience in the juveniles' problems as in their own past.

More of the time should be spent on the juvenile who is on the verge of committing a crime. As in organizations or recreational programs. Also, I think a group with the same problems could get together and discuss their problems and solutions.

When it comes to punishing a juvenile, I think they should have some punishment if the crime is repeated because some don't realize they're getting into deeper and deeper trouble and crime may become a way of life.

JUVENILE JUSTICE

(By Jan Barnes)

Fifteen year-old Jody has a problem. He enjoys being alone because he is afraid of rejection.

Jody's home situation is not exactly desirable. His mother has been divorced and married three times and is just too busy to pay much attention to Jody. Jody's new father doesn't like children so Jody stays away from home a lot. Sometimes he stays with friends, but usually he is alone.

Jody misses a lot of school; he is not an exceptionally good student and is afraid of failing. Jody's fear of failure makes it hard for him to face school, so often he takes long walks instead of going to school. Jody didn't know that it is against the law to take these walks on school days. It never occurred to him that he was in fact truant from school.

He finds it best to take long walks when he is alone, but because he likes to talk out loud to himself he finds city streets unsuitable for his lonely walks. To Jody the railroad tracks that run through his home town to the outer city limits is the best path to walk on when he needs to be alone. However, Jody didn't know that walking on a railroad track is against the law.

Then one day Jody, who was too afraid to go to school because of a test being given that day, decided to take one of his walks on the railroad tracks. He wanted to be alone. He needed to talk to someone, yet he knew

that the only one he could trust his deepest thoughts to was himself.

As Jody walked along the tracks that morning, unaware that he was breaking the law, he was picked up by the city police and taken to jail. Here he had to spend several nights until his mother was finally reached.

Jody's mother, for the sake of her third husband's wishes, decided to declare Jody incorrigible. Jody was rejected.

Jody, who is completely confused, hurt, and literally torn up inside, might retreat within himself if he does not get the correct psychological help that he needs. He may become completely withdrawn from all reality. Jody desperately needs help.

The day Jody's case came up in juvenile court, the judge who tried the case, after trying several cases before his, had become impatient and not at all understanding of Jody. He only partly listened to the facts of Jody's case when it was presented. After only a few moments of thought, he decided to send Jody to a boys' reform school. Here he would stay until he reached the age of twenty-one.

This isn't what Jody needs. The boy needs understanding and skilled counseling—most of all Jody needs to have his faith in people restored—but the boys' reform school that he is being sent to offers little of this for Jody. It's not really the school's fault, it's just there are so many boys like Jody who have also been sent there that need special help too. Yet the school's funds limit the staff to a minimum of over-worked, underpaid, not always qualified people that try their best, but this just isn't enough. Jody, and other boys like Jody, need and deserve more than that.

Jody's crime was being ignorant of the law, neglected and not wanted. For these crimes Jody has been removed from society, locked up and forgotten.

This is juvenile justice!

THE GENOCIDE CONVENTION AND OUR OWN IMAGE

Mr. PROXMIRE. Mr. President, I have stated before how the ratification of the Genocide Convention would advance our world leadership in the eyes of other nations. More important is how our ratification would help the image we have of ourselves as a nation and as a people.

The Senate Foreign Relations Committee stated in their 1973 report:

We find no substantial merit in the arguments against the convention. Indeed, there is a note of fear behind most arguments—as if genocide were rampant in the United States and this Nation could not afford to have its actions examined by international organs—as if our Supreme Court would lose its collective mind and make of the treaty something it is not—as if we as a people don't trust ourselves and our society.

I know that the people of the United States trust themselves and their society. The American Nation has never been afraid to look itself square in the face. Watergate has proven that the American people wish to find the truth about their country so that they can correct any faults. We have seen that the people demand that no person be above the laws of our Nation.

Ratification of the genocide treaty will again affirm the belief in justice of the American people. Genocide is an international crime that requires every nation to commit itself morally to the basic right of survival for ethnic, religious, national and racial groups. Senate ratification will confirm the image we have of ourselves as a proud nation seeking the truth and working for the betterment of our own citizens and of mankind. I urge the prompt consideration of the Genocide Convention.

THE PRESIDENT'S PROCLAMATION TO OBSERVE "NATIONAL ARTHRITIS MONTH"

Mr. ROTH. Mr. President, on April 4, 1974, I introduced Senate Joint Resolution 203, which is similar to House Joint Resolution 938 introduced by Representative HOWARD, of New Jersey. I regret that circumstances have precluded timely floor action in both cases.

Mr. President, it is most gratifying that Senate Joint Resolution 203 enjoys the cosponsorship of 58 colleagues of mine. I ask unanimous consent that Senate Joint Resolution 203 and the list of these distinguished Senators be printed in the RECORD.

There being no objection, the joint resolution with list of cosponsors was ordered to be printed in the RECORD, as follows:

S.J. RES. 203

Mr. Roth (for himself, Mr. Abourezk, Mr. Allen, Mr. Baker, Mr. Bartlett, Mr. Bayh, Mr. Beall, Mr. Bennett, Mr. Bentsen, Mr. Bible, Mr. Biden, Mr. Brock, Mr. Burdick, Mr. Clark, Mr. Cotton, Mr. Cranston, Mr. Dole, Mr. Dominick, Mr. Eagleton, Mr. Ervin, Mr. Fannin, Mr. Fong, Mr. Goldwater, Mr. Gurney, Mr. Hansen, Mr. Hart, Mr. Hartke, Mr. Hollings, Mr. Hughes, Mr. Humphrey, Mr. Jackson, Mr. Javits, Mr. McClure, Mr. McGee, Mr. McGovern, Mr. McIntyre, Mr. Magnuson, Mr. Mansfield, Mr. Mathias, Mr. Pell, Mr. Percy, Mr. Ribicoff, Mr. Schweiker, Mr. Hugh Scott, Mr. Stafford, Mr. Stevenson, Mr. Taft, Mr. Thurmond, Mr. Tower, Mr. Williams, Mr. Young, Mr. Pastore, Mr. Muskie, Mr. Cook, Mr. Gravel, Mr. Inouye, Mr. Metzenbaum, and Mr. Domenici) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary.

Joint resolution to authorize the President to issue a proclamation designating the month of May 1974, as "National Arthritis Month"

Whereas arthritis and rheumatic diseases are the Nation's number 1 crippling diseases affecting over twenty million Americans of all ages, causing loss of fourteen million five hundred thousand working days each year;

Whereas arthritis and rheumatic diseases are second only to heart disease as the most widespread and disabling chronic illnesses in the United States today;

Whereas the annual cost of arthritis and rheumatic diseases to Americans is estimated to exceed $9,200,000,000 annually in medical costs, lost wages, and disability payments, and taxes lost to the Federal Government;

Whereas advances in research show promise of significant breakthrough leading to a better understanding of and cure for these diseases: *Provided*, That adequate funding is provided;

Whereas the month of May is the period during which the Arthritis Foundation conducts its annual public education campaign to support its efforts in arthritis research, and treatments; and

Whereas the most common form of arthritis strikes mainly older Americans who suffer particularly from the problems of pain and disability: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is authorized and requested to issue a proclamation (1) designating the month of May 1974 as "National Arthritis Month", (2) inviting the Governors of the several States to issue proclamations for like purposes, and (3) urging the people of the United States, and educational, philanthropic, scientific, medical and health care professions and organizations to provide the necessary assistance and resources to discover the cause and cures of arthritis and rheumatic diseases and to alleviate the suffering of persons struck by these diseases.

Mr. ROTH. Mr. President, in the absence of congressional action on Senate Joint Resolution 203 and House Joint Resolution 938, the President of the United States has issued a Presidential proclamation declaring May 1974 as "National Arthritis Month." I ask unanimous consent that the President's proclamation be inserted in the RECORD.

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

NATIONAL ARTHRITIS MONTH, 1974

(By the President of the United States of America, a proclamation)

Arthritis and the rheumatic diseases are the Nation's number one crippling disorders, affecting 20 million Americans of all ages, causing them great suffering and limiting their activities. Arthritic disorders are second only to heart disease as the most widespread chronic illness in the United States today.

This disease cripples people not only physically, bringing them untold pain and anguish, but also financially. The total cost of arthritis to America in terms of medical costs and lost production is estimated in the billions of dollars.

Each year, as medical science advances through publicly and privately supported medical research and education, thousands of people receive improved treatment and live more comfortable, more productive, and more satisfying lives. Yet, despite research efforts, this dreadful disease continues to be a major threat to human well-being. America must do more to treat and eliminate the curse of arthritis.

Now, therefore, I, Richard Nixon, President of the United States of America, do hereby proclaim the month of May, 1974, as National Arthritis Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, and officials of other areas subject to the jurisdiction of the United States to issue similar proclamations.

I urge the people of the United States and educational, philanthropic, scientific, medical, and health care organizations and professionals to provide the necessary assistance and resources to discover the cause and cure of arthritis and rheumatic diseases and to alleviate the suffering of persons struck by these disorders.

In witness whereof, I have hereunto set my hand this first day of May, in the year of our Lord nineteen hundred seventy-four, and of the Independence of the United States of America the one hundred ninety-eighth.

RICHARD NIXON.

DEDICATION OF THE HOWARD C. REICHE ELEMENTARY SCHOOL

Mr. HATHAWAY. Mr. President, last Sunday educators and public officials from throughout the State of Maine gathered in Portland for the dedication of the Howard C. Reiche Elementary School. This school embodies the latest in the creative concepts that is making education so exciting for students and teachers alike. The dedication of this modern school is a fitting tribute to a

man who has been a moving force in Maine education for four decades.

Howard Charles Reiche served as principal of Portland High School from the years 1947–72. During his tenure as principal, Mr. Reiche innovated several programs including expansion of vocational and college preparatory programs, and youth involvement projects which aided in getting young people off streets and working constructively in the community.

One of Howard Reiche's proudest achievements was his handling of veterans who returned to Portland High School after World War II. These older men, finishing high school with young teenagers, presented a morale problem for the veterans. Howard Reiche met this problem by establishing veterans clubs within the high school and personally aiding many in securing employment and college positions after graduation.

Active in other areas of education, Mr. Reiche served as a member of the National Education Association and president of the Maine Secondary School Principals.

He has been an active force in the community through his workings with the Rotary Club and the Young Men's Christian Association.

The city of Portland and the State of Maine have been fortunate in having Howard Charles Reiche as an active citizen and leader and I am sure that he will continue to play a role wherever young people can be found in Portland.

I wish Howard Reiche, his wife Laura, and their family continued happiness in the future.

POLICE SERVE THE DEAF IN CHICAGO

Mr. PERCY. Mr. President, the deaf community in Chicago is very fortunate to have the services of two dedicated members of the Chicago Police Department. On their own initiative, Patrolmen Sam Anthony and Patrick McGoldrick learned the sign language used by many hearing-impaired individuals in order that deaf people needing to communicate with police officers might be able to do so.

The Chicago Daily News recently carried an article on the fine work of these two men and the vital service they provide. I ask that the article be printed in the RECORD.

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

COPS WHO CARE

(By Barry S. Felcher)

The middle-aged woman and her husband were scared. Both were deaf.

A young man had jammed a .357 caliber revolver into the woman's stomach and kicked her several times during an attempted robbery as the couple stood in front of their Austin home.

And now they would have to appear in court to testify in sign language against a suspect arrested by police.

"The lady was afraid he would be found not guilty and would be coming after her," said policeman Patrick McGoldrick, who along with his partner, Sam Anthony, are fluent in sign language and finger spelling.

McGoldrick and Anthony act as a link between the police department and deaf persons who are witnesses to or are victims of crimes.

They also teach driver's education and pedestrian safety to deaf schoolchildren.

McGoldrick acted as interpreter for the deaf couple during the trial and had assisted the state's attorney's office communications with them while the case was being prepared.

The young man was found guilty of attempted robbery this week and sent to an institution.

"The lady was very much relieved because of the guilty findings," McGoldrick said. "She feels much more secure in her home because the perpetrator knows where she and her husband live."

Both policemen are regularly assigned to the department's Traffic Safety Education Section.

Recently they visited the Alexander Graham Bell School, 3730 N. Oakley, which has 160 deaf pupils. They showed the seven students in Carole Brodsky's class a stop sign and a railroad crossing sign while explaining in sign language the meaning of each sign.

"You must be careful anytime you see that railroad crossing sign, "McGoldrick told the class with his hands. "You won't hear a train or the warning bells," he continued.

"Be careful when you make a stop. Be sure it is safe to go."

Assistant principal Lester Thieda stood near the door and watched McGoldrick and Anthony "speak" to the class with their hands.

"They wonder why a policeman would learn total communication," Thieda said. "At times of riots, something like this negates all adverse publicity against policemen. They see the police in a happy light," he said.

McGoldrick, 52, and Anthony, 28, decided two-and-a-half years ago to learn sign language.

"We know another policeman, John O'Connell, who had worked with the deaf for years," Anthony said.

"In October, 1971, we knew he would be retiring the next June, and we thought it would be a shame to let all his work go down the drain."

Both policemen then enrolled in sign language classes at the Chicago Hearing Society and spent a year learning the basic skills of total communication."

"We felt it would be good for the deaf community to know some policemen who would be able to help them," McGoldrick said.

Several months ago, Anthony, knowing that a deaf person cannot telephone police during an emergency, came up with the idea of installing teleprinter machines in the homes of the deaf. The machines would be hooked up to the police communications system.

He presented his idea to his commanding officer, Sgt. John Higgins, and now some 200 such machines are in use.

"The bad policemen get all the headlines," McGoldrick recently said.

"We get personal satisfaction from our work. Thank God my five kids are all OK, and I can help some who are less fortunate," he added.

"FAIR PLAY" BY THE COMMON MARKET NOW REQUIRED IN TRADE NEGOTIATIONS

Mr. TALMADGE. Mr. President, at a time when international economic cooperation is so crucial, I am disturbed that the European Community has failed to meet its responsibilities under the General Agreement on Tariffs and Trade. International trading rules specifically required that whenever economic unions expand their membership, such as the European Community did a little over a year ago, they should compensate outside countries for any diversion of trade. In the case of the United States, this trade diversion amounts to over $1 billion. Despite our potential loss of grain, tobacco, citrus, and other exports to the community, the Common Market has made no serious effort to offer reasonable concessions.

Current trade negotiations, called the 24:6 negotiations after the section of the GATT under which they are authorized, have as yet attracted little public attention. This has even led European negotiators to remark that the public and the Congress really do not care about the 24:6 negotiations, so why should they be pressured into concessions. In the absence of such public attention, the Europeans have not moved significantly from their initial attitude that "we do not owe you anything." This is hardly a reasonable position.

While these trade talks may not have received great attention by the news media, I can assure our trading partners that they have not been forgotten. It is the constitutional responsibility of the Congress to regulate commerce with foreign nations. And while the legislative responsibilities of the Congress may seem particularly diverse and burdensome at the present time, the conduct of foreign trade relations is an issue which must not be overlooked.

I therefore would like to bring these 24:6 negotiations to the attention of my colleagues and suggest that all of us follow closely the developments in these talks. For unless the Europeans begin to demonstrate a spirit of good faith in these talks, I feel that the Congress will have no alternative but to call for the procedure described within the GATT for governmental hearings on concession withdrawals. My hope, and I feel the hope of the Congress, is that the Common Market will appreciate the need for cooperative consultation in view of the disruption that unilateral economic actions have created for the world economy in recent months.

The Europeans have been dragging their feet and stalling the 24:6 negotiations from the beginning. Originally scheduled to end in June 1973, the 24:6 talks were extended to July and then September. Still unwilling to offer a reasonable settlement, the Europeans asked a further extension promising to submit a new set of concessions by February 15, 1974. Again this deadline was extended into March, and then April. Now our negotiators tell me the Common Market has asked for another 60 days.

I have had the privilege of chairing Finance Committee hearings on the proposed Trade Reform Act. I have heard many people say that if we only had a trade bill we could move forward with the so-called "Nixon round" of trade talks. And some of our friends in Europe like to claim that the U.S. Congress is jeopardizing the multilateral trade negotiations by not acting on trade legislation. Frankly, I do not see any reason to begin a new set of negotiations before we have finished the job of the negotiations now in progress. The behavior of the Europeans in these 24:6

trade talks certainly will color the Senate's consideration for vastly expanded authority for a new set of negotiations. If we can not make any progress in these relatively small negotiations why should we expect to do any better in the multilateral trade negotiations involving many more countries and products.

I will be closely watching the meeting of the Commission of the European Communities in June to consider the 24:6 negotiations. If at any time it does not appear that progress in these trade talks is forthcoming, I intend to call upon the President to initiate hearings to consider the withdrawal of trade concessions to the European Community, for failure to properly compensate third countries for trade which was lost as a result of the expansion of the Common Market under the prerogative specified by the GATT. The American people have been patient long enough.

I have always been a leading proponent within the Congress for international cooperation. But I have become greatly concerned by the breakdown of international trade rules and procedures. And I feel that the Congress cannot stand idly by while these rules are disregarded. One need only to point out the disastrous consequences of a breakdown in international economic order which led to the great world depression of the 1930's, to demonstrate the importance of maintaining international economic rules and principles.

If we are to preserve the international economic order, we cannot keep overlooking transgressions of international trade principles. I will continue to stress economic cooperation. However, when countries refuse to acknowledge international canons, I will insist upon the strongest prescribed disciplines.

It is time that we demand fair play in our relations with Western Europe. Since World War II the American tax payer has shouldered the burden of European reconstruction and defense. Those days are becoming short. It is time that we called for a quid pro quo in defense and economic cooperation. It is time that we insist that the Europeans abide by the "rules of the game" in trade and economic matters. And most important, it is time that we show the countries of Western Europe that the United States is more than a "sugar daddy" that will always give in if they hold out long enough.

NATIONAL HISTORIC PRESERVATION WEEK PART II—THE C. & O. CANAL

Mr. BEALL. Mr. President, as my colleagues know, this week is National Historic Preservation Week, a time when Americans can take time to appreciate the treasure which the past has left us and remind themselves that much work remains to be done in order to protect our historic areas from the ravages of time.

One such area in which I am deeply committed to and concerned about is the Chesapeake and Ohio Canal. The canal, which extends from the Georgetown area of Washington, D.C., to Cumberland, Md., a distance of 184.5 miles, is steeped in history. George Washington was one of those Americans who envisioned a water route to the West, and was in 1785 the first president of the Potomac Co., a group which sought to build such a canal. Washington had to later resign because of other pressing business—he became President of the United States—but served as honorary president of the company until 1795.

Although $500,000 was spent on this project, it was never successfully completed, and its charter was revoked in 1821.

But interest in the project did not wane, and on July 4, 1828, President John Quincy Adams began construction of the present C. & O. Canal. Said Adams on that occasion:

> The project contemplates a conquest over physical nature, such as has never yet been achieved by man. The wonders of the ancient world, the Pyramids of Egypt, the Colossus of Rhodes, the Temple of Ephesus, the Mausoleum of Artomisia, the Wall of China, sink into insignificance before it—insignificance in the mass and momentum of human labor required for the execution—insignificance in the comparison of the purposes to be accomplished by the work when executed.

Perhaps we ought to excuse our sixth President for a bit of exaggeration, but certainly the C. & O. Canal represented a new economic era in our country. Construction was completed in 1850, and canal barges regularly plied its waters until 1924.

The C. & O. Canal, of course, no longer serves any economic need. Today, it serves a different, and in my view an equally important role; that of a national historical park. With the enactment of Public Law 91-664 in January 1971, the Congress established the park for the use and enjoyment of all Americans.

Unfortunately, however, the C. & O. Canal is in trouble today. In June 1972 tropical storm Agnes caused some 26 major breaks in the canal, as well as eroding banks, damaging culverts, and destroying historic locks. Damages were estimated then at $34 million, and with the tremendous rise in costs in the last 2 years, that figure has probably risen by as much as 20 percent.

And if that was not enough, the process of decay has begun to claim more and more structures along the canal. The October 31 collapse of the 140-year-old Catoctin Creek Aqueduct was dramatic evidence of the critical need for the restoration if in fact the canal is to be saved.

The Congress in passing the 1971 act which established the C. & O. Canal Historical Park decided quite clearly that the canal ought to be saved. Now we must make sure that this restoration is carried out as rapidly as possible. The process of deterioration is quickly reaching the irreversible stage, and certainly the costs of repair will not go down as time goes by—on the contrary, they will escalate tremendously.

Our Nation's Bicentennial celebration is only 2 years away. Millions of people will flow to the Maryland-District of Columbia-Virginia area to visit the many historic areas in the region. The C. & O. Canal should be an integral part of the celebration. Portions of the canal could be used as an outdoor museum of life in the 19th century and provide a lasting tribute to the engineering skill of American builders at that time. Barge trips can be planned along the canal. Uninterrupted hiking can be available. And, of course, major portions would serve as a haven from daily life, where one can sit along the banks of the canal, and imagine in his mind's eye, the passing of a canal barge destined for Washington, loaded with George's Creek Coal.

But because of Federal inaction, the C. & O. Canal may well not be ready for our Nation's Bicentennial.

I have, and will continue, to do everything possible to increase funding for C. & O. Canal repair and restoration. For fiscal year 1975, the Department of the Interior has requested $3 million for the canal, an amount I deem grossly inadequate, since all of this money will be used for aqueduct and culvert stabilization, and little, if any, will be available for restoration work.

The C. & O. Canal—its structures and its ecology—are fragile objects, and they must be protected. But we are rapidly moving to the point where restoration in many cases may not be possible. Then we will have lost forever a unique part of our Nation's heritage.

So, on National Historic Preservation Week, I ask the Congress, and the American public, to consider our past history, and take steps to preserve it for future generations.

Our country's history is the legacy left us by our forefathers. Let us not throw away this priceless gift.

SPACE EXPLORATION

Mr. MOSS. Mr. President, as chairman of the Aeronautical and Space Sciences Committee, I am interested in the successful completion of meaningful and effective space programs that are beneficial to this Nation and its citizens. This matter is of particular interest to me now as we prepare to discuss and decide on budgets for space programs for the coming fiscal year.

Long range and consistent budget planning is essential to a successful space program. A recent publication by the American Institute of Aeronautics and Astronautics has given a cogent and lucid explanation of the different reasons for the need of foresight and consistency in space planning. I ask unanimous consent that this excerpt from the review, "Exploration of the Solar System," be printed in the RECORD:

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

BUDGETARY CONSTRAINT

The budgetary constraint is almost always the primary limitation on any program. In most high technology projects, it is sometimes possible to allow performance specifications and schedules to "slip" in order to keep the budget in line. This is far more difficult to accomplish, however, for solar system exploration, because:

(1) The schedule is often dictated by orbital dynamics; for example, the opportunity

for an outer-planet Grand Tour comes up only once each 178 years.

(2) The budget line item time duration is excessive compared to most other government-funded programs; for example, the Mariner to Jupiter and Saturn, scheduled for launch in 1977, became a budget line item in 1972, and the mission will not be completed until perhaps 1982. Further, the research programs on which the 1971 "go-ahead" decision was based predated the actual project initiation by a number of years. The total time-line for a given solar-system exploration project might therefore run as high as 15 years from plan to completion.

(3) Performance specifications are, to a great extent, inflexible because of the specific needs of trajectory dynamics and the limitations on launch-vehicle capability. Also, a major component failure or an inaccurate maneuver such as a midcourse correction any time during periods measured in years can wipe out a whole program.

As a consequence of these factors, only very limited programmatic changes are possible, and therefore, once a solar system exploration project has been initiated, a budget reduction could seriously affect the ability to perform the mission. After a program has reached its peak funding year (generally about 2 years prior to launch) little money can be saved by a program cancellation.

Thus, although NASA has attempted to match future budget predictions and projected mission costs so as to maintain a logical and feasible program, the imposition of budget reductions encourages the cancellation of young programs; i.e., those that have not yet reached their peak funding and, therefore, involve smaller losses in "sunk" costs. The effect of a significant budget cut thus tends to be the elimination of new program starts, and hence generation of a void in the program six to ten years in the future.

TABLE 5.—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION FUNDING IMPLICATIONS OF FISCAL YEAR 1974 BUDGET

[In millions of dollars]

Budget plan	1973	1974	1975	1976	1977	1978
Aeronautics	$151	$171	$159	$142	$128	$117
Space science	679	584	488	413	335	256
Space applications	189	153	146	124	86	74
Manned space flight operations, Apollo and advanced mission studies	957	582	345	226	218	218
Space Shuttle	200	475	850	1,100	1,190	1,090
Space research and technology	65	65	65	65	65	65
Nuclear power and propulsion	17	4	4	4	4	4
Technology utilization	$4	$4	$4	$4	$4	$4
Tracking and data acquisition	248	250	254	254	254	247
Construction of facilities	77	112	150	100	80	70
Research and program management (includes pay for all NASA personnel)	715	707	707	707	707	707
Total, budget plan	3,302	3,107	3,167	3,139	3,072	2,852
Total, outlays	3,062	3,136	3,231	3,219	3,145	3,043

INFORMATION ON WOMEN'S STUDIES

Mr. PERCY. Mr. President, recently the Feminist Press sent me a report of its activities from August 1972 to December 1973. The report impressed upon me that the Feminist Press has become an important source for nonsex stereotyped publications and that its Clearinghouse on Women's Studies has become a national center for information on women's studies courses and programs. I therefore ask unanimous consent that the report in a condensed form be printed in the RECORD.

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

FEMINIST PRESS ACTIVITIES

INTRODUCTION

The Feminist Press has grown rapidly in the 18 months covered by this report, and the Clearinghouse on Women's Studies has been recognized as the single national center for information on women's studies courses and programs. The Press has been able to grow because of the aid of numerous volunteers and through the generosity of the Rockefeller Family Fund, the Ford Foundation, and the Cummins Engine Foundation. The Press has benefited greatly from the generosity of the College at Old Westbury for the housing and services provided and from a friendly administration, faculty, and student body. The students at Old Westbury have come to regard the Press and Clearinghouse as resources and have been instrumental in bringing them into the academic program. The Press and the Clearinghouse have both become integrally related to the American Studies Program and to the academic life of the College.

I. PUBLICATIONS PROGRAM

The Feminist Press publishes books that represent girls and boys, men and women in "real life" rather than in stereotyped roles. The books are meant to serve parents and teachers looking for educational alternatives to those books commercially available. Publishing efforts include children's books, biographies of outstanding American women, and reprints of "lost" literature. Resource materials for teachers, curriculum developers and parents include the following: Guide to Female Studies III; Feminist Resources for Schools and Colleges: A Guide to Curricular Materials; Female Studies VI: Closer to the Ground, Women's Classes, Criticism, Programs—1972; Female Studies VII: Going Strong, New Courses and Programs—1973; Consciousness Razors; A Child's Right to Reading: A Guide to Key Cases in Women and the Law; Nonsexist Curricular Materials for Elementary Schools; High School Feminist Studies; and Community Workshops on Children's Books.

II. EDUCATION PROJECTS

Community Workshops on Children's Books consist of parents, teachers, and librarians studying the children's books available in local public libraries, writing guidelines for their improvement, and projecting methods of implementing the changes they seek. The Clearinghouse on Women's Studies began in 1970 as a function of the Modern Language Association's Commission on the Status of Women and is an ongoing educational project of the Feminist Press, chiefly as a source of information on changes in women's education at all levels: elementary, secondary, and higher education. The Clearinghouse is the principal repository of curricular information, records of publications, conferences, fellowships, awards and jobs. Who's Who and Where in Women's Studies is being published. The Women's Studies Newsletter tries to serve the entire education community. The Curriculum Development Project for Secondary School English and Social Studies produces documents that will allow the Press to focus publishing energies on areas especially of use to high school English and social studies teachers. The In-Service Teacher Education Project includes publishing and distributing in-service course materials to teachers and systems and holding a national conference.

The Women's Studies Resource Library contains material supplementary to Old Westbury's own library collection, including the following: periodicals, pamphlets, published and unpublished articles, dissertations, news clippings and other resource material relevant to all aspects of the lives of women, as well as to all disciplines. In addition, the library contains a unique file of women's studies courses and programs, most of which is available for public use.

III. A GLANCE TOWARDS THE FUTURE

The Feminist Press feels they should absorb what they have learned and teach it to others before concentrating on continued growth and expansion. The Press particularly wishes to become more focused on specific areas of educational projects and publishing.

Further information on the Feminist Press and the Clearinghouse on Women's Studies may be received from the Feminist Press, State University of New York, College at Old Westbury, Box 334, Old Westbury, Long Island, New York 11568.

WORST ECONOMIC CRISIS AMONG CATTLE FARMERS

Mr. MONDALE. Mr. President, cattle farmers in the United States are today facing what is probably the worst economic crisis since the Great Depression. Producers are losing an average of from $100 to $200 per head on their livestock. For a farmer marketing 200 head of cattle this works out to a loss of $20,000 to $40,000.

Already this crisis has lasted for a half year after prices received by farmers dropped by a third when the price ceiling on beef was lifted. Although the market began to show some recovery at the beginning of the year, these modest gains backed up in the feedlots during the truck strike.

As a result of the prolonged depression at the farm level, many cattle feeders are being forced to drastically cut back on replacement livestock, and some are being forced out of business altogether. Unless some action is taken, this disaster at the farm level may soon become a disaster at the supermarket level with shortages and sharply higher prices of beef.

To avert such a disaster, the Minnesota Farmers Union recently proposed that a program of low interest emergency loans be created to assist cattle feeders who have suffered losses of at least $5,000 but who, despite these losses, are willing to try to reenter the highly volatile livestock market. Such a program would, of course, be confined only to family farmers and not to tax loss or large-scale commercial operations.

Consumers may legitimately question the merits of a proposal to help cattle farmers when many cannot afford to pay the current retail price for beef to feed their families. Supermarket prices for beef have not declined in proportion to the precipitous drop at the farm level. If this had happened, increased demand for meat might have adjusted farm prices to a level which would have allowed operators to stay in business. I have joined with a number of other members of the Midwest Caucus of Democratic Senators in urging the Federal Trade Commission to examine the price spreads for beef as part of its investigation of the food industry.

Nevertheless, any readjustment in retail prices prompted by the Federal Trade Commission's findings would come too late to save the many farmers who are now suffering crippling losses.

That is why I recently wired the Secretary of Agriculture to urge that the Department of Agriculture give its immediate and very serious consideration to the Minnesota Farmers Union proposal. I would hope that this constructive proposal would also be carefully reviewed by my colleagues in the Senate.

Mr. President, I ask unanimous consent that the Farmers Union telegram, news release, and my wire to Agriculture Secretary Earl Butz be printed in full in the RECORD.

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

ST. PAUL, MINN.,
April 18, 1974.

To: All State Presidents and Editors.
From: Cy Carpenter, Minnesota Farmers Union.

DEAR MR. SECRETARY: The current flight of livestock feeders in this country is devastating. Farmers are losing $100 to $200 per head on cattle they sell. It is not uncommon that farmers rarely regain the dollars they paid for cattle after they have added 200 to 300 pounds of weight, with no returns for this feed or labor.

As a result, many farmers may not have the capital or the credit needed to reinvest in feeder stock or remain in livestock production. This, of course, will inevitably lead to severe disruption of the livestock industry and meat production.

We are expressing our concern not only for the farmers themselves, but for consumers who, as a result of this disruption and roller-coaster effect, will again find themselves paying higher prices for a scarce commodity. Interest rates are scandalous and we find they are currently causing consumers to pay 5 to 10 cents per pound of beef just to make up the interest costs farmers were charged on feedlot cattle—on which they are losing money. Interest rates are still higher and farmers are finding that even at the higher rate it is not available to them to re-enter the volatile livestock market. Farmers who, despite losses from $10,000 to $50,000, are willing to give it another try, find they can't.

A substantial portion of this problem must be credited to this administration for their placing ceilings on beef prices, urging consumers to buy less beef, and importing excessive amounts of cheese to compete with American meat.

Therefore, we are requesting, Mr. Secretary, that you take the initiative and provide leadership to secure authorization and funding for an emergency loan program to help keep these stricken farmers in business. We ask that you make 2 or 3 percent loans available to farmers who have suffered a documented loss of $5,000 or more, with a limit of $100,000 per loan. The loan should run for a period of 18 months to allow completion of a feeding operation.

The losses farmers suffer as a result of price disaster deserves every bit as much attention as losses suffered as the result of a natural disaster.

To retain a viable livestock industry, and for the benefit of consumers who want to keep beef in their diets, we ask prompt action on an emergency loan program.

MINNESOTA FARMERS UNION,
St. Paul, Minn., April 18.

FEDERAL LOANS ASKED FOR BEEF FARMERS

A request for an Emergency Loan Program to assist livestock farmers who have suffered losses as a result of plummeting beef prices was issued today on behalf of farmers by Cy Carpenter, President of Minnesota Farmers Union.

In a telegram to Secretary of Agriculture Earl Butz, Carpenter said that immediate action should be taken to provide low-interest loans to livestock farmers who can document a loss of $5,000 or more in the last six months.

"Farmers are losing $100 to $200 on every head of cattle they sell. It is not uncommon that farmers cannot even regain the dollars they paid for cattle after they have added 200 to 300 pounds of weight, with no returns for feed, labor or investment," Carpenter said.

"As a result, farmers do not have the capital or the credit needed to reinvest in their operations in order to purchase replacement cattle and feed. An emergency loan program is needed not only to allow farmers to stay in business, but also to protect consumers who already are paying inflated prices for beef," Carpenter added.

Carpenter said that as farmers are forced out of business by severe losses, the consumer will also suffer by shorter supplies and higher prices due to the scarcity.

"Farmers who suffer losses as a result of roller-coaster prices beyond their control deserve the same attention and assistance as victims of a natural disaster," Carpenter said.

He indicated that the federal government has a responsibility to help these stricken farmers because Administration policies contributed to the problem.

Carpenter said, "A substantial portion of this problem must be credited to this Administration by placing of ceilings on beef prices, urging consumers to buy less beef, and importing excessive amounts of cheese to compete with American meat."

"This recovery program is vital both for the afflicted farmers and for consumers wanting an adequate supply of food," Carpenter concluded.

Hon. EARL BUTZ,
Secretary, Department of Agriculture,
Washington, D.C.

I am writing to you regarding the critical situation within the livestock industry. Losses of $100 to $200 per head or more have been documented among farmers. Unless action is taken to ease their plight, cattle feeders may be unable to replace animals now going to market, and some may be driven out of businesses.

If this were to happen, consumers would inevitably suffer from scarcities and still higher prices in the supermarket.

Retail prices for beef have not generally reflected the sharp decline in prices paid to farmers since last August, and therefore market forces have not worked as they should to stimulate increased consumer demand for red meat. I have joined with a number of other Senators in asking the Federal Trade Commission to investigate this problem in connection with their investigation of the food industry.

Nevertheless, I recognize that any readjustment prompted by the Federal Trade Commission's findings would come too late to save the many farmers who are now suffering serious, if not crippling, losses.

Cy Carpenter, on behalf of the Minnesota Farmers Union, recently urged that you take the initiative in setting up an emergency loan program to help stricken cattle farmers stay in business. I believe that this is a constructive suggestion, and I should like to request that it be given very serious consideration by the Department. It is obvious that urgent action is needed to prevent today's crisis among cattlemen from becoming tomorrow's crisis among consumers the Nation over. I urge your immediate attention to this grave situation.

Sincerely,

WALTER F. MONDALE.

THE ENERGY CRISIS

Mr. FANNIN. Mr. President, my distinguished colleague from Oklahoma, Senator BARTLETT, delivered an excellent speech recently before the World Energy Conference in New York.

In his talk, Senator BARTLETT pointed out that Congress has taken a lot of testimony and consulted with many experts, but very little action has been taken which would increase the supply of energy.

He cites the facts and figures which show the detrimental effect policy set by Congress has had on the oil industry in the United States over the past two decades. The Senator demonstrates how price incentives have worked, are working, and will work to solve the energy crisis.

Mr. President, I ask unanimous consent that this speech be printed in the RECORD so that it will be available to all Members who are concerned about solving the energy crisis.

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

OIL POLITICS

(By Senator DEWEY F. BARTLETT)

I am pleased to have the opportunity to address this distinguished group. I congratulate the *Oil Daily* and the *Financial Times* of London for sponsoring a seminar which should help lead to responsible answers to the world oil problems.

Even though there is sufficient energy available world wide, political and economic decisions by the Organization of Petroleum Exporting Countries (OPEC) have created shortages, economic chaos and uncertainty about energy supplies for most of the rest of the world.

A competitive free world oil and gas market is essential to stable economic social and political structures of energy importing countries.

The United States is the largest importer of energy, the largest producer of energy and also the largest consumer of energy. With the average U.S. oil well producing 18 barrels per day as compared to ARAMCO's average well producing 14,000 barrels per day our challenge of reaching energy self-sufficiency is great.

To assure Americans ample supplies of energy at the least possible price, a continued growth of our economy and a high standard of living we must develop energy self-sufficiency.

A complicating economic fact of life we must learn to live with is that the Arab countries can, at their pleasure, raise or lower the price and amount of oil and gas they are willing to sell us.

A commitment by the United States to achieve domestic energy sufficiency is essential to our own future and would, more than any other action outside of OPEC, help to create a more competitive world market. And help to stimulate sound political and economic judgments affecting the rest of the world by the Arab countries.

Other nations have a large stake in what we do or do not do—and when we do it.

A report on the energy debate and action and inactions on energy matters in Congress is appropriate, timely and frustrating.

It has been over three years since Senate Resolution No. 45, which provided for a study on "National Fuels and Energy Policy", was introduced and very little has been accomplished towards establishing a national policy which will provide sufficient energy supplies.

Congress has made no commitment—there has been no consensus toward the goal of adequate domestic supplies.

History may be repeating itself as Congress may be investigating and harassing the oil industry to death as was done by Congress to the railroads in the 1960's.

In fact, many of the proposals before Congress, if adopted, would be counterproductive to increasing energy supplies.

On March 13, 1974, the *Wall Street Journal* published an article by Senator Henry M. Jackson criticizing the *Journal* and others, myself included, for their stands against his rollback of the price of domestic crude oil and refined petroleum products. Senator Jackson's dominance of Congressional energy policy, his hard work, and political prowess have earned my respect in the year that I have been a United States Senator. Senator Jackson is the Chairman of the Interior and Insular Affairs Committee on which I serve as its most junior minority member. This committee is charged with developing our "National Energy Policy".

The distinguished chairman, who generally represents the majority party's views on energy, and I have differences of opinion of the appropriate energy policy for Congress and the Administration. Our differences represent the differing opinions of the energy debate going on in the Senate.

In 1973, my distinguished colleague, Senator Henry M. Jackson, advanced as an overall solution to our short-term energy problems a plan that consisted of reducing demand by mandatory allocation and rationing of the shortages and conservation of energy, but neglected the supply side of the supply—demand relationship.

Walter J. Levy, on January the 4th of this year, in a speech entitled the "Implications of Exploding World Oil Costs" noted that threat that the world shortage of energy poses to the economic and monetary structures of all importing nations and went on to say that reducing demand only will not solve the problem.

Senator Jackson has favored rolled back controlled prices and mandatory allocation and rationing of shortages while others in the Senate including myself, recognize that a free market price will increase production, dampen demand and will hasten the development of alternate sources of energy—it will clear the market by providing a supply sufficient to balance demand. Both sides favor conservation of our energy supplies.

The recent history of the Cost of Living Council shows controlled prices most often cause shortages and breed more controls. Congress may allow the Economic Stablization Act to expire on April 30, but I fear at least partial price controls legislation will be passed by Congress.

During the past three years of hearings on the energy crisis, Senator Jackson, with the exception of his short-lived support of the "stripper-well" amendment to maintain marginally economic production, did not make any specific recommendation to increase short and mid-term domestic supplies of oil and natural gas by price incentives or otherwise. This was in spite of the overwhelming testimony before his committee that direct and indirect control of the price of natural gas and oil played a dominant role in the shortfall of domestic energy we are now experiencing.

The capable Senator from Washington said, "There are real and serious differences among the nation's top energy economists about the wisdom of the legislative rollback of crude oil prices." To the contrary, on Saturday, February 2, 1974, there was unanimity of opinion from several well-known economists testifying before Senator Jackson's Interior and Insular Affairs Committee against rolling back domestic crude oil prices. Dr. John H. Lichtblau, Executive Director of the Petroleum Industry Research Foundation, New York, New York, Dr. Thomas Stauffer, Research Associate, Center for Middle Eastern Studies, Harvard University, Warren Davis, Chief of Economics, Gulf Oil Corporation, Washington, D.C., John Emerson, Energy Economist, Chase Manhattan Bank, New York, New York, and by telegram Dr. C. Jackson Grayson, Jr., School of Business Administration, Southern Methodist University, Dallas, Texas, and former head of the Price Commission testified as economists. It is significant that all agreed that now is not the time for Congress to rollback the price of crude oil.

Dr. Grayson said, "In my opinion, the energy pricing issue is far too complex to be handled in pending legislation without considerable additional investigation. The consequences of moving too quickly without sufficient background information on such a measure could place this nation in greater international jeopardy by inhibiting rapid movement toward domestic energy self-sufficiency." All of the economists subsequently agreed with Dr. Grayson's statement.

Senator Jackson tries to justify the rollback provision by saying, "The fact is that no one, either in testimony before the Senate committees or on the floor of the Senate, has presented an intellectually respectable defense of $10.00 crude oil from the standpoint of supply incentives." But this is a specious argument. The previously mentioned economists stated that it was impossible to preselect accurately a market clearing price. Senator Jackson could defend a $5.25 price for domestic crude oil no better than anyone else can defend any other fixed price.

If the consumer would have enjoyed all the benefit from the proposed crude oil rollback, on the 29% of domestic production that is now uncontrolled, from $9.51 to $5.25 per barrel, he would realize an immediate savings of only approximately 2.0¢ per gallon at the pump and have the probable assurance of continued shortages and further reliance on higher cost crude oil from foreign countries that would more than offset this savings.

Fortunately, for the consumers of America and the world, President Nixon vetoed the Energy Emergency Act that Congress passed early this year, because he realized that the crude oil price rollback provision would be counterproductive to the goal of increasing energy supplies.

Senator Jackson has said he will introduce an amendment to his new Emergency Energy bill which probably will be considered by the Senate the week after next. The amendment requires mandatory price controls on crude oil and petroleum products and a price rollback on crude oil. The Commerce Committee has finished hearings on its Consumer Energy Act which provides price controls and rollbacks for oil and oil products.

The hard working Interior and Insular Affairs Committee, during 1973, spent most of its time discussing and reporting bills authored by the Chairman which do nothing to increase short and mid-term supplies of energy and sometimes even aggravate the energy supply problem.

Senator Jackson et al opposed the important Gravel-Stevens Amendment to his Alaskan Pipeline Bill. This amendment has speeded up the day that domestic oil and natural gas supplies from Alaska will reach our lower 48 states. He voted against this amendment, but fortunately it passed the Senate on the Vice-President's tie-breaking vote.

Senator Jackson recently introduced his Energy Supply Act of 1974 which as far as increasing energy supplies is concerned, does little more than call for expanded lease sales—something that many of us have been proposing for some time. The Interior Department has been expanding lease sales as fast as environmental impact statements can be prepared to meet requirements of the National Environmental Policy Act.

Another provision of Senator Jackson's Energy Supply Act of 1974 will actually limit exploration and development of our tremendous potential offshore reserves of oil and gas. This provision calls for the Federal Government to share in the net profits of any oil or gas production from OCS lands. This provision amounts to a 55 percent Federal net profits tax on offshore production. How can that possibly be an incentive to increase energy supplies as the name of the act implies?

Chairman Jackson introduced a bill to increase energy supplies for the long term—a 10 year, 20 billion dollar research and development program on which there is general Senate agreement. It passed the Senate and is currently in the House of Representatives.

Senator Jackson's only other positive action to increase supplies of oil or natural gas was his modification and support of my amendment to free from price and allocation controls the small marginally economic oil wells called "stripper wells"—those producing ten barrels of crude oil per day or less. His recently proposed price rollbacks represent a reversal of his former support of the stripper well exemption.

The most significant legislation that Congress could pass to increase energy supplies would be to deregulate the price of natural gas sold in interstate commerce. However, Senator Jackson actively opposed and successfully defeated by two votes an amendment by Senator James Buckley of New York that would have deregulated the price of new natural gas in interstate commerce to encourage additional domestic supplies for the nonproducing states.

The direct and indirect control of prices of natural gas and oil, even with the help of much criticized tax incentives, have not provided sufficient profits to drill the number of wells required.

In 1956, a high of 16,207 exploratory wells were drilled—in 1972, only 7,539 exploratory wells were dried—less than half the 1956 amount. Yet the demand for oil and natural gas in 1972 was double that of 1956.

To reach the 1956 ratio of exploratory drilling to consumption of energy, we would need to increase our present rate of drilling by 400%.

The price for domestic crude oil in 1957 was $3.09. Then the price of crude oil decreased slightly after 1957 and did not reach $3.09 per barrel again until 1969. During the same period, oilfield operating costs increased. The price of oilfield tubular goods went up 21 percent, labor up 45 percent and the cost to drill a well up 75 percent.

In 1969, the oil depletion allowance was reduced from 27½% to 22%—having the effect of reducing the domestic price of oil by approximately 17c per barrel—to $2.92—a price less than the 1956 price.

The decreased drilling activity reduced the ratios of reserves of domestic oil and gas

(excluding the North slope of Alaska) to yearly production of domestic oil and natural gas for the interval from 1956 to 1972 from 11.9 years to 8.1 years to 10.7 years, respectively.

During this period, many small independent producers (those other than the 30 largest), who drilled 82.5% of all domestic wells in 1972 were forced out of business. Fifteen years ago, there were 20,000 independents—today, there are only approximately 10,000.

What about the major companies during this period? To a significant extent, they went overseas in search of higher profits and cheaper foreign oil.

The unequivocal result of 20 years of direct and indirect price controls on oil and natural gas was low profits, which caused a decline in drilling and reserves, independents going out of business, majors going overseas, and insufficient domestic energy supplies. It made possible high-priced foreign oil and an Arab embargo—and most importantly—it helped cause shortages.

Recent price increases for crude oil and natural gas have proved that energy supplies are elastic to price.

On April 15, 1974, there were 1404 drilling rigs operating in the United States. In 1973, on April 16, there were only 996 drilling rigs operating. That means there are 40% more drilling rigs operating due to price incentives for oil and gas.

Exploratory locations now holding or awaiting rigs in the United States are up 33 percent. Development locations on "Active" and "Spending" lists are up 25 percent.

Mandatory price controls would eliminate that small element of free market—the Administration's pricing system for new and released crude oil and the stripper well amendment—that has greatly helped boost domestic activity to increase energy supplies. The result would be sharply reduced future drilling programs and a delay in the development of alternate fuel sources—such as oil from shale and gasification of coal.

It's difficult to understand anyone's disregard of the dismal results of 20 years of direct and indirect price controls of oil and natural gas.

Controlling and reducing domestic prices of oil and natural gas will again encourage the exportation of our domestic drilling activity to other countries, again further our dependence on high-cost, unreliable Arab oil, again delay our becoming self-sufficient in energy, and jeopardize our independence in determining foreign policy in the Middle East.

Despite numerous warnings by experts before Congress over the past years, the Arab nations have made the only statement about energy that Congress and the public has believed and understood—but, Senator Jackson and the majority of Congress prefer to ignore it.

Senator Jackson is saying it's fine for our citizens to continue paying approximately $10.00 per bbl to foreign nations for increasing amounts of crude oil, but that our citizens should only be permitted to pay other U.S. citizens $5.25 per bbl for domestic crude, which amounts to about half the price paid to foreign countries. This hampers our efforts to increase our domestic energy supplies.

Dr. Thomas Stauffer, a Harvard economist, said of Senator Jackson's proposed price rollback, "this may be good politics, but it is bad economics."

As one of the *Oil Daily* Washington reporters has correctly observed, Congress has summoned either Bill Simon, the former Administrator of the Federal Energy Office and/or his top assistants to Capitol Hill 52 times in the last three months. Yet not one piece of legislation which deserved the personal appearance of the Energy Czar has been approved by Congress.

Nearly every Senate committee has a subcommittee on energy. None of them are seriously discussing how we get from here to there—from energy shortage to sufficiency.

But the various committees have not been idle on energy matters. Many days of hearings have been held on the Energy Information Act, the Consumer Energy Act, which includes FOGCO, Divestiture/Divorcement of Integrated Operations legislation, Windfall Profits, Foreign Tax Treatment, Excess Profits Tax, and Price rollback proposals.

The House Ways and Means Committee has agreed to take away the depletion allowance—having the effect of reducing available capital or increasing consumer prices. In 1969, when the Depletion Allowance was reduced from 27½ percent to 22 percent, the petroleum industry responded by spending $500 million less in 1970 than the historical trend would have indicated.

Congress could have been using its time more constructively if it had addressed the problems of siting additional refineries, deepwater ports, sufficient amounts of casing and tubing, sufficient number of drilling rigs and sufficient monetary capital, and other road blocks to providing sufficient energy for the consumer's use.

On the other side of the ledger, we are currently running the Roll Call to see if we have enough votes to pass the Buckley Amendment to deregulate the price of new natural gas in interstate commerce.

Congress is so busy investigating the oil industry and blaming it for the oil crisis that it is not even considering a national commitment to pay the price of domestic energy sufficiency.

The United States is making some progress toward energy sufficiency in spite of Congress. But—today we are worse off than we were yesterday.

Things will get worse before Congress acts to develop a consensus on domestic energy sufficiency.

But—Congress WILL act.

THE BENEFITS OF SKYLAB

Mr. MOSS. Mr. President, in the magazine Aviation Week & Space Technology of April 15, 1974, there is an editorial that aptly evaluates the Skylab program and assesses its achievements. The editor in chief of the magazine and the author of this particular commentary is Robert B. Hotz. Mr. Hotz has been an editor with Aviation Week & Space Technology since 1953. His years of work and devotion to aeronautics and space activities have greatly increased the public's acceptance and understanding of this vital science. Mr. Hotz has also worked with Pratt & Whitney Aircraft Division of United Aircrafts as director of public relations, and in 1942 he organized Air Force magazine. His efforts and contributions to aerospace sciences are much appreciated.

Mr. Hotz concludes in his editorial that "Skylab was an achievement that will ultimately benefit every inhabitant of this planet and of which every American should be extremely proud." This is so, he states, primarily because of the presence of man in the spacecraft and his ability to operate and perform when machines cannot.

Mr. President, we will soon be considering the space program's authorization bill for fiscal year 1975. I would like to share Mr. Hotz's editorial with my colleagues because of its relevancy to the space program. I ask unanimous consent that the entire commentary be printed in the RECORD.

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

END OF AN ERA

(By Robert Hotz)

The successful Skylab program marked the end of the first era of manned spaceflight and laid the foundations of an expanded role for the future of man in space exploration. Skylab ended the era in which both the U.S. and the USSR space programs sought to determine the limits of man's useful performance in a space environment. Skylab answered affirmatively the questions of man's ability to adapt to a space environment and the value of his useful contributions to space operations. It also laid the foundations for future space operations by demonstrating the basic feasibility of shuttle operations and the habitability and workability of large long-duration space stations that hopefully will appear before the end of this century.

We think the most important contribution is the convincing manner in which Skylab proved beyond all shadow of doubt man's ability to adapt to long periods of space flight without losing his normal capability to work effectively over a broad spectrum of space laboratory activities. These ranged from the spectacular solar panel and solar shield external repairs to a wide variety of internal equipment and scientific experiment fixes that enabled the three Skylab missions to exceed all of their prescribed workload parameters by wide margins.

AVALANCHE OF NEW DATA

The whole cumulative achievement of Skylab requires considerable perspective to evaluate fully. Less than 15 years after Yuri Gagarin inaugurated manned space flight with a single orbit inside his spherical Vostok, a multimanned space station was kept operational for nearly six months—171 days, 13 hr. and 14 min. to be exact. Three crews shuttled to this space station and they performed an enormous workload both on their spacecraft and with the scientific experiments that produced an avalanche of new data sufficient to occupy groundling scientists for years.

All of the three crews returned in good condition and quickly readjusted from prolonged weightlessness to earthly gravity. Much was learned about exactly how to accomplish this during the three missions, and relatively simple solutions were found to most of the medical problems. The last crew, which flew the longest mission, returned to earth in the best condition.

In addition to their constant work as space mechanics, the Skylab crews demonstrated that man is a valuable addition to the loop of scientific experiments and activities that can be performed uniquely from space. Trained human eyeballs again proved to be a valuable supplement to automated optical systems. Skylab crews made a number of significant observations from their orbital platform, some of which officials are pressing them not to discuss, such as activities along the Sino-Soviet border and new construction at Soviet missile test centers. There is no doubt that man must be an integral part of any future space reconnaissance system.

Skylab gave man a tremendous new vantage point from which to explore his universe, both outwardly with a fascinating new look at the sun and inwardly to the changing dynamic patterns of his home on earth. The Skylab earth resources equipment was probably the least effective on board the space lab. But even this breadboard model produced enough data to confirm the possibility for tremendous future contributions from space monitoring of the dynamic processes of this planet to insure a better, and perhaps longer, life for its inhabitants.

For the budgeteer bean counters, who perennially lament the expenditures on space exploration, Skylab offers some interesting facts that may help gauge return on investment. A rough cut from early earth resources data gathered by Skylab is yielding clues to new mineral resources that may ultimately be worth more than the cost of the whole U.S. space program to date. One potential copper deposit located in Nevada from Skylab pictures alone is estimated to have an ultimate value in the billions of dollars.

Another extremely interesting area where Skylab pioneered successfully is in experimenting with various manufacturing processes that are doomed either to limitations or imperfections by the pull of earth gravity. The idea of space manufacturing facilities to exploit the characteristic of weightlessness has been given its initial validity by Skylab.

FLEXIBILITIES' SIGNIFICANCE

But perhaps the real essence of Skylab's performance and its significance for future space operations were in its tremendous flexibility—both in initial design and in operational planning. This quality prevented the initial failure of Skylab when the solar shield was ripped off and a solar panel fouled in deployment and also surmounted a dozen other less spectacular equipment problems to keep the spacecraft operational and reap a bonus harvest of data. There was some additional equipment onboard Skylab, such as the onboard teleprinter that aided this flexibility. But primarily it was a spirit developed between the ground crews with their considerable array of resources and the flight crews who were able to focus these resources on solving their problems aloft. Because of this, philosophized one Skylab astronaut, "Skylab worked better broken than anybody had hoped for if it was perfect."

Skylab was an achievement that will ultimately benefit every inhabitant of this planet and of which every American should be extremely proud.

MOTOROLA

Mr. PERCY. Mr. President, recently Motorola, Inc. announced its intention to sell its television division to Matsushita of Japan. Motorola decided to sell its television division as the company has done no better than break even in home consumer electronics over the past 10 years and has suffered heavy losses in its three domestic television plants. Accordingly, Motorola decided it must sell its television division or close it.

Motorola had discussed sales of its television division with three U.S. companies previously, but negotiations in each case were terminated by the prospective buyer.

The agreement reached would appear to be beneficial for all parties concerned, especially the employees who would be adversely affected if the three plants in Illinois were to be closed if a sale is not consummated.

Antitrust questions, however, have been raised by several Members of Congress about the proposed sale, and contacts have been made with the Justice Department concerning the sale by them and one or more companies.

Mr. President, just so that the point of view of certain concerned members of the Illinois congressional delegation would be known to the Justice Department, Senators STEVENSON and I, along with Congressmen FINDLEY and COLLIER, sent a letter to Attorney General Saxbe to express our concerns about the future of 7,000 employees and their families in Illinois. I ask unanimous consent that the letter referred to be printed in the RECORD at the conclusion of my remarks.

On April 23 the Department of Justic did announce that the proposed sale does raise antitrust questions and Motorola and Matsushita have agreed to delay the closing of the sale for 30 days while Motorola seeks to determine if any other valid purchaser can be located for Motorola's television business.

The Department has stated that if Motorola cannot find another purchaser, and the only alternative is to discontinue its television operations, that the Department does not plan to sue to prevent the sale to Matsushita.

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

U.S. SENATE,
Washington, D.C., April 11, 1974.

Hon. WILLIAM B. SAXBE,
Attorney General of the United States, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: We have recently become aware of a letter that Senator Birch Bayh has written to you opposing the sale by Motorola, Inc. of its television division to Matsushita of Japan. One of Senator Bayh's prime concerns seems to be the effect of such a sale on the profitability and employment of Magnavox, which is located in Indiana.

On behalf of the almost 7000 employees of Motorola in Illinois affected by this transaction, we urge that Illinois be given an equal opportunity to express its views to the Justice Department.

Motorola arrived at its decision to sell its television division after long, careful and deliberate thought. Motorola has done no better than to break even in home consumer electronics over the past ten years and has suffered heavy losses in its three domestic television plants. Accordingly, Motorola decided it must sell its television division or close it. Motorola has discussed sale with three companies previously, but negotiations in each case were terminated by the prospective buyer.

This sale will not result in a loss of employment domestically, as employee security and salaries are protected in the sale agreement. Indeed, if the sale does not take place, Motorola will close three of its plants in Illinois involving 3000 employees in Quincy; 700 employees in Pontiac; and 3000 employees in Franklin Park.

Mayor Nicholson of Quincy has contacted me to urge in the strongest possible terms that the sale be finalized. Motorola is the largest employer in Quincy and the community would not be able to stand the loss if the $20 million annual payroll were removed from Quincy.

We are most concerned about the adverse employment impact if the sale is not consummated, but we are also concerned about competition in the industry. If Motorola is forced to close, then, in our opinion, competition in the television industry will be lessened. Currently, Motorola has about 6–7% of the U.S. color TV market and Matsushita 2–3%. The sale to Matsushita means that another healthy competitor may exist in the industry competing with RCA, Zenith, Admiral (owned by Rockwell International), Sylvania (owned by GT&E), Warwick (owned by Whirlpool), Philco (owned by the Ford Motor Company), General Electric and Magnavox.

We ask that the Department of Justice give thoughtful consideration to the above points.

We will appreciate your attention to this matter.

Sincerely,

CHARLES H. PERCY,
ADLAI E. STEVENSON, III,
U.S. Senators.
HAROLD R. COLLIER,
PAUL FINDLEY,
Members of Congress.

ZETA BETA TAU DANCE MARATHON

Mr. STEVENSON. Mr. President, I want to commend the young men of the Zeta Beta Tau fraternity of the University of Illinois Champaign-Urbana campus. On the weekend of April 5–7, Zeta Beta Tau sponsored a 3-day dance marathon which raised almost $64,000 for the National Multiple Sclerosis Society. More than 100 couples participated in this fundraising event in the fight against one of the most dreaded neurological diseases.

Many of the victims of multiple sclerosis are in the same age group as the members of the Zeta Beta Tau fraternity. At a time when many people believe that today's college students are apathetic, it is gratifying to find the men of ZBT evidencing their concern for others. It is through such expressions of public spiritedness that the money to conduct the research to find a cure for multiple sclerosis will be found.

EXPORT-IMPORT ACT AMENDMENTS

Mr. BEALL. Mr. President, on April 26, 1974, one of my constituents, Mr. Herbert P. Buré, testified before the Senate Finance Subcommittee on International Finance and Resources with respect to S. 1890, the Export-Import Act, Amendments. In his statement, Mr. Buré outlined the effect Eximbank operations have on his company, as well as on our national policies, and I ask unanimous consent that his remarks be printed in the RECORD for the benefit of my colleagues.

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

TESTIMONY BY HERBERT P. BURÉ, PRESIDENT, ELLICOTT MACHINE CORP., DREDGE DIVISION, BALTIMORE, MD.

Mr. Chairman, I am very pleased that you have invited our firm to testify, regarding S. 1890, the Export-Import Act Amendments of 1973. My company is a small business firm with a large percentage of export sales and we are especially interested in any proposal which might have an effect upon export trade or financing. The Export-Import Bank has provided services which have enabled our firm to make numerous export sales which would have gone to foreign suppliers had the Bank's services not been available. We look forward to the continued availability of these services, and I urge you to extend the Export-Import Bank's authorization.

In view of the current review of your Subcommittee into the matters regarding Eximbank operations in participating in the financing or issuing guarantees on commercial banking for foreign procurement of American-made products, I wish to express my Company's concern over the possible change in the bank policy regarding Presidential determinations to allow the Bank to support American sales in Eastern Europe.

If the policy of requiring Presidential determination on a project by project basis, rather than a country by country basis, is adopted, our sales efforts in Eastern Europe will be severely hampered and our foreign competitors will reap great benefits.

Our company is a Small Business firm in a highly competitive international field and the largest United States designer and manufacturer of dredges and dredging equipment. Ellicott was established in 1885 and designed and built all of the hydraulic dredges which dug the Panama Canal in 1907. Our business has grown and developed throughout the world to the extent that we compete for the world dredge business primarily with one foreign cartel based in the Netherlands. We compete with them on virtually all dredge procurement projects all over the world.

Our company started exporting in the mid '30's, just before the Export-Import Bank was founded, and as an average over the last five years, we have exported 75% of our total production from the Baltimore plant. We have worked with Eximbank for over 25 years on many projects.

Dredging equipment is normally considered a long term investment to our customers, whether agencies of foreign government or private international contractors, and long term financing of the dredge purchase price is a tradition in the international industry.

A large percentage of our resources is constantly applied by the Company to research and development, leading to improved products which give our customers a higher return on their investment. Ellicott has advanced the U.S. dredge technology to the highest in the world.

Even during the period of the 1950's and '60s when we were severely handicapped in the international trade by an unfavorable rate of exchange between the United States dollar and foreign currency, primarily the Dutch guilder and Japanses yen, we managed to increase our share of the export business in competition with these countries as a result of continous improvement in our products which actually resulted in a gradual reduction in purchase price and cost of investment to our customer against an ever increasing productive capability and return on the investment.

Our overseas customers in dredge buying countries—and Ellicott dredges are well known in more than 60 countries of the free world—must be able to count on the availability of competitive credit terms from the United States in order to consider Ellicott as a potential supplier of dredging equipment.

If such financing is not available on a predictable basis, the United States and Ellicott are deprived of the opportunity to compete on the world market.

A recent example of this is the negotiated transaction between the Peoples Republic of China and our Dutch competitors which led to the largest single dredge procurement contract in the history of the industry for the very same type of equipment on which we can normally compete successfully, because no United States financing was available.

We submit that the financial services offered by Eximbank are not a direct benefit to the foreign buyer, but rather a necessity to the U.S. Manufacturer. Please note that we are not talking about any form of foreign aid, which is quite another matter and of no particular interest to my company. We are addressing a situation whereby our foreign buyer should count on the same financing terms from Eximbank as he can negotiate with financial institutions in other industrial countries, so that our Company is provided with an opportunity to compete with our foreign competitors.

Let me repeat: It does not provide us with an advantage, it merely puts us on an equal footing with our foreign competition. It is then up to us to compete dollar for dollar, pound for pound of hardware, and our technology against theirs.

The degree of certainty which the foreign buyer must have, demands more than an admission of his application for a preliminary commitment, subject to an extensive bureaucratic evaluation of his particular project, with excessive demands for detailed information of the buyer's political or financial credentials; it demands a certainty on the buyer's part that if he decides in favor of the Ellicott product because of the technical and economic advantages which it offers to him, he will indeed be able to get his credit application approved quickly and efficiently when he can provide the appropriate guarantees and priorities from his government.

The lapse of time involved in the approval procedure from date of application to final execution of the loan agreement is an important economic factor in the decision making process of the foreign buyer. For example—a 4½ million dollar Ellicott Dredge System, which may require approximately 3 million dollars worth of export from the U.S., may take approximately 12 months to build and complete, ready for operation, and have a productive capability of 1 million cubic yards per month, or approximately ½ million dollars of monthly revenue. A delay in processing this foreign buyers application of as little as two weeks may represent an economic loss to him of approximately one quarter of a million dollars which would be sufficient to turn his back to the U.S. and Ellicott and procure equipment elsewhere.

In the last several years, Eximbank has made many constructive and far reaching improvements to reduce the turn-around time between application and final commitment which has been a significant benefit to our Company in negotiating export contracts. Please note that Eximbank was really beginning to close the gap. The foreign financial institutions still are quicker and faster on their feet.

The present consideration for approval on a project by project basis to countries to which export financing of U.S. products has already been judged to be in the national interest, by Presidential determination, would be a severe set-back to our Company's export and represent an abdication of our interest in favor of our foreign competitors.

We strongly urge your Subcommittee to recommend extension of authorization of Eximbank, and support a clear definition of country by country evaluation without the additional burden of Presidential determination of each specific project within such country, and further assist and urge Eximbank to take every possible step to reduce its turn-around time between application and final commitment in cases where the foreign country's priorities and guarantees are clearly established.

DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT

Mr. WILLIAMS. Mr. President, I am extremely pleased to join in introducing S. 3378, the Developmental Disabilities Assistance and Bill of Rights Act of 1974. This legislation provides for the extension and revision of the Developmental Disabilities Services and Facilities Construction Act—Public Law 91–517—and includes as title II, the bill of rights for the developmentally disabled, a bill introduced earlier during this Congress by Senator JAVITS and myself.

This bill, as part of the continuing responsibilities of the Subcommittee on the Handicapped to conduct oversight on and act as an advocate for the rights of handicapped individuals, has been revised substantially to meet the mandate of the intent of Congress in passing Public Law 91–517 and to respond to testimony given on the legislation earlier this year. The subcommittee has been assisted in its oversight activities by review data submitted by the General Accounting Office in a two volume report which was requested following the hearings by Subcommittee chairman, JENNINGS RANDOLPH.

When the Developmental Disabilities Services and Facilities Construction Act was first signed into law on October 30, 1970, it represented a significant expansion of the scope and purposes of the Mental Retardation Facilities and Construction Act of 1963. The term developmental disabilities broadened the scope of this program to include not only the mentally retarded but also persons suffering from other developmental disabilities originating in childhood, including cerebral palsy, epilepsy, and other neurological handicapping conditions. The program was fashioned to include support for a full array of service programs, and new authority and responsibility was given to the States for the development of comprehensive planning and programing for services to persons with developmental disabilities.

It is important to understand the intent of this legislation. DDSFA was intended by Congress to establish a partnership of Federal, State, and local government in order to create a broad continuum of community-based programs and facilities for the developmentally disabled. It was the purpose of this act to provide a complete mechanism through which the States could pull together, at the level of service delivery, all of the fragmented programs needed to provide integrated care, training, and services for individuals with neurologically handicapping conditions. The goal was not to duplicate existing services, but to deploy funds in a catalytic manner for systematic planning, coordination, and integration of services. Funds under this act are only used to support service delivery when services do not exist or when necessary gaps must be filled to provide comprehensive programing.

As an outgrowth of the Mental Retardation Facilities and Construction Act, this legislation was aimed at a target group—those individuals with severe disabilities which originate before the age of 18, which severely affect their development, and which have continued or can be expected to continue indefinitely. Because of the chronic nature of the disability, and its occurrence early in life, individuals so impaired are more likely to have ongoing difficulties throughout the developmental years.

Also, they are less likely to have the comfort and support of family, and an income adequate to their needs later in life. Estimates of this population indicate

that there may be as many as 3.5 million adults, and 3 to 4 million children, suffering from disabilities such as mental retardation, epilepsy, cerebral palsy, childhood psychoses, sensory disorders, infantile autism, and severe mental illness. More than a quarter of this population is institutionalized, and a much higher percentage is ill served by existing service programs because of their failure to fit into neat categories.

It is within this framework that the revised legislation has been introduced. S. 3378 seeks to make changes in this program which will foster the ability of State planning councils for the developmentally disabled to carry out the objectives of the State plan, to promote community alternatives to deinstitutionalization and to direct resources toward these alternatives, and to provide coordination with other existing State agencies which deliver services to developmentally disabled individuals.

These changes include the following:

First. State councils: S. 3378 provides that members of the State planning council will be appointed by the Governor, and shall act as advocates for persons with developmental disabilities. Functions of the council will include the development of the overall State plan, and the approval of specific implementation designs submitted by State agencies to carry out the overall State plan.

State councils shall also be responsible for reviewing and approving applications for grants by university affiliated facilities to assure that such applications are consistent with the provisions of the State plan.

Under this legislation, administration of State grants will be carried out by the State agency or agencies responsible for the submission of the implementation design.

The State councils will further notify the Governor and the Secretary of failures to comply with the implementation design and of cause to begin compliance proceedings.

Second. Priorities for State plans: S. 3378 has adopted as an overall priority the deinstitutionalization of individuals with developmental disabilities and the creation of community alternatives for care and provision of services. The adoption of priorities for funding under the State plan related to this overall goal are the following: The reduction of inappropriate placement in institutions; the improvement of care within institutions; early screening, diagnosis and evaluation for infants and preschool children, including home care, early stimulation and parent counseling and training; support of community alternatives; the protection of rights of persons with developmental disabilities; cross-disciplinary intervention and training programs for multiple-handicapped individuals; and public information and public awareness programs.

Third. Construction: Construction under State plans has been limited to 10 percent of the State funding.

Construction projects related to university affiliated facilities may only be approved for projects to bring facilities into compliance with Public Law 90–480, for removal of architectural barriers.

Fourth. Definition: The definition of developmentally disabled has been broadened to include: Mental retardation, cerebral palsy, epilepsy, autism, learning disability, or any other condition which is related to mental retardation as it refers to the general intellectual functioning or impairment in adaptive behavior or to require treatment similar to that required by mentally retarded individuals.

Such disabilities must: originate before the age of 18, be expected to continue indefinitely, and constitute a severe handicap to the individual's ability to function normally in society.

Fifth. Special projects: A new special project authority has been included in the legislation to supersede funding for special projects currently contained in the Rehabilitation Act of 1973—Public Law 93–112.

Such special projects may be approved by the Secretary after consultation with the National Advisory Council for projects and demonstrations which hold promise of expanding and improving community based services for persons with developmental disabilities including parent counseling and training, early screening and intervention, infant and preschool programs, seizure control systems, and community based care, housing and other services necessary to maintain a person with developmental disabilities in the community.

Sixth. Evaluation: The committee legislation also directs the Secretary to develop within 18 months a model evaluation system and implementation plan for the evaluation of all services delivered within States to persons with developmental disabilities.

Following the development of such system, States under the State plan must implement such evaluation systems within 1 year.

The system must provide for the evaluation of all services and assistance under laws administered by the Secretary, and shall be designed to measure the effects of services on the lives of individuals with developmental disabilities, evaluate the impact of programs, evaluate the cost-benefit ratios of service alternatives and provide that evaluation of program quality be performed by individuals who are not directly involved in the delivery of such services.

Seventh. Waiver authority: S. 3378 also provides waiver authority to the Secretary to waive regulations in order to establish integrated service projects.

This provision has been included in order to facilitate the establishment of community based services and to explore innovative service delivery for comprehensive services to the developmentally disabled.

The waiver authority is provided only on a case-by-case basis, and may be provided for a specified period of time—but not longer than 36 months. Such waiver authority does not extend to provisions explicitly established in law.

Eighth. Standards for institutions: In line with the emphasis placed upon community based alternatives in title I of the act, the committee has adopted in title II, standards adopted by the Joint Commission on Accreditation of Hospitals for institutions for the mentally retarded and the developmentally disabled.

These provisions are adopted in order to assure that for those individuals who need institutional care their rights are protected, and that developmental care is provided.

Mr. President, S. 3378 represents a bipartisan effort on the part of the Subcommittee on the Handicapped to improve services and care to persons with developmental disabilities. Provisions relating to the priorities under the State plan, the development of a statewide evaluation system for services to the developmentally disabled, the special project authority and waiver authority provided to the Secretary represent a strong commitment by the committee to the provision of comprehensive and developmental services to individuals in need of such services.

I believe that unless such authority is complemented with standards of care and services within institutions, all that we attempt to accomplish for those individuals in the community will have no effect on individuals who reside within the institutions and residential care in our Nation. There is strong testimony to the fact that much of the care within such institutions, and indeed, the institutionalization itself ill serves those residents who are the most in need of comprehensive and individualized care which these institutions are often unable to provide.

There can be no question that we must judge ourselves by that care and service which this Nation provides to its poorest citizens. Surely change has come to many of the large residential institutions in the last few years as the result of court action, and the continuing concern expressed by consumer groups, and efforts on the part of States to improve conditions and care within State institutions. Yet the effort toward community based care, and the reduction of institutionalization, and deinstitutionalization has resulted in the fact that the individuals who remain within institutions are those in need of the most individualized and intensive care.

At the time the Congress enacted provisions within the Social Security Act for intermediate care facilities, there was hope that the Federal Government would assist in the effort to protect the rights of institutionalized individuals and require developmental programing on the part of all facilities applying for such assistance. The failure to provide adequate minimum standards of care in the regulations on intermediate care facilities makes it imperative that this committee take that action.

INDUSTRY GUIDE TO ENERGY MANAGEMENT: TIMELY RESPONSE TO A CRISIS

Mr. PERCY. Mr. President, the era of low-cost energy is no longer with us. Many business plans have been upset—

or soon will be—and require reconsideration. To insure practical solutions and truly workable contingency plans, each industry and individual business must become fully apprised of its own unique energy posture.

In this regard, I commend a most constructive response to the current crisis offered by the American Society of Association Executives.

At a special White House meeting on energy on January 25 this year, ASAE released a report entitled, "A Guide to Energy Management: How To Conduct an Energy Audit." The report exemplifies the timely and creative leadership of some of the men and women who manage America's voluntary, nonprofit organizations of industry and the professions.

The first sections of the report outline procedures for an efficient energy audit to be undertaken by each individual business.

Reliable facts must be compiled about energy sources and supplies, energy consumption for operations, and the effect of shortages on market demand for the company's product or services. Price projections and the severity and time profile of shortages must also be carefully assessed.

Hopefully, determinations can be made concerning energy alternatives and the extent to which the consumption of presently used fuels might be reduced. For many companies, a thorough energy audit will pinpoint new business opportunities and ways to reduce production costs and overhead.

But, the major theme of the report is that much progress can also be made at the industry level to ascertain and alleviate energy problems. Industrywide guidelines can be set and general solutions developed to deal with those energy-related difficulties common to all members of an association. ASAE lists "12 Steps an Association Can Take To Help Solve the Energy Crisis." I think that their mention at this time is valuable:

1. Appoint staff energy liaison officer.
2. Appoint association energy committee or council.
3. Have energy council gather data on energy requirements of members by:
Holding meeting of energy council and having members estimate the energy needs of the industry or profession.
Conducting mail energy survey or audit.
Estimating effect of crisis on markets for industry or profession.
4. Have energy council develop conservation campaign for members and customers of members.
5. Prepare back-up literature and promotional material for conservation campaign.
6. As soon as possible, prepare white paper on energy needs of industry or profession for presentation to governmental agencies.
7. Arrange meetings with representatives of government agencies to discuss needs and programs.
8. Provide members with continuing information on new regulations concerning energy.
9. Pool best ideas of members on ways to conserve fuel and energy.
10. Consider and draft new industry standards, specifications, and so forth, that may reduce energy use.
11. Sponsor new research on conservation, conversion, and utilization of waste or byproducts.
12. Develop long-range plans for energy use over next three to five years.

During the immediate energy crisis and in the future, the Nation's economy can be substantially bolstered by the constructive action of responsible trade associations. The leadership that can, and I fervently hope will, be provided can be instrumental in minimizing foreseeable disruptions to the economy due to fuel shortages. I strongly urge that trade associations across the country promptly adapt the ASAE measures to the structure and needs of their particular industry and act upon them.

In this country, a vigorous private sector has always been the key to national resilience in meeting new problems and challenges. Voluntary organization and action are integral parts of the American way. The trade association is a proud symbol of this tradition. And, ASAE's effort is just one example of the contribution that associations can make to our economy and to the society at large.

In the past, I have called into question the performance of a few trade associations which through their actions, and inaction, have actually contributed to decline in recent years of public confidence in business. For example, I am currently cosponsoring, along with Senators RIBICOFF, JAVITS, MAGNUSON, MOSS, and COOK what I think might fairly be termed the most important piece of consumer legislation ever to come before the Congress. The bill proposes the creation of a Consumer Protection Agency to represent the interests of the consumer before Federal agencies and courts.

In my years as a Senator, I have encountered no piece of legislation about which so much misstatement and misrepresentation of fact has circulated. And, I cannot help but blame, at least in part, a very small minority of trade associations which have chosen to attack the bill unfairly—a minority which seems to have forgotten that our free enterprise system functions most successfully in the absence of faulty goods and services, unfair trade practices, and deceptive advertising.

In numerous meetings with close personal friends of mine from the business community, I found that many of their criticisms of the CPA were often refuted by the very language of the bill. Repeatedly, the response was, "That answers my question, but our trade association did not tell us that."

Needless to say, some trade associations had misinformed their members, criticizing the bill without regard for the facts.

This performance was extremely disappointing to me. If other trade associations were to undertake their tasks with the same resolve and attention to fact that ASAE has displayed, substantial progress could be made toward restoring the good name of American business in the eyes of the public.

Mr. President, because I believe that the report by the American Society of Association Executives is so useful to industry for the management of energy problems, I ask unanimous consent that it be appended to my remarks and printed in the RECORD.

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

A GUIDE TO ENERGY MANAGEMENT—HOW TO CONDUCT AN ENERGY AUDIT

(Compiled by ASAE with the assistance and cooperation of the Washington office of the national accounting firm Ernst & Ernst and the U.S. Department of Commerce.)

FOREWORD

As President Nixon has reported, we face continuing energy shortages. No matter what happens in the Middle East, our commitment to finding solutions to energy problems must go on for a period of years. We in government share with business and industry a determination that there be minimum disruption in our vigorous economy from these shortages.

The Department of Commerce is convinced that fuel supply problems can be minimized if each company will adopt a four-point energy management program:

Top management commitment to energy conservation.

An audit of all energy usage.

Tough, measurable goals for energy savings.

An information campaign among employees, suppliers, and customers on the need for energy conservation.

A careful audit of energy use is, of course, a crucial element in this program. We are especially pleased, therefore, that the American Society of Association Executives has published this booklet, "A Guide to Energy Management," with its detailed explanation of how to conduct such an audit.

Guidance and procedures in the following pages will enable many companies to see their way through this trying period and help them to hold down production costs and safeguard jobs.

This is a fine example of creative leadership by the men and women who manage America's voluntary, nonprofit organizations of business, industry, and the professions. I urge every business manager to consider carefully the procedures described here. Taken together, they constitute guidelines to good management of energy resources.

FREDERICK B. DENT,
Secretary of Commerce.

INTRODUCTION

The material that follows—"How to Conduct an Energy Audit"—was written to serve a pressing national need.

It is intended for the use of trade and professional associations seeking to help their members cope with and plan for the energy-related problems we face.

Association executives are encouraged to duplicate this material, or adapt it as necessary, for use among their members. The purpose is to help association members through this crisis.

In the preparation of this material, ASAE sought the special assistance of the national accounting firm of Ernst & Ernst. ASAE is grateful for the assistance of R. Bruce MacGregor and Dr. William J. Leininger, of the firm's Washington office. Their help and guidance, and the work they had done previously, proved invaluable.

ASAE also appreciates the cooperation and guidance of a great many staff specialists in the U.S. Departments of Commerce, Interior, and Transportation; the U.S. Treasury; the Atomic Energy Commission; and the Federal Energy Administration.

It is the hope of ASAE that concerted voluntary efforts such as this will contribute to a better society for all Americans in the years ahead.

JAMES P. LOW, CAE,
Executive Vice President, American Society of Association Executives.

A GUIDE TO ENERGY MANAGEMENT—FOR ASSOCIATIONS AND THEIR MEMBERS

The era of low-cost energy is gone.

This means that most business plans have been upset—or soon will be—and must now be reconsidered.

The important question that every business executive must answer now is: "How will the energy shortage affect my business?" And, "What can we do about this situation for the future?"

In some cases, the survival of the company is at stake. In others, the impact will be less severe. The extent of impact will depend on such things as depth and duration of the shortages, the degree of change in customer and supplier attitudes, and the extent to which the company's product or service relies on petroleum-related products.

There is one other factor of great importance—how the individual companies will be able to adjust to the new economic environment.

Not all effects will necessarily be bad news for everyone. Some companies will find new opportunities. Companies whose planning is thorough and sound will feel less impact than others.

No businessman or professional person can afford to ignore the implications of the energy crisis. Each will find himself face to face with one of the starkest problems ever to bedevil the American economy—a potentially crippling lack of essential fuels and a host of energy-related shortages.

The crisis has still another dimension that can't be waved away. Fuel prices are headed straight up in coming months, and even if prices level out they will do so at price points almost unbelievably high.

As Pearl Harbor and Sputnik heralded dramatic changes in this country, the Arab oil embargo of last October marked the beginning of an entirely new chapter in our economic history. No longer can energy be taken for granted. Not in this year's planning. Not in next year's planning. Perhaps not for many years to come. Crisis precipitated by a far-off war has exposed our national over-dependence on oil imports and demonstrated with painful clarity how laggard we have been in pushing toward the goal of self-sufficiency.

Shocked by the oil crisis, the nation already is taking steps to close the long-neglected gap in energy policy and action. But in the difficult interim between the first mile of this journey and its last, your job will be one of dealing with energy shortages month to month, day to day—even hour to hour.

KEY QUESTIONS FOR BUSINESSMEN

The broad questions each business will need to answer are these:

1. What is going to happen to the company's sources of supply?
2. What will happen to the company's markets?
3. How will operations be affected?
4. What is the best plan of action—and what are the alternatives—to keep the company going at its most efficient pace?

IMPLICATIONS FROM SUPPLIERS

Each businessman will need first to consider how conditions outside the company can tilt the scales one way or another. The actions of suppliers—including those who furnish energy—will materially affect operations. Suppliers have special problems of their own, and none will be affected equally by shortages. So, the businessman will need to look almost as deeply into that situation as his own to reach any conclusion firm enough to merit inclusion in company plans.

Supplier X, for example, might well choose to curtail service to customers, or may be forced to. If that happens, is there an alternate source of supply? Does the supplier have an alternative source for his supplies?

A foretaste of the interdependence of company with company was provided as much as two years ago when shortages of paper, steel, chemicals, and other materials began to appear with the economy then approaching rates close to the limits of productive capacity.

Pressure on supply means pressure on established lines of corporate goodwill.

PATIENCE AMONG BUSINESSMEN

At the recent National Retail Merchants Association trade show in New York, to cite one illustration, exhibitors of paper bags and other paper products found themselves catching hell from former customers who sought out their booths and demanded: "Why aren't you filling orders from us anymore?" Limitations on supplies of gasoline, electric power, natural gas, propane, petrochemical feed stocks, diesel fuel, and heating oils inevitably will breed short tempers, hurt feelings, and long-remembered disagreements—unless there is patience in the business community and a high level of mutual understanding.

Only businessmen, and voluntary associations of businessmen, can generate this esprit de corps. No agency or bureau in Washington can manufacture it for you.

If the skein of interdependence is still unclear, consider the following examples from real life;

Manufacturer A may take comfort from the knowledge that he consumes very little energy. But suppose his products depend heavily upon synthetics. His ability to meet his company's requirements then could hinge entirely on whether his petrochemical supplier is compelled to curtail output.

Moral: An alert manager will obtain as much information as possible, as soon as possible, on the energy vulnerabiilty of suppliers. He also will look into alternative sources of supply, price implications, and other relevant possibilities.

A firm may purchase materials or products which are marginal in its supplier's line. If the supplier has to curb his production, he might elect to discontinue or to slash his output of those items. This already is happening in some industries.

Moral: Get some assurance that it won't happen to you, or look for another supplier. With business slowing in 1974, your bargaining leverage may be enhanced.

Companies buying services or supplies from long distances could experience service problems if flight schedules to the area are diminished.

Moral: Look for service agencies closer to home, or gear up—where it is practical—to do the work yourself.

CHANGES IN SUPPLY AND DEMAND

Since the basic effect of the energy crisis is to change supply-demand relationships, the demand element merits the closest attention.

Demand could increase, for instance, for a ski resort that might not be glamorous but is within a tankful of gasoline for those who want to ski. Demand already has risen for such items as bicycles, storm windows, warm apparel, small cars, and public transportation.

On the other hand, demand may decrease for such things as bank loans to finance second homes, recreation vehicles, boats, and private aircraft. Demand also may decrease for conventional mortgages due to lessened construction activity and the questionable location of some new housing units in far-out suburbs.

PRODUCT-RATIONING SYSTEM

Because of unavoidable curtailments or its inability to meet newly created demands, a company may have to decide which customers should receive less products or services than others. In this case, the company will need to devise its own product-rationing system. Such systems will face the same problems that federal rationing schemes do—namely, the development of equity criteria, how to avoid blackmarket payoffs, how to grant exceptions for hardships, and so forth.

Another aspect—preexisting relationships—also must be weighed. Business loans by banks, for example, may be threatened by the energy crisis—such as loans to motels, resorts, and motor home manufacturers. Restricted driving owing to gasoline shortages may result in significant savings in the claim costs of insurance companies, so that premium levels based on previous driving habits may now be reconsidered. This already is happening in several states.

In each instance, the business executive should examine the potential exposure to his company arising from preexisting arrangements.

Businessmen hoping to bring their companies successfully through the uncertain waters of 1974 face the top-priority assignment of adjusting plans and operations to the new future. Every business—which hasn't already done so—will benefit by making an energy audit to determine where the company stands now, where it is headed, and how the problems can be dealt with.

HOW TO CONDUCT AN ENERGY AUDIT

A meaningful and usable energy-impact audit requires the development of an orderly approach for the collection of data, evaluation of the data, and the formulation of action and contingency plans.

The first step in making an energy audit is to compile facts. The businessman setting out to do this has to identify the historical facts he needs, or determine current estimates. Then he must determine where the necessary information can be obtained. Next, he should design a structure for classifying the information he gathers.

This initial part of the audit, or inventory, is not intended to answer questions about what might happen. Rather, its purpose is to organize facts on activities and projects which, when analyzed, will disclose the nature of energy-caused impacts. From that information, action plans can be evolved. Put a different way, you pinpoint supplies essential to maintaining your business and single out those which may be especially vulnerable to cutbacks.

AUDITING ENERGY SUPPLIES

The obvious place to begin determining fuel consumption is, of course, with the utility bills. Monthly data for at least one year should be collected in order to establish a 12-month revolving base period upon which estimates can be made and against which present performance can be compared.

In some cases it will greatly facilitate accurate data-gathering if the fuel supplier can be called upon to help determine the exact prices and quantities involved. The supply audit also should include any purchases of heated water and steam. Finally, it is important to obtain some assessment of the future availability of supplies and prices for each fuel.

In addition to energy purchased directly, a firm also must be concerned about the implications of energy shortages on the availability and price of each of the other goods and services which the firm must purchase in order to do business.

For a manufacturing concern, the data needed could include steel by volume and type, fasteners, motors, paint and finishes, plastics, computer services, delivery capability, and so forth.

CRITICAL NATURE OF SUPPLIES

Inspection of invoices paid will provide a ready rundown on all outside suppliers and supplies, while review of the bill of materials, plant production schedules, and company information systems will yield insights into the critical nature of supplies.

Vulnerability of supplies—when not de-

tectable from in-house documents—can be assessed by turning to outside sources. These may include economic and production data published by trade journals, government publications, and the general press. Personal communication with suppliers of key items also may yield useful forward-looking information. Larger companies may want to employ economic input/output models. Perusing federal regulations governing the availability of petroleum products to supplier industries also can provide insight into future developments.

GET RELIABLE INFORMATION

Whatever the source of the information, a businessman should validate its reliability. We are entering a period of rampant rumor, and it would be disruptive, if not downright disastrous, to base a business decision on unconfirmed reports.

When classifying information about suppliers, describe supplies in terms pertinent to their energy impact. This will help to eliminate from consideration those supplies which have an assured availability, or are generally unaffected by energy shortfalls.

CLASSIFICATION OF INPUT MATERIALS

It is important also to make sure that classifications show input materials—semi-finished, shaped, delivered, and so forth.

The classification scheme should include such supplier characteristics as (1) distance from the plant or location where needed; (2) whether U.S. or foreign; (3) mode of transportation; (4) extent to which transportation might be curtailed; and so on.

GATHER FACTS ON OPERATIONS

Facts concerning operations also will be needed. The businessman should round up data on heat, light, energy-using equipment, such as fork lifts, trucks, machine tools, etc. For these items, a separate listing can be developed to show alternate sources of energy, where applicable.

Items of energy consumption can be grouped in categories such as process requirements, non-process, and transportation. The level of detail then can be broken into three categories: quantity of energy consumed, how critical to continuing operations, and likelihood of energy shortage.

To do this properly, the business executive should look at quantity consumption in relationship to seasonal patterns, contractual arrangements concerning peak periods, and other important characteristics. For example, storage capacity for fuel oil used as back-up, to a possible interruption in natural gas service.

ALLOCATING ENERGY CONSUMPTION

The next step in the inventory is one of allocating energy consumption down through the company's organizational structure. For instance, the company may have three separate heating systems using fuel oil. Allocating first to a heating system, and then to facilities or zones within facilities, may contribute to the best-use pattern. The analysis will show how the best-use pattern can be incorporated into future plans.

Further detail concerning alternative second steps may be useful for some companies, especially where short supplies might prevent the fulfillment of growth opportunities.

SUPPLY AND DEMAND RELATIONSHIPS

Since the energy crisis already has changed traditional supply and demand relationships, it is wise to consider further changes. The first task here is to identify possibilities for increased or decreased demand for a company's products or services.

Consumer buying patterns, broadly speaking, already are shifting. For example, note the increase in the demand for home insulation products and the decrease in the demand for travel-oriented products and services.

The firm needs to know which consumer demands will rise and which will fall—and by how much. Historical patterns may not help much. The task of data collection and evaluation can be complicated by the fact that some demand changes may begin one or more steps beyond the company's product or service. The pattern of a wholesaling company, for example, can be disrupted because of impacts on retailing. A manufacturer's output may certainly be affected by such things as the level of consumer demand in department stores.

Collection of relevant information about customer demand, therefore, is complex. The job needs to be done for each kind and category of company operation.

ANALYZE SUPPLY INFORMATION

The next step involves evaluation and analyzing all of the information that has been collected.

In terms of supplies, the businessman should:

Estimate the severity of the shortage. What percentage below last year's supply, for example.

Project the time profile of the shortage. For example, in what months will the greatest shortage occur? How long? When will the shortage ease?

Consider whether the shortage will be absolute or relative. Not available at all? Available in limited quantities? Available at much higher prices?

Anticipate the range of price increases for supplies with relative shortages. If rising—by how much?

Guesstimate the timing of price changes.

For each input in short supply, the businessman should draw up a list of possible alleviating actions, time and cost for each alternative, the extent to which each alternative will relieve the problem, and so forth.

In terms of price, for example, while a product may be in short supply, a company may still be able to get as much as needed at a higher price. That impact should be evaluated in each instance.

Many larger companies may be able to use simulation of the production process or develop a computer model of the interrelationships among the company and its suppliers. Even in the more sophisticated approaches to analysis, however, judgmental estimates will play a vital role in decision-making.

WAYS TO CONSERVE ENERGY

In terms of on-site conservation, here are some specific ways to save fuel:

1. Check your plant's heating efficiency. Eliminate heat loss sources. Broken windows. Doors that won't close properly, etc. Increase heating plant maintenance. Evaluate the feasibility of using other fuels. Check plant area for heat balance.

2. Adopt a four-day week and add two hours of work time to each shift.

3. Reduce the temperature to 50 degrees during non-work periods and 65 degrees during work periods.

4. Think about reducing temperatures to 46 degrees during non-work periods and 60 degrees during working hours.

5. Refer to the checklist of energy conservation measures developed by the Office of the Chief Engineer at the Federal Power Commission (Washington, D.C. 20426) and the pamphlet, "33 Money-Saving Ways to Conserve Energy in Your Business," published by the Office of Energy Programs, Department of Commerce, Washington, D.C. 20230.

Other possibilities: Redesigning a product to reduce process energy needs; redesigning the process system to make it more efficient; modifying the process flow to increase efficiency; discontinuing the use of equipment that has a low efficiency rating.

SEVERE LEVELS OF ENERGY REDUCTION

On any checklist should be a reminder to examine the vulnerability of the company to severe levels of energy reduction.

Establish a lower boundary which is the irreducible minimum the company needs to stay in business. For example, safety, health, and efficiency considerations may show that plants and offices need to be heated no lower than 60 degrees during working hours and 46 degrees during non-working hours.

The basic minimum requirement will not likely be a single set of figures, but rather alternatives based on varying operational assumptions. For example, assumptions about working hours establish the time for which 60 degrees will be necessary.

In serving the company's market or customer needs, two items are basic:

1. The problem of allocating products or services among customers if the company is forced to limit output to less than demand.

2. The problem of identifying how preexisting customer relationships may be changed in ways that affect total demand for the company's products.

In the first instance, the company faces what amounts to a need for developing a rationing system. Some guidelines: Rely on price; provide reduced allocations with extra amounts available at penalty prices; or go to strict rationing.

The selection of the best method for each company probably will be influenced by such factors as the degree of competition, stability of business relationships, the length and severity of shortages, the type and volume of products, and the manpower available to implement allocation. Pricing options do, of course, have important limitations, such as price controls and antitrust regulations.

The problems related to the second instance are less troublesome—particularly when demand goes below the plant's ability to produce. Preexisting customer relationships may provide guidance to solutions in this area.

SETTING UP CONTINGENCY PLANS

Now, the job of developing contingency plans. This can be achieved by blending the information revealed by the analysis of supplier circumstances, operations, and customer relationships.

Very possibly, in doing an impact analysis, a company will find other matters which must be reflected in contingency plans. For example, the foreseen demand changes may be so significant that work-in-progress, finished goods, and accounts receivable valuation will require review. Hence, the value of certain capitalized research and development may decline.

If you anticipate substantial curtailment, you might want to activate a cost-reduction program to protect profit margins. A similar program might be triggered by sharp increases in the cost of supplies.

The final task is one of devising specific steps to be taken now and possible steps to be taken if specified events occur in the future. A good procedure is to establish an action plan for immediate implementation and then formulate a series of contingency plans with trigger mechanisms.

CRUCIAL ELEMENT FOR SUCCESS

A crucial element for the success of this whole exercise is to establish ways to measure the effect of the action and ways to follow events which are basic to contingency plans. Plans too often have been implemented without appropriate monitoring and control so that, if not disastrous, the results were less than desired.

Implicit in the control process are steps aimed at evaluating the effects of a given plan on operations and profits.

The company which goes about an energy

audit systematically, identifying and evaluating all relevant elements, will surely come through the energy crisis in better shape than the one which doesn't. This should be the aim of management. Anything less, given the murky outlines of the road that lies before us, would be folly.

CHECKLIST FOR CONDUCTING AN ENERGY AUDIT

Each business executive must find the answers to these basic questions:

1. What is going to happen to the company's sources of supply?
2. What will happen to the company's markets?
3. How will operations be affected?
4. What is the best plan of action—and what are the alternatives—to keep the company going at its most efficient pace?

The approach to an energy audit should be systematic. It involves four steps:

1. Collect all relevant information.
2. Evaluate and analyze the information.
3. Formulate action plans.
4. Formulate contingency plans.

I. COLLECT ALL RELEVANT INFORMATION ABOUT SUPPLIES

1. Relevant historical facts.
2. Determine current estimates.
3. Sources for information about supplies.
a. Inspection of invoices paid.
b. Bill of materials, plant production schedules, company information systems.
c. Trade journals, government publications, the press; personal communication with suppliers of key items; federal regulations governing availability of petroleum products.

Note: Characterize supplies in terms pertinent to energy impacts. Make certain that all information is reliable.

Information about operational energy use

1. Process requirements.
a. Quantity of energy consumed.
b. How critical to continuing operations?
c. Likelihood of energy shortage.
2. Non-process requirements.
a. Quantity of energy consumed.
b. How critical to continuing operations?
c. Likelihood of energy shortage.
3. Transportation.
a. Quantity of energy consumed.
b. How critical to continuing operations?
c. Likelihood of energy shortage.
4. Allocate energy consumption down through the company's organizational structure.

Information about markets

1. Identify possibilities for increased demand for each kind and category of company product or service.
2. Identify possibilities for decreased demand for each kind and category of company product or service.

II. EVALUATE AND ANALYZE THE DATA

Evaluate supplier information

1. Estimate the severity of the shortage. What percentage below last year's supply, for example.
2. Project the time profile of the shortage. In what months will the shortage occur? For how long? When will the shortage ease?
3. Consider whether shortage will be absolute or relative. Not available at all? Available in limited quantities? Available at much higher prices?
4. Estimate the range of price increases for supplies with relative shortages. If rising—by how much?
5. Estimate the timing of price changes.
6. For each input in short supply, draw up a list of possible alleviating actions, showing:
a. Time and cost for each alternative.
b. Extent to which each alternative will relieve the problem.

Evaluate information about energy consumption

1. Determine the extent to which consumption can be reduced without affecting production or service levels.
a. List actions needed to achieve these reductions.
2. Determine the vulnerability of the company to energy and petroleum product reductions beyond levels achieved by conservation measures.

Evaluate market information

1. If demand for the company's products or services increases:
a. List actions needed to meet demand.
2. If demand for the company's products or services decreases:
a. List effects on company, and actions necessary to keep the company from going out of business (if the decrease in demand is severe).

III. FORMULATE ACTION PLANS

1. Decide which alternatives to follow regarding supplies.
2. Decide which alternatives to follow regarding internal operations.
a. Conservation measures.
b. Establish a lower boundary which is the irreducible minimum energy level needed to stay in business.
3. Decide on a course of action for serving customers.

IV. FORMULATE CONTINGENCY PLANS

For each area of your audit—supplies, operations, and markets—establish possible steps to be taken if specified events occur in the future.

Monitor and control each step of your plan.

HOW TO MAKE AN ENERGY PROFILE OF YOUR INDUSTRY

The question that most directly affects you as an association executive is: "What actions can your association take to support your members?"

Whatever the action, it must have two key ingredients if it is to be successful. It needs to be based on solid, hard, consistent facts. And the way this ammunition is used must be well controlled and closely targeted.

These elements are essential to keep you out of the energy soup where members won't sit still from one day to the next, and nobody quite believes you.

How can you get the facts?

One way of getting the facts is to follow a simple four-step work plan:

1. Have your association staff make up an energy profile of your industry—what is the role of energy in your industry and what are the effects of the crisis?
2. Call a meeting of 20 or so of your key members to verify the estimate.
3. Formulate a course of action.
4. Conduct a detailed survey of the membership to refine the initial estimate and provide a supporting data base.

MAKING AN ESTIMATE

Your initial estimate is an important starting point. Because events are moving so swiftly, you have to take the best estimate your staff can give you—now.

The estimate needs to be placed in a time frame—short run, six to 12 months; intermediate term (1975–76); long run (1976–80).

The initial data must come from information already available in your files, from your staff's knowledge, and from available outside sources. To assemble the information, you need to set up your own energy task force.

Large associations probably will be in good shape to produce the information from internal data and knowledge simply because of the staff size and staff specialties. Medium and smaller size associations may need to rely more on available outside sources.

The result of this crash effort will be a first cut at the energy profile in your industry. What reliance do you have on energy? How will you be helped or hurt? What effect will these changes have on the economy, regional or national?

MEMBERSHIP INPUT MEETING

Now that you have a starting position, the next step is to refine the information by getting membership input.

In order to derive maximum results from such a meeting, the members attending should be prepared to provide the following kinds of information from their own energy audits:

An energy usage history, present energy usage, current reserves, and an assessment of which energy sources will experience greatest impact or be subject to excessive price increases.

A compilation of specific current problems which can be grouped into major problem areas, identification of potential problems, and a membership consensus of expected severity of the shortage impact.

An industry profile of the minimum energy resources required to maintain production at different levels—from full production down to minimum production levels required to stay in business.

A list of actions taken to conserve energy, together with resultant expected savings, and a list of alternatives available to the membership to counteract expected shortages for each type of energy.

It is important that your energy profile be developed with the perspective of your industry structure. Where are your members located? How many people do they employ? What is their contribution to the total national output? How critical is your industry's output to other areas of the economy?

This kind of information normally is available to the association, so that this framework can be created rather quickly.

The specific course of action will depend on the projected impact of the crisis. If the crisis is causing problems, the actions will be directed to increasing supplies, changing regulations, firming up supplies, and so forth. If the crisis offers opportunities, the actions will be directed to identifying the extent of opportunity, making it known, and so forth.

One clear course of action will be to establish a permanent means of communication so that ideas and information have a focal point in the association and you can speak with a single, authoritative and consistent voice.

The final step in your attack on the energy problem should be a detailed survey of your membership, initiated as soon as you start developing estimates.

The survey will provide you with the detailed back-up information you need to continue your efforts to solve the crisis. The information will be the same as that requested for the meeting, but generally in greater detail and better refined, since the companies will now be much further along in completing their own audits.

This data base will ensure that you can continue to speak factually, forcefully, and effectively for your industry. In times of crisis and change, the association executive who can do this is the executive whose views will be heard.

TWELVE STEPS AN ASSOCIATION CAN TAKE TO HELP SOLVE THE ENERGY CRISIS

1. Appoint staff energy liaison officer.
2. Appoint association energy committee or council.
3. Have energy council gather data on energy requirements of members by:

Holding meeting of energy council and having members estimate the energy needs of the industry or profession.

Conducting mail energy survey or audit.

Estimating effect of crisis on markets for industry or profession.

4. Have energy council develop conservation campaign for members and customers of members.

5. Prepare back-up literature and promotional material for conservation campaign.

6. As soon as possible, prepare white paper on energy needs of industry or profession for presentation to governmental agencies.

7. Arrange meetings with representatives of government agencies to discuss needs and programs.

8. Provide members with continuing information on new regulations concerning energy.

9. Pool best ideas of members on ways to conserve fuel and energy.

10. Consider and draft new industry standards, specifications, and so forth, that may reduce energy use.

11. Sponsor new research on conservation, conversion, and utilization of waste or by-products.

12. Develop long-range plans for energy use over next three to five years.

MINNESOTA'S REFRESHING NATURAL BEAUTY

Mr. MONDALE. Mr. President, time spent in the outdoors is a refresher and a tonic to all of us. Minnesotans are in the enviable position of living in a State with a wealth of lakes and waterways, forests, and hiking trails. The opportunity to revive tired spirits is always close by in Minnesota's unspoiled bounty.

This summer, the 65th Annual Convention of Rotary International will be held in Minneapolis and St. Paul. The Rotarians have chosen well to take advantage of the excellent convention facilites offered by the Twin Cities and to enjoy Minnesota's outdoor splendor nearby.

The variety of outdoor activities available in Minnesota was recently described in the Rotarian. I ask unanimous consent that it be printed in the RECORD.

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

GREAT WIDE WONDERLAND OF WATER

(By Mike Michaelson)

The 17-foot aluminum canoe was drawn up on the otherwise deserted beach, a slim necklace of pale sand rimming the wind-ruffled blue waters of the lake. As two children gathered driftwood for a fire, their father worked on a stringer of plump bass, filleting the fish with a keen-edged, thin-bladed knife. With quick, deft strokes he removed a pair of fillets from each fish and dumped them into a small bag of flour. Soon they were sizzling in butter in a heavy black skillet, filling the northern air with an irresistible aroma.

This traditional shore lunch was savored at a small lake in deeply wooded country north of Brainerd, Minnesota, less than 150 miles from Minneapolis/St. Paul. But the setting could have been any of the thousands of similar lakes in Minnesota or Wisconsin, northwoods neighbors that offer some of the finest and most varied freshwater fishing—and quiet-water canoeing—in the U.S.A.

The statistics themselves are awesome. Some 2.6 million acres of Minnesota (about five per cent) are covered with water, including 15,291 lake basins of 10 or more acres and more than 25,000 miles of flowing water. Wisconsin is also well endowed, with 8,600 lakes, 35,000 miles of fishing streams, and 174 species of fish. Both states have an infinite variety of well-charted canoe trails and hundreds of canoe-rental liveries—a paddler's paradise that ranges from the celebrated wild rushing waters of Wisconsin's Wolf River to the 14,000 square miles of quiet wilderness waters that comprise Minnesota's Boundary Waters Canoe Area.

Notwithstanding this vast fishing and canoeing Eden stretching out for hundreds of miles from the hub of Minneapolis/St. Paul, visitors to the Twin Cities need not travel great distances to enjoy these sports. Within the metropolitan area itself are many lakes where you can cast from shore or fish from bridges or rented boats. An eight-county region surrounding the Twin Cities is peppered with 936 lakes jumping with walleye, bass, pike, and panfish. Lake Minnetonka, nestled against the western edge of the metropolis, stretches for more than 12 miles, has dozens of small bays, and offers good paddling and fishing. And the St. Croix River, which begins as a bubbling spring amid the muskeg of the northwestern corner of Wisconsin, reaches down to within a dozen miles of Minneapolis/St. Paul.

The lower segment of the St. Croix, flanked by undulating farmland, is quiet and placid, a broad highway for big-boat fishermen, with deep holes that hide hulking sturgeon, lazy catfish, and panfish galore. The northern reaches of the river are swift and clear, the promised land for canoeists and the home of fighting bass and plump walleye.

North from the twin towns of Taylors Falls, Minnesota, and St. Croix Falls, Wisconsin, the St. Croix tumbles and foams through a wilderness where you can find quiet isolation as a bald eagle soars overhead and deer gambol in the adjoining forest. The surrounding upper valley is a rugged, lonely country of creeks and brooks and the rushing white water of the tributaries that spill into the St. Croix.

Canoe trips onto the upper river can be arranged at Taylors Falls, where outfitters will transport you and the rental canoes to a point within one to four days canoeing time back downstream. Those who venture up as far as Grantsburg, Wisconsin, will find some of the area's finest smallmouth bass fishing. The Northern States Power Company, largest single landowner along the upper St. Croix, maintains 28 primitive campsites or access areas along the river. Visitors wishing to take a one-or-two-day trip on the more tranquil waters of the lower St. Croix can have their cars shuttled downstream and leave canoes at their destination.

The St. Croix is but one of many exceptionally fine canoeing waters Minnesota has to offer. Others include:

The Big Fork—a 173-mile canoe trail in north-central Minnesota through moose country and vast fields of wild rice. Near the Highway 6 bridge, visit Bill Hafeman's canoe factory where he hand-builds birch-bark canoes of the Chippewa and Voyageur design.

Boundary Water Canoe Area—in northeastern Minnesota, abutting the Canadian border, offers one million acres of portage-linked lakes and streams. In many places paddle power in the fashion of latter-day voyageurs is the only practical means of travel. A popular jumping-off point for wilderness trips is Ely, where experienced outfitters can provide everything you'll need for a trip—canoe, tent, sleeping bags, food, utensils—even a reflector oven, great for performing culinary wonders with freshly caught trout or for baking a pie from blueberries picked along the trail. All you need bring, literally, is yourself.

Canon River—less than 40 miles south of the Twin Cities, is ideal for short outings. In the picturesque hamlet of Welch is a dam and a water-powered mill.

Crow Wing River—so clear that one could read a newspaper spread on the bottom, is good for swimming and, with an easy current, offers some of the best family canoeing in the state. It begins in the Crow Wing chain of lakes and flows south to join the Mississippi. Seldom is the water depth more than three feet.

Kettle River—a scenic waterway that joins up with the St. Croix, alternates between rushing rapids and long placid pools as it rolls through ever changing forest. The cascading waters of the upper Kettle are popular with white-water paddlers but can be dangerous for the novice. Hell's Gate Rapids has claimed several lives.

The Minnesota—a 300-mile voyage down this river that is rich with Indian and Voyageur history lets you trace the early settlement of Minnesota through a region of granite outcroppings and dense hardwood forest.

La Grande Dame herself, the Mississippi, should not be overlooked. She presents some diverse canoeing and fishing experiences and a big slice of pioneer history. Paddlers might also consider these rivers: the Cloquet, Des Moines, Little Fork, Crow, Red Lake, Root, Rum, and Snake. Information and detailed charts are available from the Minnesota Department of Conservation, Division of Parks and Recreation, 320 Centennial Building, St. Paul, Minnesota 55101.

In Wiscosin, the musical names of the fine water trails evoke images of the great French explorers and the Indians who once plied these twisting blue highways in birchbark canoes. The Flambeau and Brule, the Chippewa and Manitowish, the Peshtigo and the Namekegon—these are the waters waiting for you to explore, just as the missionaries and fur traders probed them three centuries ago.

For example, the stretch of the Chippewa from Cornell to where it joins the Mississippi about 50 miles south of the Twin Cities makes an agreeable cruise, with some rapids and dams, but with pleasant stretches of quiet water, too. It also offers some fine smallmouth bass fishing and plenty of campsites.

Tumbling out of northeast Wisconsin near Rhinelander is the Wolf, a favorite with white-water canoeists and kayakers, but it also contains some stretches that are more amiably disposed to beginners. There is an eight-mile section from Hollister to Langlade that, with the exception of a rock rapid near the latter community, offers a fine cruise to the average paddler. Another favorite in the northern part of the state is the Flambeau. A protected stream, it bears few scars of civilization along its heavily wooded shoreline. Deer, waterfowl, and other wildlife abound. Try casting for smallmouth bass and walleye to fill your camping skillet.

Many recreational canoeists who prefer more tranquil paddling start at the midsection of the long Wisconsin River, a trip from Nekoosa to Prairie du Sac that includes such scenic attractions as Petenwell Rock, Castle Rock, the dikes at Portage, Lake Wisconsin, and the famous Upper and Lower Wisconsin Dells. On the 35-mile trip from Nekoosa to Petenwell Dam the canoeist will encounter no falls, rapids, or portages.

Another fine family-type trip in central Wisconsin is the Waupaca chain of lakes. Twenty-three clear, spring-fed lakes with connecting channels provide wooded shorelines, sandy beaches, good fishing, and plenty of nearby resorts. The chain connects with Crystal River, a fast-running little stream popular with tourists who rent fiberglass canoes there for a taste of river-running excitement. (Write to the Department of Natural Resources, Madison, Wisconsin 53701, for the booklet *Wisconsin Water Trails*.)

Fishermen from either of these north-country states will tell you their land is Avalon for freshwater game fishing. In fact, groundbreaking is planned at Hayward, Wisconsin, this year for the National Fresh Water Fishing Hall of Fame to be housed in a building shaped, appropriately enough, like a muskie.

Something about the legendary muskellunge fires the imagination of fishermen. This giant of a fish is difficult to catch; many fishermen spend lifetimes trying. It is not especially good to eat, nor is it the prettiest of fish. Perhaps the same motivation drives man to scale the Himalayas or hunt Bengal tigers. Muskies are big and awesome and surrounded by mystique.

If you're determined to *try* to catch a muskie, this north country *could* be the place. In Minnesota, where the state record for muskies is 56.8 pounds, you might choose to do battle at Leech Lake off Highway 371 near Walker, a town that may have more tackle shops per capita than any community anywhere. You'll find them dotted along Main Street, their window freezers displaying the latest catch of lunkers. Some 150 muskies are pulled out of Leech Lake each year, averaging out at about 18 pounds each. But you may get lucky and arrive during a long awaited reenactment of the frenzied "Muskie Days" of the summer of 1955, when the species went on a rampage and the usual annual quota of these prize fighters was landed in a single week, 55 muskies being taken in two days.

Another well-known Minnesota muskie spot is Case Lake, where a group called Muskie. Inc. has been rearing this hard-to-raise fish. Other hot spots may be Lake Winnibigoshish and many of the headwater lakes of the Mississippi in the north-central part of the state—plus sections of the river itself, particularly between Brainerd and St. Cloud.

Over in Wisconsin, the heaviest concentration of muskellunge lakes is found in the headwater regions of the Chippewa, Flambeau, and Wisconsin rivers. In Vilas County, tucked away in the high country of the state's northern forests at an altitude of 1,860 feet above sea level, they make a claim to global fame with the "world's greatest concentration of muskie waters." Certainly, there is a lot of water in the county—90,293 acres of it contained in more than 1,300 lakes (tops in the state).

Walleye fishing is superb in both states. The Wisconsin Department of Natural Resources has published a list of 1,207 waters where lurk this marble-eyed fighter valued for its delicious meat. Minnesota, where the record walleye topped 16 pounds, has designated this large member of the perch family as the state fish. Both states also abound with northern pike, a powerful, spirited fighter that is prized as a game fish.

In the midst of all these heavyweight contenders, don't overlook the thrill of landing a scrappy panfish on lightweight tackle. A "transplanted Californian" has mounted on the wall of his Minneapolis home a pair of four-pound-plus black crappies which he claims gave him as big a thrill fishing as any Pacific salmon he has landed. He caught them on a black jib in the relatively obscure Toad Lake in the Detroit Lakes region (which claims to be "Sunfish Capital of the World"). Although he proudly claims that this lake yields the finest fishing in the entire northland, the fact is that, with thousands of lakes in this prime fishing region, *everyone* has his own special fishing spot.

Maybe this year you'll have one, too. (Further information on fishing places and regulations is available from the two addresses previously mentioned.)

STATE OF THE WORLD ECONOMY: PAKISTAN'S VIEW

Mr. PERCY. Mr. President, because of the important role played by Pakistan in a very important region of the world, I wish to submit for the RECORD a comprehensive statement on the world economy by Dr. Mubashir Hasan, Pakistan's Minister of Finance, Planning, and Development.

This statement was given by Dr. Hasan, whom I have the pleasure of knowing personally, at the Special Session of the United Nations General Assembly on April 22, 1974.

I ask unanimous consent that the text of Dr. Hasan's statement be printed in the RECORD.

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

TEXT OF THE STATEMENT OF HIS EXCELLENCY DR. MUBASHIR

The General Assembly of the United Nations, representing, as it does, 135 states, is meeting for the first time in order to consider specifically the state of the world economy and the economic relations among states and groups of states. It is indicative of the gravity of the situation that it has brought to this session such distinguished personalities including Heads of States and Governments.

The problem before this special session is an all-embracing one—political, social, economic, biological and ecological. It affects every facet of national and international life. Its implications are awesome and mind-boggling; but for us in the Third World, or call us the fourth, the fifth, or indeed the last, the essentials of the problem are simple.

For the industrialized world, the primary problem is that of making suitable adjustments in the economic order that has brought to them the highest standards of affluence ever attained by man in the history of civilization.

For us in the non-industrialized world, the spectre of death looms large. Poverty, hunger and disease have reached unprecedented levels. Out of every three children born in the developing countries, one succumbs before the age of five. For those who survive, it is a life of deprivation, desperation and degradation. Theirs is a subhuman existence. It is an intense but, mercifully, a short struggle, as their life expectancy is no more than thirty years.

The degree of tragedy varies with time and circumstances. One of the worst in contemporary history is unfolding on the continent of Africa. The suffering caused by the drought to Mauritania, Mali, Niger, Chad, Upper Volta and Ethiopia, is such as cannot even be imagined by those countries where such visitations have not taken place.

How has this tragic situation come about? Hardly a generation ago our Charter laid down in Article Fifty-five that the United Nations should promote a "higher standard of living, full employment, and conditions of economic and social progress and development". The problems we face today have come about because we did not take measures that the Charter required of us. Despite our political independence and sovereign status, an unceasing transfer of resources has been taking place from the poor to the rich nations. This transfer occurs in many forms. However, the single most active mode is that of "unequal exchange". The prices of commodities exported by the developing countries are low because we are forced to pay low wages to our workers. Not only are our wages low, but our profits are low too. If our profits were higher, the income, or value added we receive per unit of our exports would be on a par with that of the developed countries with their high wages. But this is not the case. Thus the exchange is unequal. Furthermore, where our goods compete with those of the developed countries, tariff and non-tariff barriers force our prices down. This is the case with textiles, leather-goods and a large number of foodstuffs.

Where our goods do not compete, it is the mutual competition of producers within the same country and between different poor countries that keeps them low. Such goods include tea, coffee, cocoa, copper, and other minerals and, until recently, oil and phosphates.

One must ask oneself how much such products would cost if they were to be produced by the highly paid workers of the industrialized nations. It is a question of simple arithmetic. The labour of the developed countries is paid at least ten, and of certain types, twenty times of what the labour of a developing country receives. If one were to assume that at present only one-third of the cost of production is the wage cost, then a wage ten times higher would raise these prices four-fold. I regard this a low estimate, because, in fact, our average wage rates are much less than a tenth of the rates in the developed countries and the proportion of labour costs in our products is much higher than a third. Thus the magnitude of the difference between what we *do* receive and what we *should* receive is hundreds of billions of dollars. Our estimates range between 250 and 630 billions annually, depending upon the method and range of calculations. The figures may at first sight seem incredible but, unfortunately, these are hard and cold facts which explain the basic reason for the miseries of two billion people, nearly two-thirds of mankind who toil from dawn to dusk, from childhood to old age.

Our delegation has studied the transfer of resources and income from the un-industrialized to the industrialized world. The principal elements of the mechanics of this transfer are the following:

(i) Unfair tariffs imposed by developed countries result in government revenues which are, in effect, paid by the exporting developing countries.

(ii) The tariff structure becomes more unfavourable to the developing countries as the degree of processing increases. For example, it tends to encourage the export of cotton rather than yarn, and yarn rather than cloth. In other words, there is discrimination against our exports in direct proportion to the value-added in the developing countries. On the other hand, the added value in the exports from the developed countries is overpaid. In addition, quota restrictions are imposed by the developed countries against imports of manufactures and agricultural products from the developing countries.

(iii) The developing countries are required to pay exorbitant interest on capital and excessive profits on investment to the developed countries.

(iv) The increase in creation of international reserves of currency always favours the developed countries.

(v) The prices of raw materials from the developing countries are unfavourably depressed not only through the competition of producers but also through the existence of monopolies, cartels and unfair trade practices indulged in by the buyers in the developed countries.

(vi) Even the trade surplus of oil in the

developing countries has been going to the services of the developed countries.

(vii) The developed countries have a virtual monopoly of the means of ocean and air transport.

(viii) The international financial practices such as clearance of money transactions, insurance and co-insurance schemes, and fixation of freight rates, all work in favour of the developed countries.

(ix) The managements of firms from the developed countries operating in the developing countries prefer to make purchases of their requirements from the developed countries at very high prices. These are not "arms-length" transactions in all cases.

(x) The developed countries charge too high a price for technology from the developing countries.

(xi) Emigration of educated, skilled, and professional manpower from the developing countries to the developed countries.

In sum, the economic power of the developed countries which determines the pattern of investment, production, commerce and consumption in the developing countries is always used to the advantage of the first group of countries and to the detriment of the second. At the same time, the pattern of consumption has become so lopsided that the privileged countries obtain a disproportional share of production, leaving very little for consumption in the poor countries. Similarly, the affluence of the developed countries, being on the intensive use of raw materials, is in effect depleting the natural resources of the developing countries at an alarming rate. These serious excesses are further compounded by a thoughtless and short-sighted pursuit of unrestricted production and consumption which cause ecological imbalances and pollute the land, water and atmosphere of our planet.

The availability and prices of raw materials are posing an extremely difficult problem to most countries. Shorn of rhetoric, the problem of raw materials boils down to this: Until recently the developing countries, producing raw materials, literally got a raw real.

The terms of trade were against us. Having no holding capacity, we had to sell at cheap prices and any increase in production was penalized by lower unit prices. The international middleman, the speculator and the hoarder of the commodity markets reaped most of the benefits while the individual producer and the producing country suffered. The recent rise in commodity prices has not helped many developing countries, but in fact has made us suffer to an unbearable degree. To support my point, I have only to refer to the high prices of fertilizer, foodgrains and certain other essential items like edible oil. Whichever way the developing countries turn, we are faced with ever-increasing difficulties. Shortage of fertilizers will lead to loss in food production which means more food imports and a worse balance of payments. This snowballing effect will continue until we are economically and, in some cases, physically wiped out. This is the grim spectacle facing us at present.

The waste of the natural resources of our world, both renewable and non-renewable, is a folly mankind can ill-afford. The gifts of the earth, without which no economy can function, are being exhausted at an incredibly increasing speed. The sooner it can be controlled the better.

My religion, Islam, is quite explicit on the subject that God has created sustenance for all his creatures and that the resources of the earth are for all mankind.

I quote from the Holy Quran:

". . . He (God) is the one who made *for you* all that there is in the earth. . . ." (Ch: 2:29).

And again:—

"Do you not see how Allah has made of service to you whatsoever is in the skies and in the earth and has loaded you with favours, both within and without. . . ." (Ch. 31:20).

It is our deep belief that the riches of land, sea, and the spaces beyond are meant for the good of all mankind for all time not merely for one generation, much less the exclusive use of their temporary owners. Indeed, Islam also proclaims that the individuals, and nations for that matter, who seemingly own wealth (or anything) are only its custodians. They are allowed to use only as much of it as they rightfully need. They must not waste this wealth nor usurp the share of others; otherwise severe chastisement awaits them.

We are urged by many distinguished friends to allow the forces of supply and demand to operate freely.

We are asked to put our faith in the great enterprises which utilize the resources and operate the existing system of international trade. But they do not operate for the objectives that have been stated again and again by a vast majority of the speakers in this special session. They operate merely for profit and they use up the natural resources for the economic priorities of a minority rather than a majority. They do it in a manner that is not in accord with the economic needs of developing nations.

To say that the international monetary system is in disarray would be an understatement. It allows the privileged countries to incur large deficits because their currencies are used as the basis for international exchange. The monetary crisis is the result of a situation in which the increase in production in the developed countries still does not keep pace with the increase in demand. The inflation which is raging across the world today, and which has created a situation that can no longer be sustained, is the manifestation of the effort to consume more than is produced.

The antagonism between the rich and the poor is natural. You have to be poor to realize it. The poor are increasingly beginning to believe that the rich have not become rich by Divine design but by expropriating the fruits of their labour; that some nations are affluent and others are impoverished as a result of the cumulative effect of the eras of imperialism, colonialism and neo-colonialism, and not due to any inherent defect in themselves.

In fact, most people in developing countries work hard, for excruciatingly long hours, to eke out a miserable living. Surely, such labour deserves better reward than they receive.

The problem under consideration at this session has a historical perspective. The history of centuries of unjust and unequal existence is the history of a long struggle. Over the last few decades the developing countries have struggled successfully for their political independence. They are now struggling for their economic emancipation. Is it not natural that the struggle should continue until peace on earth and goodwill among mankind are established,

What I have just stated is not a distorted interpretation of history. It is history's object lesson. For us in the Islamic Republic of Pakistan, it is also the word of Allah who says in the Holy Quran and I quote:—

"Mischief has appeared on land and sea because of what the hands of men have wrought (so) that (God) may give them a taste of some of their deeds, in the hope that they may turn back (from evil) . . ." (Ch: 30: 41).

Again:

". . . . and if Allah had not repelled some men by (means of) others, the earth would have been corrupted . . . " (Ch: 2:251).

There is another matter intimately connected with the agenda before the Assembly. Most developing countries owe huge debts to the developed countries. These were accumulated over the last fifteen to twenty years. These were given and received with the objective of economic development of the poorer nations. The loans were made with the best of intentions but, as it is apparent, the intended objectives did not materialize. The borrowing was not a unilateral act of the recipient countries but was a joint decision of the donor and the recipient. In actuality the final say was that of the donor and not that of the recipient.

Before the increase in the cost of oil, the economies of the developing countries had reached a breaking point as in many cases as much as one quarter of their export earnings were being used for servicing their debts. And, in most cases, these exports consist of those very vital commodities and goods so urgently required for improving the economic welfare of their own people.

We, therefore, suggest that when proposals are formulated for alleviation of the problems with which the developing countries are faced, the question of the burden of debt has to be kept in full view. The solution in the form of the most liberal rescheduling, if donor countries cannot persuade themselves to reach a still more generous solution, is an absolute imperative.

The debate has been remarkable for its range and depth. I should like here to express my country's warmest appreciation to His Excellency Mr. Houari Boumedienne, President of Algeria, for his vision in calling for the convening of this special session. The debate has been remarkable also for the number of concrete proposals and useful suggestions it has brought forth, for the relief of those immediately affected, and for changing the international economic order.

We fully endorse the theme of self-reliance expounded by the Chairman of the delegation of the People's Republic of China envisaging reliance on the strength of our own people, and making full use of our own resources for economic development.

We are re-assured by the determination of the USA, announced by Secretary of State, Dr. Kissinger, to build food reserves, to restore the world's capacity to deal with famine, and to increase the quantity of food aid over the level provided last year.

We support the bold initiative of His Imperial Majesty, the Shahinshah of Iran, for the establishment of a Special Development Fund.

We welcome the reported decision of OPEC to create a fund for soft-term loans to developing countries.

We welcome the announcement of the Minister of Petroleum and Mineral Resources of Saudi Arabia that they will participate in a number of institutions and funds to mitigate the hardship of the developing countries.

We are wholly with the Arab countries in establishing institutions such as the Kuwait Development Fund, the Arab Bank and a Fund for Africa.

We envy the centrally planned economies which, as the Foreign Minister of USSR stated, ensure proportionate and harmonious use of all resources and which have not been affected by the present crisis.

We also fully appreciate the many constructive proposals made by other delegations which deserve detailed and expeditious study for the improvement and the well-being of people all over the world.

As many distinguished delegates have already spoken on the subject, it is not necessary for me to relate once again the gravity of the economic plight of the nations hit by the rise in the prices of oil, fertilizer, wheat and other essential commodities. So hard has been the blow that more than a billion people are in no condition to suffer the agony of the delay that detailed investigations, time-consuming diagnosis and a

protracted debate on treatment must entail. They need first-aid without further loss of time.

And, we will support any scheme, any proposal, any institution that will lead to an enduring solution of the problem. A cooperative effort of producers, a fund for stabilization of prices, and a stockpiling operation; all are welcome toward the objective of having stable prices, assured supplies and satisfaction of reasonable demands. Let experts sit down and formulate a workable scheme which will achieve this objective for all nations of the world, rich and poor, developed and developing, producer or consumer. This will indeed be a noble effort.

I have already referred to the restrictions, particularly tariffs, placed on our exports by the developed countries and remarked that their effect is to lower the prices we receive. Because our economies are so dependent on foreign exchange earnings, we have no choice but to cut our prices below those of the competing producers in the developed countries. In effect, it is we who pay these tariffs and the governments of the developed countries that collect revenue out of them. It is understandable that no country would like to see whole industries and agricultural and mining activities swept away by low-cost competitors.

However, these tariffs and non-tariff barriers designed for protection of producers at home were never intended to become means of raising revenue at the expense of the developing countries. It is only just and reasonable, therefore, that these tariff revenues should be refunded to the governments of the exporting countries by the governments of the developed countries. Such a scheme would go very far indeed towards improving the trading relationships between all countries.

The basic pre-requisite to fulfill the purpose of this special session cannot be met unless the world production is increased. Unless there is more production, there can be no increase in anyone's prosperity. All nations have to join in increasing production. The developed nations naturally have to carry the major burden in this endeavour as their productive capacity is larger. But their production cannot increase without increase in the production of the Third World. And the Third World will have to be generously helped in order to help itself and the rest of the humanity.

Unfortunately, my delegation does not see in the immediate future the prospect of a technological breakthrough in the industrialized countries which can lead to a substantial increase in their production.

The second alternative for transfer of goods and services to the Third World is to reduce consumption in the affluent countries. Will the developed nations do this? This is a big question mark for the whole world.

The third alternative is further impoverishment of the underdeveloped nations. However, this would lead to major upheavals.

All these issues, although economic in appearance, are political in substance. It is, therefore, imperative that solutions be found on the basis of the principles laid down in the charter of the United Nations.

The complexity and immensity of the problem, the possibilities of recession and depression, the spectre of pestilence and famine need not give rise to pessimism and gloom. The very convening of this session, the addresses of the high dignatories and the level of the debate demonstrate the desire of mankind for a just solution. Above all, the desire for unity and the awakening of the Third World auger well for the future. We are happy that the recent Islamic Summit held in Pakistan helped, among other things, in stimulating this process of awakening. This is evident from the large number of messages received from all over the world by our Prime Minister, Mr. Mulfikar Ali Bhutto. The Lahore Declaration contains portions relating to economic cooperation that are of vital significance not only to the Islamic countries, but also to the whole world.

What is required is a vision on the part of the rich, both in the oil-consuming and the oil-producing countries. In this vision lies the only chance of a peaceful solution of the current crisis. Should we fail to find a solution based on justice and equity, let us always remember that Nature has its own grand design for fulfilment of the destiny of mankind.

I thank you.

DESIGNING AMERICA'S FUTURE

Mr. HUMPHREY. Mr. President, on Sunday, May 5, I had the pleasure of participating in the annual meeting of the Small Business Service Bureau in Worcester, Mass.

I was particularly pleased to join in their tribute to Massachusetts State Senator Daniel Foley as the Bureau's outstanding public servant for 1974. I have known Dan Foley for years as an outstanding legislator, a fine American, and a good friend. But most importantly, Dan Foley is a man of the people and a tireless champion of their interests.

Among the more than 1,000 guests attending the annual meeting were Gov. Francis Sargent, former Gov. Endicott Peabody, Attorney General Robert Quinn, Congressmen HAROLD DONOHUE and JOSEPH MOAKLEY, Worcester Mayor Izrael Katz, and the entire Democratic leadership in the Massachusetts State Legislature.

As a result of the very careful planning and hard work of the bureau's energetic president and gracious host, Mr. Francis Carroll, the entire evening was one that all of us will long remember.

Mr. President, I ask unanimous consent that my remarks to the annual meeting of the Small Business Service Bureau be printed in the RECORD.

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

DESIGNING AMERICA'S FUTURE

(Address by Senator HUBERT H. HUMPHREY)

It is a pleasure to be here tonight to participate in the Annual Meeting and Testimonial of the Small Business Service Bureau. As a small businessman of sorts myself—my family still owns a small drugstore in South Dakota and I grew up behind the counter of my fathers store—I feel right at home.

I am particularly pleased to be able to join in your tribute to Senator Daniel Foley as your Outstanding Public Servant for 1974. I have known Dan Foley for years as an outstanding legislator, a fine Democrat, and a good friend His initiatives in the field of progressive health legislation and no-fault auto insurance, have not only succeeded in protecting the consumers of this state, but have shown the way to many other states around the nation. But, even more than these specific accomplishments, Dan Foley has remained close to the people he represents and an effective champion of their interests. I compliment your organization for your excellent selection of a truly outstanding public servant.

And, speaking of outstanding public servants, it is a privilege to be here in the home district of my distinguished colleague of 25 years in Congress, HAROLD DONOHUE. HAROLD has been one of the most consistent and vigorous supporters of progressive legislation in the House of Representatives for two decades. Colleagues recognize that he is an experienced source of sound thinking and quiet strength when the legislative atmosphere gets a little tense, as it so often does in this turbulent time of our history.

We have worked together on many major pieces of legislation during our years together in Congress. But today he is deeply involved in the most important and historic deliberation of the Congress in over a century. As the ranking Democratic member of the House Judiciary Committee, Harold Donohue is in a critical leadership position in Congressional consideration of the impeachment of the President of the United States. While I do not envy him in this difficult job. I am thankful that men with his experience and character are carrying out this difficult responsibility.

* * * * *

Rapid change and increased complexity are hallmarks of modern societies and America is no exception.

Overnight the energy situation seemed to burst into our consciousness as a national crisis. One day the radio jingle was "Electricity is cheap, cheap, cheap," the following day it was "turn your thermostat down."

For years the price of crude oil in our country increased at a rate of about 1.5% each year, but in the past twelve months its price has skyrocketed an incredible 80%. In other words, the price of domestic crude oil has risen twice as much in the past year as in the prior 23 years combined.

Government policy has traditionally been aimed at holding down the supply of oil domestically as a way of keeping American crude prices above world market levels. This year that policy has been reversed. Today our policy is based on an urgent need to expand production and bring supplies to market at the earliest possible time, in order to drive down today's high world market oil prices.

The world food situation reversed itself just as dramatically. For decades, our concern was over how to keep our farms from producing so much that farmers drove each other out of business, and how to dispose of surpluses. Today, world demand is running far ahead of the ability of the world's farmers to produce.

The growth in world population and world affluence has turned the food situation around. Our nation's food stocks are at their lowest level since World War I. And world food reserves today have shrunk to a point where they are adequate to meet demand for a mere 21 days. That is a slim margin and is courting a world food disaster. Coupled with this scarcity are rising world food prices that spell trouble to many American consumers. But starvation for many millions around the globe who rely on the products of our farms for their sustenance.

Conditioned to a world of food surpluses, neither the United States nor any other major food exportng nation has taken the steps that will be needed to provide a minimum level of food security and price stability to the world's producers and consumers.

For centuries countries have argued, bargained and entered trade negotiations to gain access to the markets of other nations.

This was the reason for the Kennedy Round of trade negotiations in the early 1960's and the purpose of virtually every trade overture the United States has ever initiated—including those toward the Soviet Union and China.

But today, the focus of international trade discussions has been radically changed. The main concern of every industrialized nation in the world today is access to the resources of other nations.

Yes, historically it has been access to markets—now, it is access to supply!

Access to fuel, to food, to lumber, to minerals, is what international trade is suddenly all about.

These are just a sampling of the many indicators that our nation now faces a much more basic question: How will America adapt to this new recognition of the limits on nature's resources without diminishing the standard of living of its people?

One necessity will be to begin to do a much better job of planning-yes, of establishing goals and setting priorities for our Nation.

We have been most successful when such goals have been precisely set and doggedly pursued.

The Space Program is a good example. It was a success because we set a goal, developed a plan for achieving it, and assigned a specific time period for its accomplishment.

The Marshall Plan met with success in rebuilding Europe after World War II for similar reasons. We defined our objectives, and put the entire effort under a comprehensive plan and management system.

Today's needs can also be met if we clearly and carefully select our goals, establish a time period for their accomplishment, pledge the resources required and then create a management system to pursue each of them.

Some of our most important needs—needs that should be national priorities—are pretty obvious to all of us.

First, our Nation's transportation system needs urgent attention; it is neither balanced, efficient, nor modern.

Second, the conflict between environmental protection and industrial growth must be resolved.

Third, the development of alternative energy sources is essential if we are to sustain our standard of living.

Fourth, our cities are decaying—they need to be made modern and liveable again.

Fifth, we need a National Food Policy to assure plenty.

Sixth, rural and small town America provide a choice. A diversity, in lifestyle to our citizens that is healthy for our country and has to be preserved and developed. And we have important unmet needs in housing, health, and education.

These are just a few of the goals to which America must address itself.

But, we will not set the Nation's priorities, commit its resources, mobilize the support of the people, and reach these goals without a much better job of planning—looking ahead. Yes, better planning!

For years we in politics, and many in private life, have avoided this word like the plague.

Planning—it conjured up the demons of Socialism and Communism in the minds of many people. Today, I believe we are a bit more mature. Most people accept planning as a non-ideological necessity in managing activity in the modern world—private and public activity.

When I speak of planning I do not mean having someone in Washington make the many detailed decisions regarding public or private activity. Nor do I envision a one-year, two-year, or five-year national economic plan within which every business in every sector of the economy must be fit and to which they all must conform. This is not my idea of what we need in America at all.

Planning in our nation can only be effective if all levels of government and the private sector are intimately involved in it. The philosophy of our people and the traditional practices in our economy doom any other approach to certain failure.

We have had experience with planning of this sort in our country in the past, and it has worked quite well.

For example, without careful planning the great interstate highway system which is rapidly nearing completion, would have been impossible. And the system of state and national parks in this country could, likewise, only have been developed with clear goals and thorough planning.

The need today is to extend the concept of planning as a way of dealing with the problem of continued prosperity in the face of ever more limited resources.

This is a tremendous challenge to America.

But, we have faced great challenges in the past and emerged a stronger nation—challenges that would have broken the spirit and defeated a lesser nation and a weaker people.

To move this concept of planning along and to focus public discussion on this crucial issue, I have recently introduced in the Senate the Balanced National Growth and Development Act of 1974. It is the single most important legislative proposal of my 25 years in Congress, and I have worked for over two years on its development.

When one looks ahead to the beginning of the next century—a mere 25 years away—the need for such a planning capability is obvious.

In 25 years, our nation's population is expected to exceed 270 million people; today it is 212 million.

In 25 years, 83% of our people will be living on one-sixth of this nation's land in ten massive urban areas.

In 25 years, the per capita income of Americans will be from two to three times what it is today.

In 25 years, we will be consuming three times as much energy as we did in 1970, if past trends continue.

In 25 years, automobile travel in the United States will easily double, even if it grows at a slower rate than it has in the past.

In 25 years, consumption of increasingly scarce raw materials will have risen dramatically over current levels—for example, aluminum consumption in the United States can be expected to jump almost five-fold from the 1970 level by the year 2000.

It is incredible that the United States, the first nation to enter the modern world of the 20th Century, may well be the last nation to develop the institutions and processes needed to deal with the complexity and rapid change that come with a modern technological society.

If we are to "design" our future and not simply "resign" ourselves to it, if we are to anticipate change and direct it to the fullest possible benefit of our people; then we must create the means and organization needed to plan and provide for America's balanced national growth and development.

The need for this kind of legislation is particularly urgent today, when trust and confidence in the political process is at an all time low. And the mistrust and cynicism are not directed solely at the White House—the shadow of doubt extends from the city hall to the state house, from the Governor's Mansion to the United States Congress. Nor is it directed solely at individuals. Rather, the basic integrity and soundness of our political institutions is being questioned.

Our political process must be cleansed. Government must become worthy of the trust and confidence of the people. But campaign and election reform, so often touted as the response to Watergate, are only the beginning.

Unless our government buckles down and begins to meet the needs of our people, all the campaign reform and election reform in the world will not restore the people's faith in their government.

The proposal I have discussed with you tonight would, I believe, result in a great improvement in the ability of government to anticipate and respond effectively to our nations' problems.

I do not claim that it is a perfect proposal or that modifications would not improve it. And, as with anything that is new, we probably will make mistakes as we learn to use it. But I do believe that the problems of the 20th century require that government have the new tools. I am proposing, if it is to successfully deal with them. Certainly we must try. For as Franklin Roosevelt once said:

"Governments can err, Presidents do make mistakes. But the immortal Dante tells us that the Divine Justice weighs the sins of the cold-blooded and the sins of the warm-hearted on a different scale. Better the occasional faults of a government living in the spirit of charity than the consistent omissions of a government frozen in the ice of its own indifference."

SCHOOL IMPACT AID REFORM

Mr. HRUSKA. Mr. President, S. 1539, the Education Amendments of 1974, proposes a comprehensive reform of school impact aid under Public Law 81–874. I have expressed earlier my appreciation to the Education Subcommittee chairman (Mr. PELL) and the ranking minority member (Mr. DOMINICK) for their efforts to assure recognition of impact aid funding priorities. This is a matter of serious concern to school districts near major military installations. May I again express my appreciation and extend it to all members of the committee for addressing the many issues involved. My constituents in the school districts adjacent to Offutt Air Force Base, the headquarters of the Strategic Air Command, have had good opportunities to make their views known.

For several years the Senate Appropriations Committee has asserted funding priorities for category A—"on base" entitlements through appropriation language. This is not a satisfactory procedure. It is vulnerable to point-of-order challenge. School districts with severe category A impaction have faced continuing uncertainty about the amount of their annual entitlements. We would do well to write reasonable priorities into law as the committee has recommended.

There are some impact aid features in S. 1539 which I oppose. The inclusion of low rent public housing in the Public Law 874 definition of Federal property has been unacceptable to me since it was first adopted several years ago. This inclusion grossly distorts the original intent of Public Law 874. S. 1539 would remove the Public Law 874 safeguard which precludes funding of the category C or public housing eligibles until other funding requirements of the act are met. S. 1539 would do this by eliminating category C and folding the public housing eligibles into the established A and B categories.

Both the President and the Secretary of Health, Education and Welfare have raised strenuous objections to this proposal. In a March 5, 1974 letter to the distinguished committee chairman the President referred to the proposed change in category C entitlement. He said:

> The modest steps taken by the Committee to accomplish this reform are overwhelmed by the forced funding of a new Category.

The Secretary stated on the same date in a letter to the distinguished chairman that:

The inclusion of Category C—public housing—within the A and B Categories is a step backwards, making Title II of S. 1539 unacceptable.

I trust, Mr. President, that all of my colleagues understand that no firm estimates exist for the cost of funding public housing children under Public Law 874. Some consider $300 million a good guess.

The Select Committee on Equal Educational Opportunity, chaired by the distinguished senior Senator from Minnesota, addressed this issue in its report filed on December 31, 1972. The report recommended substantially the same public housing impact aid support reflected in the pending bill. In minority views, joined by the distinguished senior Senators from Colorado and Kentucky, I then stated strong objections to recommendations for full funding of the Public Law 874 provisions which authorize impact aid payments to school districts in relation to the number of children living in federally assisted public housing. The cost was then estimated at about $300 million for fiscal year 1973.

The position I stated in December 1972 on impact aid and public housing is the one I still hold and recommend to the Senate:

The addition to total municipal overburden in large cities, as a result of heavy concentrations of poor and low-income families, deserves consideration on a more comprehensive basis than education. The Report [of the Select Committee on Equal Educational Opportunity] recognizes this in its adoption of the recommendation of the President's Task Force on Urban Renewal—to provide support related to a variety of municipal services. Any urging of immediate full funding of school impact aid, related to public housing, would be a digression from the goal of more comprehensive urban support. It would also confuse current efforts to clarify P.L. 874 objectives with respect to school-district impact of military and civil service dependents.

The danger in removing the current Public Law 874 safeguard on category C funding is clear upon examination of the impact aid proration provisions in S. 1539. Unless categories A and B, which under S. 1539 would now include public housing children, are fully funded, each category would first receive 25 percent of entitlement. Then a second set of varied proration factors would apply. The net result of the proration under optimistic appropriation conditions would be a drop in entitlement from 100 percent to 85 percent for school districts with greater than 25 percent A—"on base" impaction.

Senators from States with heavy category A impaction will recognize clearly the dangers to local school budgets of the 15-percent entitlement reduction threatened by S. 1539. It is a serious threat. I cannot conceive that the appropriations Committee would support and the President accept a fully funded impact aid appropriation on the terms of the pending bill. The full-funding amount could exceed $1 billion per year. Any amount less than full funding, and the proration factors apply.

Mr. President, while I have commended the chairman and members of the committee for their attention to impact aid priorities, I regret very much that what the right hand has given the left tends to take away through the devices of public housing eligibility, full funding and proration.

I have agreed to cosponsor the amendment introduced by the distinguished senior Senator from my neighbor State of South Dakota. It would shield the school districts with 25 percent or greater category A impaction from the S. 1539 proration provisions and thus maintain a critical funding priority established in recent years through the appropriation process. The Senator from South Dakota has rendered good service to all States with large military bases near relatively small school districts.

It has come to my attention that there has been some consideration of a substitute for or an amendment to the proposal of the Senator from South Dakota. As I understand it, the purpose would be to raise the proration immunity threshold to some level higher than 25-percent category A impaction. For example, under the Senator from South Dakota's amendment, all districts with 25 percent or greater impaction would be immune from proration in less than full-funding situations. The ranks of the immune school districts would be thinned considerably, however, if a higher category A immunity threshold were stipulated, say 50- or 60-percent impaction.

The effects of raising the percentage above 25 percent can be seen in the tables below. I ask unanimous consent that they be printed in the RECORD at the end of my remarks.

In fiscal year 1973, the most recent year for complete impact aid data, 34 States had a total of 229 school districts with greater than 25-percent category A impaction. Some of these are American Indian districts. These are noted in the table which lists individual school districts.

Senators from each of the 34 States concerned can gage the effects of altering the McGovern amendment by raising the proration immunity threshold above 25 percent. It is simply a question of how many severely impacted school districts in each State would be vulnerable to proration and suffer as much as a 15-percent category A entitlement reduction. For example, by raising the proration immunity threshold from 25-percent to 60-percent category A impaction, 134 of the 229 severely impacted school districts—nearly 59 percent of the total—would remain vulnerable to proration. A 50-percent category A impaction threshold would leave 112 school districts—nearly 49 percent of the 229 district total—still vulnerable.

Mr. President, the case for a 25-percent threshold rests mainly on usage. For several years, 25 percent has been accepted as the point where severe category A impaction begins and 100 percent of entitlement should be guaranteed. It is not an immutable level, but it shows signs of being durable. I strongly oppose efforts to tamper with it.

Experience with past education bills and the stated position of the administration suggest that we may be some distance from the signing of a bill into law. Regardless of the fate of S. 1539 and H.R. 69, the House-passed education bill, we are building an important record on impact aid reform. I welcome this opportunity to help build the reform record. I would regret very much, however, seeing in that record any efforts to tamper with the Senate's established acceptance of 25 percent as the beginning of severe category A impaction.

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

NUMBER OF SCHOOL DISTRICTS AT VARYING LEVELS OF CATAGORY 3A IMPACTION, FISCAL YEAR 1973

[Percent of impaction]

State	25–29	30–39	40–49	50–59	60–69	70–79	80–89	90–100	Total number
Alaska	2	2	1			1			6
Arizona	4	2	2	6	1	3	3	17	38
Arkansas					1				1
California	3	5	1	2	2	4	1	3	21
Colorado		1	1	1					3
Connecticut		1							1
Idaho			1						1
Illinois	1	2		3					6
Indiana		1							1
Kansas			2					1	3
Maine			1			1			2
Massachusetts		1		2					2
Michigan			1		1	1			3
Minnesota								3	3
Missouri	1			1	1				3
Montana	1	6	6	2	4	7	2	3	31
Nebraska		1				2		1	4
Nevada			1						1
New Hampshire	1								1
New Jersey	1	1	2			1			5
New Mexico	2	1	3	2			2		10
New York	1		1						2
North Dakota	3	3	2	1	2	2		2	15
Ohio	2								2
Oklahoma	5	2	5	2	3	1			18
Oregon		4						1	5
Rhode Island	1	1							2
South Dakota	1	2			2	1		2	8
Texas	4							4	8
Utah		1	1						2
Virginia	1								1
Washington	2	6	1	1	2	1	3		16
Wisconsin			1						1
Wyoming						2	1		3
Total	36	43	33	22	19	27	12	37	229

DATA ON DISTRICTS WITH 25 PERCENT OR MORE CATEGORY 3A IMPACTION—FISCAL YEAR 1973

State and school district	Total average daily attendance	Category 3A children	Category 3A children as percentage of total	Total entitlement
Alaska:				
Alaska Dept. of Ed	21,119	16,617	78.68	$24,727,591
Hoonah Public Schools [1]	270	97	35.93	70,435
King Cove City School Dist	81	22	27.16	15,975
Bristol Bay Boro School Dist.[1]	264	69	26.14	50,103
Dillingham City School Dist.[1]	316	101	31.96	73,340
Nome-Beltz Reg. High School	315	135	42.86	98,028
State total	22,365	17,041		25,035,474
Arizona:				
Maricopa Co. Accomodation S. D	515	515	100.00	221,527
Indian Oasis S. D. No. 4 [1]	934	934	100.00	401,760
Fort Huachuca Accomodation Schools [1]	1,847	1,847	100.00	794,487
Mt. Lemmon Accommodation S. D	103	46	44.66	19,786
Yuma Co. S. D. No. 27 [1]	1,143	622	54.42	267,553
Litchfield S. D. No. 79	1,124	309	27.49	132,916
Northern Yuma H. S. D.[1]	556	184	33.09	79,147
Grand Canyon S. D. No. 4 and 3	178	127	71.35	54,629
Tuba City E. S. D. No. 15 [1]	1,134	1,107	97.62	476,176
Grand Canyon H. S. D.[1]	76	65	85.53	27,959
Tuba City H. S. D.[1]	371	361	97.30	155,284
Union E. S. D. No. 62 [1]	116	58	50.00	24,948
Peach Springs S. D. No. 8 [1]	115	105	91.30	45,165
Valentine S. D. No. 22	35	18	51.43	7,742
Moccasin S. D. No. 1	20	10	50.00	4,301
Dysart S. D. No. 89 [1]	2,734	702	25.68	301,965
Chevelon Butte S. D. No. 5	20	20	100.00	8,603
Page High Sch. Dist. No. 8	563	281	49.91	120,872
Page Elem. Sch. Dist. No. 8	1,446	835	57.75	359,175
Window Rock S. D. No. 8 [1]	2,156	2,084	96.66	896,432
E. S. D. No. 2 [1]	988	987	99.90	424,5[illegible]8
Keams Canyon E. S. D. No. 25 [1]	361	361	100.00	155,284
McNary Elem. S. D. No. 23	101	87	86.14	37,423
Alchesay H. S. D. No. 2 [1]	242	240	99.17	103,236
Ganado S. D. No. 19 [1]	1,294	1,209	93.43	520,051
Kayenta E. S. D. No. 27 [1]	814	814	100.00	350,142
Chinle C. S. D. No. 24 [1]	2,803	2,803	100.00	1,205,710
Puerco E. S. D. No. 18 [1]	582	300	51.55	129,045
Young Sch. Dist. No. 5 [1]	289	223	77.16	95,923
Rice S. D. No. 2 [1]	1,015	903	88.97	388,425
Sacaton E. S. D. No. 18 [1]	802	762	95.01	327,774
Apache Co. H. S. D. No. 9 [1]	767	200	26.08	86,030
Fort Thomas Elem. S. D. No. 7 [1]	347	254	73.20	109,258
Fort Thomas H. S. D. No. 7 [1]	117	79	67.52	33,981
Alpine S. D. No. 7	39	11	28.21	4,731
Monument Valley H. S. D. No. 5 [1]	365	365	100.00	157,004
Navajo Compressor Stat. S. D. No. 5 [1]	29	29	100.00	12,474
Horse Mesa Accom. Sch. & Unor. Terr.[1]	20	7	35.00	3,011
State total	26,161	19,864		8,544,499
Arkansas:				
Gosnell S. D. No. 6	1,864	1,205	64.65	518,150
State total	1,864	1,205		518,150
California:				
Two Rock U. S. D.[1]	151	88	58.28	37,853
Reservation S. D.[1]	14	10	71.43	4,301
Herlong S. D	296	117	39.53	50,327
Coffee Creek, S. D	26	10	38.46	4,301
Alpine Co. Unif. S. D	109	32	29.36	15,789
Center Jt. S. D	1,160	673	58.02	289,490
Wheatland S. D	2,542	2,151	84.62	925,252
Wheatland U. H. S. D	862	591	68.56	423,912
Travis Unif. S. D	3,420	3,326	97.25	1,641,081
Monterey Peninsula Unif. S. D	17,799	5,166	29.02	2,548,956
Atwater S. D	3,400	1,077	31.68	463,271
Chawanakee S. E. D	40	40	100.00	17,206
Big Creek Elementary S. D	185	126	68.11	54,198
Ocean View S. D	2,142	660	30.81	283,899
Adelanto S. D	1,864	1,452	77.90	624,577
China Lake Jt. S. D	2,500	2,387	95.48	1,026,768
Muroc Unif. S. D	3,894	2,763	70.96	1,363,291
Central U. S. D	2,181	1,625	74.51	698,993
Seeley U. S. D	383	205	42.44	88,180
San Pasqual Valley Unif. S. D.[1]	672	245	36.46	120,885
Lompoc Unif. S. D	12,167	3,113	25.59	1,535,985
State total	55,907	25,587		12,218,525
Colorado:				
El Paso Co. S. D. No. 8	3,196	1,876	58.70	806,961
Ignacio United S. D. No. 11 Jt.[1]	918	443	48.26	190,655
Air Academy S. D. Bo. 2	4,466	1,700	38.07	789,123
State total	8,580	4,019		1,786,640
Connecticut:				
Town of Groton Bd. of Ed	8,722	2,769	31.75	1,710,632
State total	8,722	2,769		1,710,632
Idaho:				
S. D. No. 193	3,925	1,725	43.95	742,008
State total	3,925	1,725		742,008
Illinois:				
Highwood Highland Park S. D. No. 111	1,416	428	30.23	$311,160
North Chicago S. D. No. 64	3,451	1,965	56.94	975,249
Community H. S. D. No. 123	1,304	392	30.06	419,612
Rantoul City S. D. No. 137	3,481	1,770	50.85	926,595
Rantoul Twp. H. S. D. No. 193	1,537	421	27.39	368,484
Mascoutah Comm. Unit. S. D. No. 19	3,511	1,905	54.26	945,470
State total	14,700	6,881		3,946,571
Indiana:				
Maconaquah Sch. Corp	3,788	1,375	36.30	658,460
State total	3,788	1,375		658,460
Unif. S. D. No. 475	6,412	2,719	42.40	1,270,316
Unif. S. D. No. 437	3,127	1,397	44.68	652,678
Unif. S. D. No. 27	2,368	2,366	99.92	1,105,395
State total	11,907	6,482		3,028,390
Maine:				
Limestone School Dept	2,400	1,699	70.79	730,824
Town of Winter Harbor Sch. Comm	193	93	48.19	40,003
State total	2,593	1,792		770,828
Massachusetts:				
Town of Ayer Sch. Committee	3,413	2,030	59.48	1,540,973
Bourne Sch. Committee	3,230	1,169	36.19	1,046,839
State total	6,643	3,199		2,587,812
Michigan:				
Oscoda Area Schools	4,121	1,717	41.66	834,530
Rudyard Twp. S. D. No. 11	2,221	1,593	71.72	774,261
Forsyth S. D. No. 7	3,314	2,130	64.27	1,035,265
State total	9,656	5,440		2,644,057
Minnesota:				
Redlake I. S. D. No. 38 [1]	909	893	98.24	449,143
I. S. D. No. 77 [1]	135	135	100.00	67,899
Unorg Territory S. D. [1]	92	92	100.00	46,272
State total	1,136	1,120		563,315
Missouri:				
Knob Noster Redrg. S. D. R. 8	2,043	1,206	59.03	555,278
Belton S. D. No. 124	4,300	1,101	25.60	506,933
Waynesville Reorg. S. D. R. 6	4,902	3,030	61.81	1,395,102
State total	11,245	5,337		2,457,314
Montana:				
Jt. S. D. No. 8 [1]	358	109	30.45	46,886
Browning E. S. D. No. 9 [1]	1,267	952	75.14	620,028
H. S. D. No. 9 [1]	378	236	62.43	198,320
Elmo E. S. D. No. 22 [1]	33	24	72.73	13,814
Babb S. D. No. 8 [1]	71	55	77.46	31,295
Heart Butte S. D. No. 1 [1]	160	160	100.00	105,044
Lakeside S. D. No. 3	109	32	29.36	13,764
Jt. H. S. D. No. 8 [1]	121	40	33.06	26,640
Dixon S. D. No. 9 [1]	68	22	32.35	13,730
Gardiner S. D. No. 4 [1]	102	46	45.10	42,923
S. D. No. 21	116	84	72.41	49,649
Lame Deer S. D. No. 6 [1]	304	258	84.87	125,496
Glasgow E. S. D. No. 1	1,415	443	31.31	196,948
Harlem E. S. D. No. 12 [1]	392	170	43.37	81,108
Harlem H. S. D. No. 12 [1]	183	76	41.53	59,461
Brockton S. D. No. 55 [1]	139	103	74.10	79,821
Box Elder E. S. D. No. 13 [1]	141	93	65.96	48,653
S. D. No. 2 [1]	50	49	98.00	29,918
E. S. D. No. 27 [1]	306	170	55.56	83,303
E. S. D. 17 H [1]	1,091	333	30.52	149,510
Blaine Co. S. D. No. 5 [1]	203	171	84.24	130,079
S. D. No. 2 [1]	136	62	45.59	29,750
Frazer H. S. D. No. 2 [1]	46	20	43.48	19,174
Poplar Pub. Grade S. D. No. 9 [1]	593	304	51.26	151,601
Poplar H. S. D. No. 9 [1]	241	82	34.02	58,675
S. D. No. 57	44	35	79.55	25,469
Box Elder H. S. D. No. G [1]	86	66	76.74	71,677
H. S. D. No. 2 [1]	140	92	65.71	73,481
Brockton H. S. D. No. 55 [1]	31	21	67.74	20,852
Edgar S. D. No. 4 [1]	55	25	45.45	25,100
Elem. S. D. No. 87	257	247	96.11	170,247
State total	8,636	4,580		2,792,432
Nebraska:				
Winnebago S. D. No. 17 [1]	307	231	75.24	149,119
Macy S. D. No. 16 [1]	364	285	78.30	183,978
Santee S. D. C. 5 [1]	48	46	95.83	29,694
S. D. of the City of Bellevue	10,170	3,932	38.66	2,538,263
State total	10,889	4,494		2,901,056

Footnote at end of table.

DATA ON DISTRICTS WITH 25 PERCENT OR MORE CATEGORY 3A IMPACTION—FISCAL YEAR 1973—Continued

State and school district	Total average daily attendance	Category 3A children	Category 3A children as percentage of total	Total entitlement
Nevada:				
Mineral Co. S. D.	1,674	697	41.64	$299,814
State total	1,674	697		299,814
New Hampshire:				
City of Portsmouth Bd. of Ed.	5,332	1,496	28.06	891,765
State total	5,332	1,496		891,765
New Jersey:				
Boro. of Lakehurst Bd. of Ed.	791	259	32.74	206,047
Boro. of Eatontown Bd. of Ed.	2,346	1,119	47.70	739,558
Bd. of Ed. N. Hanover Twp.	2,037	1,606	78.84	911,629
No. Burlington Co. Reg. S. D.	2,239	1,097	49.00	953,490
Pemberton Twp. Bd. Ed.	7,277	2,041	28.05	1,623,717
State total	14,690	6,122		4,434,443
New Mexico:				
Dulce I. S. D. No. 21 [1]	595	527	88.57	226,689
Jemez Springs Mun. S. D. No. 31 [1]	612	265	43.30	113,989
Bernalillo Mun. S. D. No. 1 [1]	2,772	1,179	42.53	507,146
Cuba I. S. D. No. 2 [1]	1,080	519	48.06	223,247
Alamogordo Mun. S. D. No. 1	8,875	2,334	26.30	1,003,970
Tularosa Municipal S. D. No. 4 [1]	1,484	464	31.27	199,589
I. S. C. No. 22 [1]	4,479	3,610	80.60	1,552,841
Gallup McKinley Co. Bd. of Ed. [1]	12,177	6,791	55.77	2,921,148
Bloomfield Mun. S. D. No. 6 [1]	1,909	567	29.70	243,895
Magdalena Mun. S. D. No. 12 [1]	609	312	51.23	134,206
State total	34,592	16,568		7,126,725
New York:				
U. F. S. D. No. 14, Town of Fire Island	78	23	29.49	50,487
Central S. D. No. 1, Town of Peru	3,996	1,613	40.37	1,199,539
State total	4,074	1,636		1,250,027
North Dakota:				
Riverdale Pub. S. D. No. 89	268	160	59.70	84,465
New Town Pub. S. D. No. 1	746	216	28.95	92,912
Lincoln S. D. No. 38	152	61	40.13	26,239
Grand Forks Pub. S. D. No. 1	10,552	2,667	25.27	1,440,446
Minot Pub. S. D. No. 1	9,023	2,543	28.18	1,373,474
Solen Pub. S. D. No. 3 [1]	346	213	61.56	119,757
Fort Totten S. D. No. 3 [1]	31	31	100.00	13,334
Fort Yates Pub. S. D. No. 4 [1]	369	286	77.51	123,022
Twin Buttes S. D. No. 37 [1]	79	62	78.48	26,669
Couture S. D. No. 27 [1]	835	269	32.22	115,710
Ingebreton S. D. No. 28 [1]	115	74	64.35	31,831
Mandaree Pub. S. D. No. 36 [1]	213	207	97.18	89,041
White Shield Pub. S. D. No. 85 [1]	197	77	39.09	33,121
Nekoma School District No. 36	120	52	43.33	22,367
Oberon SD No. 16	107	34	31.78	14,625
State total	23,153	6,952		3,607,019
Ohio:				
Mad River Twp. Local S. D.	7,604	1,932	25.41	831,049
Hamilton Local Bd. of Ed.	3,324	902	27.14	387,995
State totals	10,928	2,834		1,219,045
Oklahoma:				
Dahlonegah D. S. No. 29 [1]	101	64	63.37	27,529
Bell D. S. D. No. 33 [1]	223	125	56.05	53,768
Lost City D. S. D. No. 17 [1]	197	97	49.24	41,724
Ryal D. S. D. No. 3 [1]	66	45	68.18	19,356
Skelly D. S. D. No. 1 [1]	110	45	40.91	19,356
Rocky Mountain Dep. S. D. No. 24 [1]	100	30	30.00	12,904
Maryetta D. S. D. No. 22 [1]	199	56	28.14	24,088
Wickliffe D. S. D. No. 35 [1]	43	18	41.86	7,742
Wolfe D. S. D. No. 13	46	23	50.00	9,894
Justice D. S. D. No. 54 [1]	72	48	66.67	20,647
Vamoosa D. S. D. No. 8 [1]	115	46	40.00	19,786
Broxton I. S. D. No. 68 [1]	159	65	40.88	27,959
Carnegie I. S. D. No 33 [1]	827	207	25.03	89,041
Boone D. S. D. No. 56 [1]	67	48	71.64	20,647
Little Axe D. S. D. No 7 [1]	198	59	29.80	25,378
Stony Point D. S. D. No. 124	62	16	25.81	7,232
Canton I. S. D. No. 15	438	130	29.68	55,919
Burns Flat I. S. D. No. 7	435	168	38.62	72,265
State total	3,458	1,290		555,243
Oregon:				
Hebo S. D. No. 13 J	100	36	36.00	$23,234
Petersburg S. D. No. 14 C	106	36	33.96	29,490
Jefferson Co. S. D. 5 9 J	2,082	632	30.36	451,658
Three Lynx S. D. No 123	66	66	100.00	42,595
Bonneville S. D. No. 46	72	24	33.33	19,660
State total	2,426	794		566,639
Rhode Island:				
Town of Middletown Sch. Comm.	4,255	1,402	32.95	861,332
Town of N. Kingstown Sch. Dept.	6,555	1,832	27.95	1,098,851
State total	10,810	3,234		1,960,184
South Dakota:				
Todd Co. I. S. D. [1]	1,784	1,213	67.99	638,790
Douglas I. S. D. No. 3	3,158	2,421	76.66	1,274,947
Shannon Co. I. S. D. No. 1 [1]	1,448	1,325	91.51	697,771
Eagle Butte I. S. D. No. 3 [1]	858	594	69.23	312,812
White River I. S. D. No. 29 [1]	424	148	34.91	77,939
McLaughlin I. S. D. No. 21	619	169	27.30	88,998
Smee I. S. D. No. 4 [1]	189	171	90.48	90,052
C. S. D. No. 3 [1]	98	37	37.76	19,484
State total	8,578	6,078		3,200,796
Texas:				
Del Valle I. S. D. No. 91	3,916	1,001	25.56	430,580
Killeen I. S. D.	13,215	3,703	28.02	1,592,845
Flour Bluff I. S. D.	2,972	744	25.03	320,031
San Vincente C. S. D. No. 2	14	14	100.00	16,166
Randolph Field I. S. D.	1,344	1,288	95.83	1,097,221
Lackland I. S. D.	867	865	99.77	736,876
United Cons. I. S. D.	2,171	596	27.45	256,369
Fort Sam Houston I. S. D.	1,521	1,421	93.43	1,210,521
State total	26,020	9,632		5,660,612
Utah:				
San Juan Co. S. D. [1]	2,494	1,176	47.15	505,856
Daggett S. D.	188	75	39.89	32,261
State total	2,682	1,251		538,117
Co. Sch. Bd. of Prince George Co.	4,629	1,326	28.65	570,378
State totals	4,629	1,326		570,378
Washington:				
Oak Habor S. D. No. 2 1	5,128	1,646	32.10	735,729
Diablo S. D. No. 1 5 [1]	40	12	30.00	5,363
Dupont Fort Lewis S. D. No. 7	1,150	998	86.78	446,086
Cape Flattery S. D. No. 4 1	622	218	35.05	97,441
Anderson Island S. D. No. 24	43	36	83.72	16,091
Taholah S. D. No. 77 [1]	145	105	72.41	46,932
Queets Clearwater S. D. No. 2 [1]	79	30	37.97	19,643
Mill A. S. D. No. 31	90	30	33.33	13,409
Mount Adams S. D. No. 2 9 [1]	878	427	48.63	190,860
Medical Lake S. D. No. 326	2,334	1,416	60.67	632,923
Inchelium S. D. No. 7 [1]	179	64	35.75	28,606
Nespelem S. D. No. 14 [1]	165	93	56.36	41,569
Wellpinit S. D. No. 49 [1]	177	154	87.01	68,834
Keller S. D. No. 3 [1]	30	19	63.33	8,492
Columbia S. D. No. 2 6	214	57	26.64	25,477
Clover Park S. D. No. 4	13,153	3,364	25.58	1,503,640
State total	24,427	8,669		3,881,103
Wisconsin:				
Flambeau S. D. No. 1 [1]	369	181	49.05	108,203
State total	369	181		108,203
Wyoming:				
S. D. No. 14 [1]	344	270	78.49	297,972
Fort Washakie C. S. D. No. 21 [1]	229	203	88.65	224,030
S. D. No. 38 [1]	311	238	76.53	251,466
State total	884	711		773,468
National total	387,443	182,651		109,549,761
Districts on this listing		229		

[1] American Indian school districts.

IMPORTANT ROLE PLAYED BY LOCKHEED C-5 "GALAXY" IN CEASE-FIRE IN MIDDLE EAST LAST OCTOBER

Mr. TALMADGE. Mr. President, there appeared in the June issue of National Aeronautics magazine an excellent article on the Lockheed C-5 "Galaxy," the world's largest aircraft, and the important role it played in achieving a cease-fire in the Middle East last October.

The article points to the importance of the C-5, not only as a huge cargo carrier, but as an instrument of national defense and foreign policy, present and future.

The C-5 massive airlift to strengthen Israel during the recent war is credited with directly contributing to the Mideast cease-fire and possibly to a more lasting peace. We are very proud that the C-5 is built at the Lockheed Georgia Company in Marietta, Ga., and I bring this article to the attention of the Senate and ask unanimous consent that it be printed in the RECORD.

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

THE SAGA OF "FAT ALBERT"

(By Craig Powell)

When you're big and bulky and seem just too clumsy to ever get off the ground, it takes a lot of work just to fly. Faced with ridicule and abuse, it takes a lot more effort to become an aerial star. Walt Disney's famed flying elephant "Dumbo" discovered this the hard way. So did "Fat Albert," the U.S. Air Force's affectionate name for the world's largest aircraft, the Lockheed C–5 "Galaxy." But when all the dress rehearsals were over and it was time for the big performance, both Dumbo and Fat Albert not only flew; they stole the show.

For Dumbo it was star of the circuit tent. For Fat Albert it was being a star over the Holy Land and mainstay of a gigantic airlift that became a strongly influencing factor in bringing about a cease-fire between the Arabs and the Israelis, a buffer Zone between the two, and peace talks in a lonely tent in the Egyptian desert.

Looking back in time, it was October 14, 1943 . . . Over the skies of southern England the B–17 "Flying Fortresses" of the 8th Air Force assembled to begin the now famous mission against the Third Reich's ballbearing factories at Schweinfurt, Germany.

Exactly three decades later, October 14, 1973, airborne behemoths, the U.S. Military Airlift Command's Lockheed C–5 Galaxies, began a massive airlift to resupply Israel with vitally needed weaponry at the height of the Yom Kippur war.

It would be difficult to finitely measure the success of the Schweinfurt bombing raid. Not even the historians can yet postulate in the absolute. But some facts are known. The 8th Air Force suffered the greatest casualties of any mission of World War II; 63 aircraft, over 630 combat crewmen lost. But soon thereafter, German tanks began to grind to a halt. Aircraft of the Luftwaffe were being grounded. Nazi ships and submarines were failing to go to sea. The Fatherland's factories began to lay fallow; in fact, everything that required ballbearings was ceasing to function.

In like manner, it would be difficult today to finitely measure the success of the Israeli airlift. That, too, will be for later historians to determine. Yet again certain facts are known. No aircraft were lost. But, already, there are strong indicators that the C–5's have paid off, not only as cargo carriers, but as instruments of national policy directly contributing to the Mideast cease-fire and possibly to a more lasting peace.

When the recent Yom Kippur war began, the Arab nations were well stocked and supplied with the weaponry of war. Almost from the beginning, the Soviet Union started its best sea and airlift resupply to the Arab ports and airfields.

Faced with massive attrition of supplies and equipment, it appeared Israel would quickly lose the conflict through the classic military principle of "too little—too late." But world observers had failed to take cognizance of Fat Albert and the C–V's capability to play "catch-up" ball.

Once the billion-dollar United States resupply to Israel was underway, at least one Russian observer read the writing in the desert sands. Watching the freshly supplied Israeli tanks and equipment spearhead across the Suez Canal, the Soviet is reported to have commented that from what he could observe of the Israeli resupply effort, Cairo and the Arab armies were in imminent danger of being overrun and would do well to negotiate a cease-fire immediately.

Unlike the 1967 conflict, the Yom Kippur war of the waning days of 1973 was not an Israeli pre-emptive strike born of fear of an onslaught by the Arab nations. This time the Israelis were struck without warning from across the Suez and in the Syrian Golan Heights.

Following the initial shock, the Israeli forces rebounded to take the initiative on both fronts. But again the battle was different from 1967. This time the Arab armor and air forces were intact and the task of destroying them was costly to the Jewish state.

Quickly the war developed into one of attrition with Israel in dire need of resupply. Tel Aviv urgently called on its mentor, the United States, for help.

Unfortunately for the Israelis, their pleas for assistance came at a time when the two superpowers were conducting power politics behind the scenes. The Soviet Union was enjoining the U.S. to move with the USSR into the battle area in sufficient military strength to force a cease-fire. The United States found such incursion into the middle-east unacceptable.

At the same time, Secretary of State Henry Kissinger and Washington were entreating the Russians to go along with the U.S. in placing a two-nation clamp on all resupply to both antagonists. This proposal met with obvious Soviet declination, as the Russians had on October 10, only four days following the outbreak of hostilities, begun a massive airlift to the Egyptian/Syrian military forces. With such one sided support, it was clear Israel could not sustain its military operations and the war could come to a speedy close with the Arab armies prevailing.

If, as President Richard Nixon and the U.S. National Security Council believed, an ending of hostilities in the middle-east and hopes for a peace, however uneasy, lay in a military balance, then a substantial American effort was needed to pump vitality back onto the weakened Israeli forces.

The National Security Council and the Pentagon made its decision on October 13 and nine hours later, operation "Nickel Grass" was underway. The first of what was to become a steady stream of C–5 and C–141 jet transports of the Military Airlift Command was loaded and airborne. At roughly 10 p.m., October 14, 1973, a C–5 Galaxy, flanked by F–4 Phantom-jets in Israeli battle dress, touched down at Tel Aviv's Lod Airport. The first of the "Nickel Grass" aircraft and the first C–5 to ever operate on a mission to Israel was carrying 193,916 pounds of military cargo.

Three-and-a-half hours later, the aircraft had been unloaded, serviced and the Galaxy was airborne, enroute back to the United States.

On November 14, 33 consecutive days of airlift had been completed flying a daily average of almost a thousand tons of critically needed weapons, ammunition, spare parts, medical supplies and other material. There had been a total of 421 C–141 and 145 C–5 missions. The C–5's had delivered some 10,800 tons in 4,880 flying hours while the C–141 Lockheed "Starlifters" brought in 11,500 tons in 13,620 flying hours for a total of 22,300 tons of combat equipment in 566 missions.

The figures themselves are impressive. Yet, for a genuine insight into the manner in which Fat Albert met the test requires a more detailed examination of that Israeli aerial pipeline supply route.

As the massive airlift began, the United States' NATO allies quickly ducked for cover rather than be caught up in the middle-east conflict. Despite the fact that the conflagration was being waged on the NATO southern flank, the European nations sought sanctuary in aloofness.

Not only did they refuse to make NATO equipment available for resupply to Israel, but they closed all U.S. occupied airfields in Europe to airlift operations in support of the Israelis. Thus, the U.S. Military Airlift Command had to cope with a round-robin route of more than 14,000 miles, a task that the C–5 could still have accomplished by restricting its payload or by means of air-refueling carrying maximum tonnage (the C–5 is the only U.S. jet transport with a refueling capability).

Fortunately, Portugal allowed the U.S. to utilize facilities at the Azores in the Atlantic from which the MAC aircraft could stage its flights into Lod International Airport at Tel Aviv. Though the stage lengths were still in excess of 4,000 miles, the C–5 alone airlifted approximately two-thirds the total amount tonnage moved by the competing Russian airlift which had been in operation since the fourth day of the war and over stage lengths averaging only 1,700 nautical miles.

By November 2, the U.S. aerial resupply had equaled the achievements of the Soviet airlift to the Arabs using AN–12's and AN–22's. Together with the smaller C–141's, the C–5's transported 22,395 tons over the 7,500 route to the mid-east in its 566 missions as compared to the 15,000 tons moved by the Soviets in 934 missions. Though the C–5 flew only 145 of the 566 missions, it accounted for nearly 50 percent of the total tonnage or 10,763 tons of cargo.

But total tonnage itself was merely the cake itself. The frosting came in the form of the C–5's 36 percent fuel savings over the smaller C–141 and in the fact that the C–5 on many of its missions was carrying what it termed "outsized" cargo. It was for just such a contingency of airlifting outsized cargo that Fat Albert was designed and built. And when the chips were down, the C–5 came through with even its severest critics sitting up to take notice.

As the world's largest aircraft, the Lockheed C–5 Galaxy is almost as long as a football field and stands as high as a six-story building. The cargo compartment is 121 feet long, nineteen feet wide, and thirteen feet 6 inches high; or roughly the size of an eight-lane bowling alley.

So, despite the "slings of outrageous fortune" hurled at the C–5 during its development stages—despite all of its growing pains—when the real world called on the Galaxy to do the job, Fat Albert came through. It not only accomplished the job it was designed to do, it proved it was also the only aircraft in the world that could.

During the Israeli airlift, outsized cargo that could not have been airlifted by any other plane in the world was gobbled up in the cavernous storage compartments of the C–5's. The latest of the United States' heavy tanks, the M60 main battle tank and the M48 tank along with supplies and ammunition to sustain them rolled aboard the C–5's. Sikorsky CH–53 helicopters went on board without the necessity of being completely disassembled. Self-propelled howitzers and armored personnel carriers rolled on and off, fore and aft as the gargantuan C–5's unique landing gear knelt to accommodate them almost at ground level. Even full tail sections for the McDonnell Douglas A–4 attack bombers were airlifted in to permit rapid repair of the A–4's sustaining damage from Soviet built surface-to-air missiles. Operating under semi-wartime conditions, the C–5 accomplished its mission with a logistics reliability rate of 95.7 percent between the Azores and Israel.

Meeting crews at Lod International Airport, Premier Golda Meir spoke for the people of Tel Aviv and Israelis throughout the nation. Referring to the C–5 airlift, she vowed, "For generations to come all will be told of the miracle of the immense planes from the United States."

As stated, not even the airplane's most ardent critics, and there have been many, would fault the quality of the airlift the C–5 provided the mid-east. But the story runs deeper.

Because of that airlift resupply, the Israeli armed forces were able to continue on the aggressive, free of the certain knowledge that

their munitions, weapons, and other supplies were rapidly dwindling.

With fresh stockpiles available, they were able to continue their drive to the outskirts of Damascus in Syria. With the Syrian front under control the Israeli commanders shifted the full force of their armies to the west, drove across the Suez to entrap the Egyptian Third Army in a pocket encompassing both sides of the canal.

It was perhaps because the Egyptian commanders and President Sadat recognized that with this type of resupply, the Israeli would have the capability of winning the war on the battlefield that led to the cease-fire and the ultimate peace negotiations.

It is perhaps more likely that, behind the scenes, the Soviets also recognized the handwriting on the wall. This recognition was probably the principal factor in the USSR's decision to cease its ultimatum unilaterally to move into the mid-east with military forces and instead to join the United States in pressuring both antagonists (Arab and Jew) to come to the conference table.

These are assumptions of many mid-east watchers. Again, only the historians of the future will be able to validate them. But one military fact of life is clearly evident and has been since the cease-fire went into effect; the U.S. C–5/C–141 airlift altered the course of the Yom Kippur war.

Interestingly, Fat Albert's portion of the airlift was carried out by some 51 of the total force of 79 C–5's in the Air Force inventory. The remaining Galaxies, though they could have been fruitfully employed in the airlift were tied up elsewhere.

There seems little question that the mid-east airlift would have been greatly enhanced had the Pentagon acquired the full 115 aircraft originally programmed rather than cut production back to 81 planes; an action that Cong. Melvin Price said the U.S. would one day live to regret.

If Disney's "Dumbo" had problems getting his tiny wings to lift his enormous pachyderm's body off the ground, they were nothing compared to the growing pains suffered to Fat Albert as he struggled through his early development stages. The Galaxy suffered the tortures of the damned.

Few weapon systems being developed across the technological boundaries have been quite so badly maligned as the C–5. All sorts of demeaning labels were hurled at the plane, including "The Flying Fraud of All Time," which was one of the few occasions on which its detractors were willing to concede the C–5 would actually get airborne. A phrase of the time was that the C–5 had become "Proxmired down in a morass of charge, counter-charge and innuendo."

Unfortunately, it was a time when the wolves were howling about the expense of defense procurements. Because of its size, the Galaxy made an excellent target and the wolves snapped hardest at its heels. The new giant Bird became a *Cause Celebre* for Congressional and public critics.

On Capital Hill, Senator William Proxmire led the pack. And from out of the labyrinth of the Pentagon, came a civil servant, A. Ernest Fitzgerald, who established one of the first of the currently vogue "Washington leaks" to the Proxmire Committee. Unfortunately, there was just enough of the clorine of truth in the water from Fitzgerald's spigot to make it seem potable.

Just enough in fact, that the "Fitzgerald Case" has in itself remained a current news item for over half a decade. The Air Force, piqued at lack of loyalty, abolished Ernest's high-paying Pentagon position in a Reduction of Force. Fitzgerald yelled "foul" and claimed the Air Force was conducting a personal vendetta because he had told the truth about mismanagement of the C–5 program.

Fitzgerald ultimately had his day in court and the Civil Service Commission ruled his dismissal had not been in keeping with CSC doctrine and directed the Air Force to reinstate him.

The Air Force complied. (Fitzgerald now maintains that he has been pigeon-holed in a do-nothing job, has sued for $3.5 million and the pot continues to boil.) What has not as yet been clearly established is if whether Fitzgerald's charges were based on altruistic concern over "cost growth" of the C–5 or mal-contention with the Air Force, Lockheed, or both. At any rate, the journalistic "30" is still to be added to the anecdote of A. Ernest Fitzgerald.

Countering Fitzgerald and the critics, Larry Kitchen, President of Lockheed Georgia Company, builders of the C–5, has his own opinions which he told to National Aeronautics in personal interview. While admittedly he speaks from a company position, National Aeronautics found that most Air Force airlift officials conversant with the C–5 history tend to basically concur with Kitchen's evaluation.

According to Kitchen, the C–5's traumatic experiences stemmed from a never-before-tried-or-tested conceptual development technique. Neither Total Package Procurement nor "concurrency" contained sufficient flexibility to be a viable concept in the development of an aircraft system that was to cover a nine-year program and require advances in the technological state of the art. The TPP contract was probably the single most responsible factor in the cost growth of the C–5 which led to its reputation for excessive cost overruns and such misnomers as the "billion dollar bilking." Under the contract there was no way to affect reasonable and timely trade-offs on cost, schedules, or performance.

"Because we knew we would probably run into problems of unknowns, a repricing formula was written into the contract designed to protect the government investment and the contractor against catastrophic loss or windfall profit. These were the provisions the opponents of the program called the 'Golden Handshake'.

"Actually, because of a divergence of interpretations between DOD and Lockheed resulted in a legal dispute that was never carried to the Board of Appeals, these provisions were never properly used. A requirement levied against Lockheed to put up the multimillion dollars to keep the production line flowing mandated that Lockheed accept a restructuring of the TPP contract to a fixed-loss cost-reimbursement type contract supposedly pegged at $200-million. Overall, Lockheed, either directly out of pocket, or through missed opportunities, dropped on the order of well over $300-million on the C–5."

But this type of pragmatic evaluation of the program was little understood by the general public because of far more flamboyant and dramatic vignettes along the way which were the delight of the media.

Just as "Dumbo" was laughed at and ridiculed in his first attempts to fly, Fat Albert had more than his share of downright embarrassing incidents that caught the eye of the press. So embarrassing, in fact, that Fat Albert's visored nose blushed to the same rosey hue as Dumbo's face in the circuit tent. That they were insignificant in the development of such an aircraft was inconsequential.

This is not to say that the C–5 did not have its share of real troubles.

But Fat Albert's biggest problem was an overwhelming penchant for making headlines under the most ludicrous conditions. For awhile, it seemed that whatever "Albert" did was destined to end up in banners on the front pages and heading the television newscasts, with pictures to match. Most of them added up to "John Q. Citizen's Fed Up With Billion Dollar Bellyfull". And all made good editorial copy.

Poor Fat Albert. With full fanfare and bands playing, the delivery of the first "operational" C–5 was made in June 1970 to Charleston, South Carolina. Extensive ceremonies were arranged with local VIP's and politicians in attendance. On hand to officiate, with his abundant shock of silver hair flowing in the breeze, was Congressman H. Mendel Rivers, audacious Chairman of the House Armed Services Committee. At the controls of the first aircraft was General "Smiling Jack" Catton, then Commander of the Military Airlift Command.

Following a spectacular flyby of the reviewing stands and before a full contingent of press and television representatives, Fat Albert made his approach for landing. But unknown to General Catton in the cockpit, "Murphy's Law" had overtaken Fat Albert (Murphy's Law postulates if a part can be improperly installed on an aircraft, sooner or later, someone will install it the wrong way). In this case, a retainer ring on one of the 28 wheels of the landing gear had been improperly seated.

As the giant aircraft touched down for landing, the wheel spun off the bird. Like an errant cub romping ahead of the pack, the wheel bounded down the runway outdistancing the slowing aircraft—also making for fantastic picture coverage for still and motion cameras alike.

Actually, the high flotation landing gear of the C–5 had been specifically designed for rough landings in the forward battle areas and loss of one wheel was no serious incident. In fact, General Catton never knew the wheel was gone until his copilot saw it cavorting down the runway and told the general. If anything, it resulted in improved checklist procedures in the operation of the aircraft. But at that moment, with the media in search of another C–5 story, it could have well been the "Titanic" going down again.

Coolest cat on the flight line was veteran Chairman L. Mendel Rivers who was deluged by the press. "What catastrophic portents lay in the lost wheel, he was asked. Replied Rivers, "It meant the aircraft landed on the 27 wheels left."

But even this spectacular display of showmanship was not to end Fat Albert's affinity for the press. He was back for an encore about a year later.

Still faced with no room for trade-offs, and to meet weight restrictions, the builders put the C–5 through a massive structures redesign, the use of extensive chemical milling of metal and the use of titanium fasteners. Weight was saved at great expense but the changes also had a tendency to close the engineering margin for error in calculating stress levels that are normally built into all aircraft.

This was one of the factors responsible for the fatique difficulties that have so far kept the C–5 from reaching a life expectancy of 30,000 flying hours. "Known changes, however," contends Kitchen, "will extend the expectancy to 15,000 to 20,000 hours of the initial requirements; a contention, then-Secretary of the Air Force Robert Seamans supported.

And therein lies Albert's next tragedy/comedy. One of the causes of metal fatigue discovered was in pylon truss fittings supporting the General Electric TF–39 engines. The fittings were redesigned for aircraft still coming off the line and the rest of the fleet scheduled for retrofit during periodic inspections.

Unfortunately, one of the early production aircraft with high flying hours was caught behind the retrofit "power curve." On September 29, 1971 Fat Albert made the front pages again.

The aircraft could not probably have taken off and flown its runway of the C–5 training

base at Altus, Oklahoma. As the crew standardly brought the engines up to full power, the truss fittings on one pylon failed allowing the engine to separate. The engine still developing maximum power took off like a gyrating skyrocket, climbed to approximately 200 feet of altitude before arching back over the aircraft to come to rest alongside the runway.

Again, the incident was relatively minor as the entire fleet was already scheduled for modifications. But, from a news coverage standpoint, one would have thought man had first split the atom.

The aircraft could most probably have taken off and flown its mission without further incident except that flight safety procedures precluded. So the world will never know if Fat Albert could have taken off with one of its four engines completely missing.

Summing the whole C–5 picture. Lockheed's Larry Kitchen philosophizes. "It is a shame that an advanced technology aircraft such as the capable C–5 was forced to take the undeserved criticism it did. This has not only hurt Lockheed and the whole aerospace industry but the Air Force as well.

"Further, most of the valid criticism was caused by the inflexibility of the untried concept of total package procurement. Certainly, there would have been a cost growth due to inflation and technology problems but TPP increased the costs beyond proportion.

"But, let's not cry about the problems of the C–5. We must realize that sophisticated weapon systems, pushing technological frontiers, cost money. If we have a valid requirement for say a C–5, B–1 bomber, or a new fighter, let's find the money and build it.

"If we, as Americans, feel we can't afford the costs of advanced technology weapons systems, then let's drop operational performance requirements of the aircraft to meet the costs we feel we can afford. The point I'm trying to make is, wisely spend the money necessary to advance the technological state of the art to meet national needs or build airplanes designed to the technology available with a recognized risk in our national defense posture."

Now the problems of the C–5 are mostly behind. It is today a battle-tested veteran that has proven the concept of a heavy logistics transport aircraft that can move outsized cargo such as tanks and helicopters into critical areas that lack sophisticated logistics handling equipment. As its name implies, the Galaxy has established itself in the "star" category and like Dumbo commands the respect of all as it cavorts in the "top of the tent."

So the C–5 stands ready for its next curtain call. In the meantime, the Pentagon continues with other advanced aircraft programs; specifically, the F-15 air superiority fighter and the F–16 light weight fighter.

Nothing is quite as fool-proof as use of the test tube under laboratory conditions. But you can't fly aircraft in a test tube. However, in the case of its two fighters the F–15 and F–16, the Air Force did the next best thing. Both aircraft made their first airborne flights in the safest possible environment to assure they got off the ground and back to earth again with the least possible danger. What environment was that? Why in the belly of "Fat Albert", of course. . .

CHOICE FOR TOMORROW

Rapidly changing events in the arena of world affairs have not only established the validity of the requirements for a C–5 type aircraft, they are also forcing the White House and the Department of Defense to reappraise its capabilities to meet contingencies of the future.

The recent logistics support to Southeast Asia and the resupply to the Mid-east have tested the concept of the "Galaxy" and its ability to carry outsized cargo. Now, the Nixon Doctrine itself and the climate within NATO circles imply retrenchment of U.S. forces based throughout the world. Rather than maintain forces abroad, new concepts may be calling for a "remote presence"; i.e. forces, on alert within the United States, ready for instant airlift to any trouble spot in the world.

Whatever these decisions may be, most airlift experts feel that there must be a revamping of the Military Airlift Command. Until now, the current MAC force structure has been sufficient to meet its contingencies, but it now needs additional aircraft to supplement the force.

Several options are open for the supplemental aircraft if it is decided to bolster MAC's airlift capability. The cargo capacity of the existing C–141 fleet would be expanded. The Air Force could opt to purchase a cargo version of the Boeing 747 or start development of an entirely new aircraft in the form of an advanced C–5, the C–XX. Another viable option would be the reopening of the C–5 production line at the Lockheed Georgia Company. A number of airlift experts, both in the Air Force and on Capitol Hill favor this latter option. Even at the time, the C–5 production order was cut from 115 to 81 aircraft, some members of the House Armed Services Committee's airlift subcommittee voiced the opinion that four squadrons were insufficient to fulfill U.S. foreign commitments; six squadrons, they said, were needed.

Lockheed Georgia's President Larry Kitchen believes the restart of the C–5 line could turn out the first aircraft in approximately 40 months and by incorporating known improvements into the new run of heavy logistics transport aircraft the purchase of additional C–5's would be most economical and cost effective in the long run.

In Kitchen's judgment, the Military Airlift Command needs additional strategic airlifters more than any other type aircraft. While he is extremely complimentary as to the capabilities of a cargo version of the Boeing 747, he does not feel the airplane falls into the category of a heavy logistics strategic airlifter; i.e., one that can airlift M–60 main battle tanks, Sikorsky CH–53 helicopters and other such outsized cargo.

The C–XX, says the Lockheed official, is also an acceptable option for the next decade. The questions here, as he sees them, seem to be "Does it make sense to go with the C–XX which, at this time is an unknown aircraft rather than go with an improved C–5?" Also, "would the increased performance of a C–XX be worth the extra costs involved, particularly when the aircraft would still be some 8 to 9 years downstream before starting into the Air Force inventory?"

Kitchen is the first to admit that he has a definite vested interest in the C–5. But, at the same time, he is equally quick to point out that the government also has a valuable national asset. "First," he told National Aeronautics, "there is the matter of some $1-billion in 'sunkcosts' for the research and development of the original C–5. Second, there is an investment of $200–$250 million of tooling lying idle and available to restart C–5 production. And, thirdly, there is qualified manpower in the area already experienced by the C–5 'learning curve' ready to go to work."

He explains too, that everything is not all sweetness and light. There would be startup cost to be considered. Some of the sub-contractors are no longer in business and some of the components are no longer being manufactured. Yet, even with these considerations. Kitchen estimates that based on a 40 aircraft buy, the unit price would cost out, including startup, at about $40 million, per aircraft. Though the 81st C–5 off the original line that came in at only $25 million, inflationary factors have so boosted overall costs that the $40 million figure is comparatively less than the cost of the original C–5.

Lockheed has programmed several contingencies in the event the Air Force should opt for opening the C–5 line. Preferably, Lockheed would make modifications and improvements to the new run of aircraft that would increase certain capabilities as well as decreasing overall costs.

The aerospace firm would like to design a new wing box that would solve the fatigue problems and extend the life of the aircraft to the desired 30,000 flying hours which was part of the initial goal.

They would build a simplified version of the aircraft leaving out some of the more sophisticated but little used systems on the up-dated model of the plane. Basically, it would mean removing those systems not needed for airlift and adding those which would contribute to long life.

There are, of course many questions to be answered by the DOD airlift experts before they come to a decision on what airplane or mix of airplanes are needed for the next decade or two.

Senator William Proxmire, perhaps the most outspoken critic of the C–5, taking cognizance of the Mid-east airlift and the Galaxy's contribution, again took the opportunity to comment on the C–5's cost effectiveness. In a newspaper interview, he implied that "memories in Congress of the original cost overrun on the C–5 make it far from certain that the C–5 assembly line could ever be reopened."

He also asked a number of questions which may or may not have been intended to downgrade the effectiveness of the C–5. Larry Kitchen, however, thinks they were questions most apropos and that should be answered before decisions are made at the Pentagon.

Proxmire in his interview said, "If the C–5 helped make our airlift mission to Israel a success, I say that is great. No one would be more pleased than me to know that the money invested in this program may have paid off in this case. But all the facts about the airlift are not yet known and it would be a serious blunder to leap to any premature conclusions.

"A careful analysis of the Middle-east airlift is absolutely essential before any new programs are decided upon. How many C–5's were actually used in the airlift? How many C–5's weren't used? How many tanks were delivered? Were the number of tanks and other equipment delivered a significant factor in the outcome of the conflict? Would it have made any difference if we had more C–5's in the inventory, given the logistical problems and the ability of the Israelis to accept the deliveries? Can we extrapolate from the Middle-east conflict to Europe, where we presently pre-position large numbers of tanks? The issue of withdrawing troops from Europe is not the same as the issue of withdrawing tanks and equipment. Would it help in any future European conflict to have more C–5's or other kinds of cargo planes? These are some of the questions that need answers before new programs are launched."

These questions, properly answered, Kitchen believes substantiate his position that whatever the mix of new aircraft to supplement the MAC fleet, a minimum of two additional C–5 squadrons are a must.

The major question, of course, is: "What will the Department of Defense and Congress think?"

OUR FLIP-TOP SNAP-TAB THROW-AWAY SOCIETY AND THE BOTTLE BILL

Mr. HATFIELD. Mr. President, 2 days of hearings were held this week on legislation I introduced to ban all throw-away beverage containers, and to require a deposit on all beverage containers. Under the able leadership of the subcommittee vice chairman, Senator Moss, a

thorough hearing record was made by both proponents and opponents of the bill before the Environment Subcommittee on the Senate Commerce Committee.

I want to call particular attention today to the statement of the Environmental Protection Agency about the bill. While they did not endorse the specifics of the bill, I was gratified by the strong support of the concept of requiring a deposit on all beverage containers. It is a victory for those of us who want a national law patterned after our successful Oregon bottle law.

As sponsor of the bill, I certainly am willing to consider a phasein, as is suggested by EPA. If reasonable mechanics can be developed for a 3- or a 5-year phasein, then one should be reviewed carefully.

To be candid, I also am gratified by the EPA statement, because it represents a victory of the EPA experts over the cautious accountants at the Office of Management and Budget. I had feared that other pressures, ones quite obvious, might cause OMB to scuttle what I was told had been a strong statement of support put together for EPA by its experts in litter, solid waste, and energy.

Mr. President, I ask unanimous consent that the statement of John R. Quarles, Jr., Deputy Administrator of the Environmental Protection Agency be printed in the RECORD, followed by my statement in support of S. 2062.

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

STATEMENT OF HON. JOHN R. QUARLES, JR.

Mr. Chairman and Members of the Subcommittee: I appreciate the opportunity to appear before you this morning to discuss the views of the Environmental Protection Agency on S. 2062, "a bill to prohibit the introduction into interstate commerce of nonreturnable beverage containers." This measure would impose a mandatory two cent deposit on containers which could be used interchangeably by various beverage manufacturers and bottlers and a 5 cent deposit on all other beverage containers for sale or shipment in the United States. While the bill would not prohibit the use of metal cans, it would ban those metal containers with detachable tab tops.

S. 2062 is modeled after the beverage container law which was enacted by the State of Oregon in October 1972.

As a Nation, we Americans consume more bottled soft drinks and malt beverages than any other people in the world. Indeed, there are few national habits more typically American than taking time out for "the pause that refreshes." Bottled beverages, whether we like it or not, are truly part of the American life style.

While the soft drink and beer industries have grown over the last twenty years in response to the demands of a growing and thirsty population, the consumption of beverage containers has also increased—but at a rate in considerable disproportion to both population trends and beverage consumption.

Between 1959 and 1972, the quantity of beer and soft drinks consumed in the United States increased 33% per capita. During this same time period, the number of beer and soft drink containers consumed skyrocketed by 221%—from 15.4 billion units in 1959 to 55.7 billion units in 1972. This dramatic increase in container consumption can be traced, in large part, to an increase in the use of the non-refillable container.

To borrow another phrase from the beverage industry, we Americans have adopted over the years a "no deposit, no return" attitude about our resources which has become increasingly troublesome now that energy and materials are in short supply.

Nowhere is our "throw away" style of life more apparent than along the streets and highways of this country.

Beer and soft drink containers form a large and highly visible segment of roadside litter. According to a privately commissioned study, in 1969, discarded beverage containers were estimated to comprise 19.7% of highway litter by item and between 54 and 70 percent by volume, based on observations of the Oregon State highway department.

Relating these figures to the broader solid waste picture, we find that approximately 8.2 million tons of beer and soft drink containers were produced and discarded in the U.S. in 1972. This figure represents 21% of all packaging wastes and approximately 8% of the total product waste generated by business and commercial establishments, households and institutions. Beverage containers are the most rapidly growing segment of all municipal waste with a growth rate of approximately 8% per year.

While a concern for the environment and the problems of litter and solid waste disposal serves as the more obvious incentive to reduce the burgeoning number of discarded beverage containers, we have found that a return to refillables has undeniable materials and energy benefits as well. Discouraging the use of "throwaway" containers is indeed one practice which fully satisfies the demands of both environmental enhancement and energy conservation.

In 1972, beverage container production resulted in the use of 6 million tons of glass, 1.6 million tons of steel, and 575,000 tons of aluminum. Moreover, beverage container consumption results in the use of approximately 1% to 2% of energy used by all U.S. industries.

Our studies show that taking into account the energy demands of both the manufacturing and refilling process, a refillable bottle making 5 trips has been found to use one third less energy than that required merely to produce one nonrefillable glass or aluminum container. This is a significant energy savings when we consider that most returnable bottles make upwards of 10 trips, and 25 to 30 trips per bottle is not unusual.

The trend toward increased use of nonrefillable containers is likely to continue over the next decade if steps are not taken to slow this spiraling demand for throwaways. By 1980, the 55.7 billion figure for containers consumed is expected to rise to 80 billion units, with the greatest growth anticipated for the aluminum beverage container.

Public officials and private citizens alike have watched with increasing concern the proliferation of discarded bottles and cans along our highways, parks and beaches. Aside from local anti-litter laws and privately-sponsored clean-up campaigns, efforts to come to grips with the problems associated with the careless disposal of non-returnable were ineffective until recently.

In 1970, with the enactment of the Resource Recovery Act, the Environmental Protection Agency was given authority to investigate the beverage container situation. Section 205 of that Act directs EPA to study the recovery of resources from solid waste and the reduction of solid waste at the source. Beverage containers as well as other types of packaging were among those areas studied under this authority.

Our *Second Report to Congress*, transmitted in March of this year pursuant to Section 205, discusses our work in the area of beverage containers and outlines the major options available to reduce the generation of disposable bottles and cans.

Briefly, we found three major types of strategies that have been proposed to either reverse the trend toward refillable containers or reduce the beverage container portion of litter: taxes on beverage containers to finance litter clean-up, a ban on the manufacture and sale of non-refillable containers, and a mandatory deposit system, such as that contained in S. 2062.

(1) *Litter Tax.* The litter tax would require that a minimal additional sum, perhaps $0.005 per container, be paid on the sale of each container for beer or carbonated soft drinks. The tax could be imposed at the point of purchase of the container by the beverage industry. Litter taxes could be imposed at the State or local level, as in the State of Washington. Where implemented at the State and local level, the costs and benefits must be analyzed in relation to the characteristics of the particular area. While a low litter tax might not cause any change in the rate of littering, it would raise revenue to be used for litter collection. Such a tax would not affect the trend toward non-refillables.

(2) *Ban on Nonrefillable Containers.* A ban on nonrefillable containers would prohibit utilization of any container other than one which is refillable. Bottlers of beer and soft drinks would probably place deposits on their refillable beverage containers to retrieve them for refilling. As for the drawbacks associated with such an approach, such a ban would completely eliminate the beverage can manufacturing industry as well as the contract canning industry. The uses of steel and aluminum for beverage cans would also be eliminated. The State of South Dakota has recently enacted a law prohibiting the sale of beverage containers which are not reusable or biodegradeable.

(3) *Mandatory Deposit.* The mandatory deposit alternative would require the retailer to pay anywhere from 2 to 10 cents for every empty container of beer and carbonated soft drinks. The retailer would be required to accept from the consumer any empty container of the kind, size, and brand sold by that retail outlet. Retailers, in turn, could return empty containers to the distributor who would also be required to pay the stipulated refund.

Mandatory deposit legislation is now in effect in the States of Oregon and Vermont. In Oregon, the law has been upheld by the Oregon Supreme Court. The Vermont law has also recently been upheld in the courts. However, the laws that have been passed in Bowie, Maryland, Loudoun County, Virginia, and Ann Arbor, Michigan, have not been enacted due to legal challenges.

Data presently available from the operation of the various State and municipal mandatory deposit programs reflect both the merits and the drawbacks of such a system.

Studies by both Research Triangle Institute and Midwest Research Institute indicate that mandatory deposit legislation is likely to result in decreases of 60 to 95% in the number of beverage containers discarded as litter. Preliminary data from Oregon support these analyses as they illustrate beverage container litter reductions of from 75 to 85%. Such a mandatory deposit system would be likely to result in a decrease in solid waste of from 70–75% of the beverage container portion of the amount of total product waste, or 5–6 million tons.

Benefits produced by mandatory deposit legislation in reducing energy consumption depend upon the mix of containers available and the number of trips per container. Based on the achievement of a 90% refillable bottle market in which each container makes 10 trips, we estimate a reduction in the energy required to produce beverage containers of approximately 194 trillion BTU's of energy. This would be equivalent to 92 thousand barrels of oil per day.

Turning now to the economic effects of

mandatory deposit legislation, predictions on beverage sales impacts range from no sales decline to a decline of 8%. Preliminary experience in Oregon indicates a drop in the beer growth rate from 6% in previous years to 1.2% in 1973. However, it is important to point out that an analysis of beer sales trends over the past 10 years has indicated that sales in 1973 show no significant deviation from the trend line. It would therefore be difficult to prove any adverse sales impacts from the Oregon beverage container legislation.

No comprehensive data on soft drink sales in Oregon are as yet available. A recent survey by Oregon State University estimates a 10% rise in soft drink sales, a figure that is consistent with previous years. Although comprehensive beverage sales data are not yet available from Vermont, it appears that the law in that State has resulted in some sales decline.

One major drawback of the implementation of a mandatory deposit program is the potential for considerable temporary industrial disruption. A study performed by Research Triangle Institute estimates that in 1969, a deposit measure would have resulted in a loss of approximately 60,500 jobs nationally, primarily in the container manufacturing industries, and a gain of 60,800 jobs, primarily in the retail and product distribution sectors of the economy. This would mean a net increase in total jobs. It is important to note, however, that the jobs gained would be lower paying than those lost. Thus such a measure might be likely to produce a net loss in labor income.

Mandatory deposit legisltaion is also likely to result in a decline in tax revenues during the period of transition to a refillable system. This would be due to the fact that a majority of beverage can lines would become obsolete, as would a large percentage of container handling equipment. Estimates of losses in revenue from beer excise taxes and corporate write-offs for obsolete equipment during the first year of transition range from $271 to $803 million nationally. These figures would probably decrease if beverage sales did not decline, and if beverage cans continued to be sold.

Mandatory deposit legislation would also affect the consuming public. While the average price paid by consumers for beer and soft drinks should decrease because the higher price nonrefillable containers would not be available, increased handling costs and costs related to equipment changes in the brewing and soft drink industries are likely to be passed on to the consumer. Nevertheless, it is likely that the consumer could pay slightly less on the average for beer and soft drinks under a mandatory deposit system.

In this regard, it is interesting to note that the price of soft drinks in the State of Washington where no mandatory deposit law is in effect rose 12% as compared with only an 8% rise in the neighboring State of Oregon, which had a mandatory deposit law in effect during that same period.

Mandatory deposit legislation may result in limitations on both brands and sizes of beverage containers available to the consumer. Preliminary data from Oregon support this indication as many foreign beers and some soft drink brands cannot be obtained in the same sizes in which they were available before the law went into effect.

It should be emphasized that these considerations are based upon a fairly broad-brush national macro-economic assessment. There are a number of other micro-economic effects that could occur which are much more difficult to predict, and have not been the subject of analysis to date. These include shifts from regional to local beverage distribution systems and other inter-firm and inter-product effects.

Based upon our observations in the States and localities which have enacted mandatory deposit laws, we believe that a mandatory deposit program results in conservation of energy and materials and a reduction in solid waste and litter caused by beverage containers. We would therefore favor the adoption on a nationwide scale of a mandatory deposit system to eliminate differences in beverage container programs from State to State and to assure a uniform and equitable program for manufacturer, bottler, laborer, and consumer alike.

Associated with a sudden shift to refillable systems, however, is the likelihood of some economic disruption and unemployment. In order to achieve the resource and energy recovery benefits of such a program while at the same time minimizing the adverse economic repercussions, we would recommend that such a nationwide system be implemented over an extended period of time and with proper controls. Such a phasing-in would greatly reduce industrial disclocation.

If an immediate shift to a national mandatory deposit system went into effect in 1975, based on the achievement of a 90% refillable bottle market, we estimate that approximately 57,000 employees in the metal and glass container industries would be affected.

Phasing in such a system by 1980, however, would reduce the employment dislocations by 32%, thereby affecting 39,000 employees rather than 57,000. This would mean an average of less than 7,000 employees disclocated per year. Further reductions in dislocation could be achieved by an even more lengthy phase-in period. If, for example, a 90% refillable bottle market were to be achieved by 1985, an estimated 16,000 employees would be affected, less than 3,000 per year.

These dislocations must also be viewed in light of job opportunities available for the displaced workers within their occupational category and industry. Assuming a 90% refillable market by 1980, we have been advised by the Bureau of Labor Statistics that for each job lost, a minimum of 70 job opportunities would become available in the same occupational category. For certain job categories, several thousand job opportunities would be made available for every dislocated employee. These job opportunities do not take into account the large number of jobs that would be created in the beverage manufacturing, retail, and distribution sectors of the economy by a return to a refillable system.

As to the specific provisions of S. 2062, we offer several observations. We have considerable difficulty with the failure of the bill to provide for a phase-in period. Without some equitable and efficient technique for phasing-in the deposit requirements, we would anticipate severe economic disruptions and dislocations. We are not sure in our own minds how a "phase-in" could best be accomplished.

Another problem stems from a provision in the bill which might be construed as drawing a distinction between interstate and intrastate beverage shipments. Such a distinction could well defeat a national program, and it would clearly result in inequities.

Since the success of any program of mandatory deposits depends on public awareness and response, we believe the approach taken must be simple and unmistakably clear. The multiple definitions of a variety of beverage containers could be confusing.

However, aside from the difficulties we have with many of the specific provisions of S. 2062, we are in accord with the basic idea of the bill.

Mr. Chairman, we could go on and on in the collection and examination of data, and in the analysis and re-analysis of probable effects from any regulatory approach to the problems of beverage container consumption and litter. We have studied this matter intensively and we believe that we now have a reasonably reliable body of data concerning the problem. We have the benefit of the Oregon experience. We also have the prospect of a proliferation of State and local laws addressing the problem with differing and perhaps contradictory approaches.

As I mentioned earlier, we do lack some economic data concerning possible market effects of a mandatory deposit requirement. On the other hand, the information and data we have concerning the environmental effects of such a requirement we believe are persuasive.

Because of the difficulties we have with the provisions S. 2062 we do not recommend its enactment. However, we *do* endorse its underlying premise—that a national requirement of mandatory deposits for beverage containers can make a significant contribution toward the solution of the environmental problems associated with no-deposit, no-return containers.

STATEMENT BY SENATOR MARK HATFIELD

Mr. Chairman, as the former ranking Republican on this subcommittee, it is a pleasure to appear before you this morning in support of my proposal, S. 2062. My colleague from Oregon, Mr. Packwood, is a cosponsor, as are Senators Case, Hughes, Kennedy, McGee, and Metcalf.

Appearing before the Senator from Utah, Mr. Moss, always is a pleasure, for his national leadership efforts for consumers and in the recycling area I know will alert him to the problems of solid waste, litter and energy, and he will see what Oregon has done to solve one aspect of this problem with our bottle bill. I am aware of the many pressures for hearings before this subcommittee, and my thanks for scheduling the hearing are echoed by everyone from Oregon, where we have made our state bottle law work.

I also want to recognize the fine staff work done on this hearing by Mr. Paul Cunningham.

A THROWAWAY SOCIETY—CAN WE AFFORD IT?

Can the American people reverse the drift toward a "throwaway society?" The people of Oregon have answered "Yes" to this challenge, and the opportunity now exists for the rest of the country. Non-returnable beverage containers—beer and soft drink—have been banned from sale in Oregon for over a year. No flip-top snap-tab cans; no throwaway bottles. A deposit is required on all bottled and non-tab canned beverages.

The Oregon legislature picked out an identifiable segment of the "make it, use it, discard it" attitude and passed a law showing that some people recognize yesterday's attitudes won't work on today's problems or tomorrow's challenges. The state law in Oregon has been a huge success. It has cut litter drastically and saved energy. The people of Oregon made the law work. Today and tomorrow this Committee will hear from a number of people from Oregon who will provide the Committee with details on the Oregon law, and discuss its application to a national bottle bill. I will not, therefore, address my remarks to the nuts and bolts of the legislation, for others I know will offer testimony on its merits, and others on what they see to be its shortcomings.

Instead, Mr. Chairman, I would like to share with you some thoughts on the broader picture of why a national ban on the sale of non-returnable beverage containers should be enacted.

To pass such legislation as the Committee is considering would help reverse the counter-ecological growth patterns that have paralleled the technology explosion of the past two decades.

Beverage packaging is only one example of this pattern. Housing could have been chosen, where aluminum siding creates a

pollution price tag nine times greater than wood siding. It takes six times the energy to move the same amount of freight by truck than by rail. Production of aluminum, cement, and chemicals consumes thirty percent of the industrial use of electric power in the United States. Some of the new energy sources under review will use great amounts of energy in their production, so the "net energy" result is meager in the face of the resource depletion in generating it.

NET ENERGY

Energy consumed to make new energy is a crucial factor to which energy planners and economic advisors have paid little attention. For example, if it took nine units of energy to mine, process, and transport oil shale that in turn, generated only ten units of energy, the net energy gain would be only one unit of energy. Such a shale reserve, therefore, would deliver only one-tenth as much net energy and last one-tenth as long as was calculated using today's gross energy figures. Using such gross energy reserve statistics regarding fossil fuels instead of a net energy figure only deludes the public. Nuclear power, hailed by many, probably just barely yields net energy today, due to high costs of mining and processing fuels, storing wastes, operating complex safety systems, and manning governmental regulating agencies.

The issue of throwaway beverage cans and bottles is one that can be conquered. In the abstract, we can say that all this issue needs is the support of those people who sip, drink, swill, or guzzle beverages. In reality, it needs the support of this committee and a push by Congress. While the opposition is powerful and influential, and has, I presume, a substantial "war chest" to fight this bill, I believe this legislation should be passed. The beverage container issue is one definable in scope. It can be examined and—more importantly—I can be solved.

SOLID WASTE

Although the statistic is staggering, we are told that some 90 million beverage containers will be produced this year. Most of that total will be thrown away, except in Oregon. Production on non-returnable beer bottles increased from 1946 to 1969 by over 3700%—an amount difficult to comprehend. At the same time, returnable beer bottles dropped 64% per capita.

Putting away the ethics of a throwaway society for a moment, we should try to visualize the solid waste problem of disposing of these cans and bottles. It is a staggering job. The siting of future landfills to dispose of mountains of trash is a major problem whose dimensions—literally and figuratively—will continue to grow.

ENERGY SAVINGS

Because solid waste on such a vast scale is difficult to comprehend, every beverage purchaser should look at energy savings from passage of our national bottle bill. I think the Committee should look at this carefully, for information I have received indicates such a law would generate substantial energy savings. One study shows an energy saving equal to the total 1970 energy needs for the cities of Boston, Washington, Pittsburgh, and San Francisco for five months. Another report states that the energy equivalent of 131,000 gallons of gasoline daily would be saved by banning throwaways. Another study shows it takes over three times the energy to bottle a gallon of beer in throwaway containers than in returnable ones.

Each time an empty beer can or soft drink bottle is thrown away, the energy used in its manufacture also is discarded. A returnable container is used an average of over ten times, with obvious energy savings. We are told a 100 watt light bulb could burn for twelve hours on the energy wasted on a throwaway. One Ph.D studying this problem says the energy waste is so great that throwing away an aluminum 12 ounce beverage can is like throwing it away half full of gasoline—the energy equivalent used in its manufacture. An environmental group here in Washington has calculated the national energy savings of a ban on throwaways to equal:

The electrical needs of 9.1 million Americans for a year; or

The gasoline for 1.5 million cars averaging 10 miles per gallon to travel 10,000 miles; or

The natural gas to heat 2 million three bedroom homes in the Mid-Atlantic region for the 8-month heating season.

ENVIRONMENTAL TECHNOLOGY

Today we are led to believe that maintaining a quality environment and providing for our energy needs are conflicting objectives. Maintenance of our natural ecological systems, however, should not have to compete with man's other uses for energy. These ecological cycles actually should supplement our energy supply, and it is tragic we have allowed this relationship to be turned around.

We have been making technological choices that have been displacing products and processes that fit in with the cycles of nature. To rescue nature, we then have been applying "environmental technology" which substitutes for natural processes, and therefore duplicates the natural work from the ecological sector. This displacement and duplication is a crippling economic handicap. Consider the example of how sewage is handled. As the growth of urban areas has become more and more concentrated, much energy—including research and development work—has gone into developing and implementing technologies to protect lakes, rivers and oceans from the wastes dumped into them. These wastes, however, often are rich sources of chemical energy capable of being recycled back into the farmlands from which the nutrients came. They could replace much of the fertilizer now produced from fossil fuels and eliminate the need for energy-expensive tertiary sewage treatment.

The same attitude is reflected in the numerous ads showing large bottle and can manufacturers encouraging the recycling of their throwaways, although the increased energy use can be seen by anyone. Modern man unfortunately appears to believe it is better to solve the litter-solid waste problem by energy-expensive recycling rather than by avoiding much of the problem to begin with through use of returnable containers. In spite of the national leadership given by Senator Moss in the recycling area, however, insufficient economic incentives unfortunately still hinder solutions to solid waste problems such as beverage containers. I just wish some of Senator Moss's recycling proposals had been in effect for years, and our solid waste problem would not be as severe as it is today.

LITTER REDUCTION

While energy savings offer an au courant impetus for banning throwaways, the dramatic reduction in litter in Oregon provides another critical reason why our bill should be enacted. In fact, the litter reduction is really an easily seen benefit to anyone travelling in Oregon recently. We have witnessed a dramatic drop in roadside beverage container litter. A study of the impact of the law on litter in Oregon by the Environmental Protection Administration states ". . . the law had a significant and positive impact on the litter in Oregon." The E.P.A. study showed beverage container content in roadside litter has dropped about 96%. EPA spokesmen in their testimony, as well as Oregon witnesses can provide more background on this important savings from enactment of our bill.

CONSUMERS AND THE "THROWAWAY TAX"

As supermarket dollars buy less and less, consumers should remember they are paying a "throwaway tax" on all those snap-tab flip-top cans and throwaway bottles. Dollar watchers need only examine beverage costs where both returnable and nonreturnables are sold. You pay less for returnables. When a consumer buys a beverage in a returnable container and returns it, he pays only a fraction of its container cost. The throwaway purchaser, however, pays the entire cost. Added to this is a disposal cost, and sometimes a roadside litter cleanup cost.

In a throwaway society characterized by mountains of discarded beverage containers, the problem is not caused by "them", but by "us." Two slogans illustrate the situation: "We have met the enemy and they is us." and "If you're not part of the solution, then you're part of the problem."

So far, however, little has been done to solve this problem. Oregon results from our bottle law show it can be attacked and solved, but acquiescence by a dormant public won't accomplish it.

Throwaway containers should be repugnant reminders of how little society cares about wanton depletion of its energy resources, or a measure of the disdain for helping curtail the staggering litter and solid waste problems.

A laundry list of areas exists where blind obedience to technology has created a host of problems. The beverage container area provides Congress a clear opportunity to reject this throwaway ethic spawned by the idolatry of technology. We must reject this misguided attitude in favor of one which reduces energy and help solve our litter—solid waste problems.

I urge this Committee to approve our bill, and thus to signal an end to this destructive approach to the stewardship of our land and its finite resources.

While we are the enemy today, we can be part of the solution tomorrow. To do less than solve this problem would be to submit to the tyranny of technology. To solve the problems caused by throwaway beverage containers would be to signal that society can place critical values—ethical and economic—in their proper perspective. The American people and the Congress must reject the flip-top, snap-tab throwaway society, and banning throwaway nonreturnable containers is a needed first step.

In closing, Mr. Chairman, let me thank you again for holding hearings on this bill. We in Oregon know such a law can work and we welcome the opportunity to testify about the Oregon law. As Oregon witnesses appear, I would hope that some questions could be directed to them about the opposition to our bill. Ask them what dire predictions were made in hearings similar to this one before the Oregon legislature. Try to find out just what the opposition claimed the effect of enactment of the law would be. The reason I suggest this to the Chairman is that I know opponents of our bill will stream before this hearing and predict a worse depression than the 1930s if Congress bans throwaways. Tales of woe will be pictured by our powerful opponents. As witnesses from Oregon will tell you, the Oregon legislature heard all the same dire predictions. If the men and women in our legislature had believed all the claims of the bill's opponents, there would have been no Oregon "bottle bill".

It is no secret that opponents of the bill represent both labor and management—and perhaps I should be pleased that I could help this labor-management rapproachment, even if it is only to defeat my bill.

Thank you again, Mr. Chairman, and I

will supply any added material you wish for the RECORD.

NATIONAL PUBLIC RADIO: A PRECOCIOUS 32 YEAR OLD

Mr. METCALF. Mr. President, national public radio is a precocious newcomer among media operations covering activities on Capitol Hill. Its budget is modest, and its audience, while growing steadily, is small compared to that of the commercial radio and television broadcasters. Yet, because of its innovative and creative programing, NPR is clearly establishing standards for public affairs broadcasting which have great significance for the industry, for the Congress, and for the American people.

I refer particularly to NPR's coverage of congressional committee hearings. In just 3 years of operation, this public radio network has transmitted live over 725 hours of such hearings. That is the equivalent of 6 solid weeks of broadcast coverage each year—and the policy of the network is to choose an issue and stay with it, uninterrupted except for necessary explanatory comments and continuity, until the hearings are completed.

Moreover, the network has transmitted to its 164-member stations around the country not only the highly dramatic hearings, such as those on the war in Vietnam or on Watergate. It has also carried hearings on subjects less likely to receive close media attention, such as the nomination of cabinet officers or proposed farm legislation.

Mr. President, one of the most important purposes of congressional hearings is to inform the public, to develop awareness of public policy issues, and to create a record for describing in the fullest possible detail how a particular program or law will affect the interests of various segments of our population. Hearings serve to inform and to educate. If what our witnesses say were to be heard only in the confines of the committee room, congressional hearings would serve very little purpose.

NPR is performing a valuable service in broadcasting congressional hearings today. And I believe that this service has great potential for bringing the workings of the Congress closer to the American people, expanding public understanding and giving our citizens a sense of participation in functions of their national legislature.

Most recently, the Joint Committee on Congressional Operations held 6 days of hearings on Congress and mass communications. We were seeking to discover ways that Congress might assist the media in covering its activities and in reporting on them more fully and accurately. We had outstanding witnesses from both the Senate and the House as well as from the media and the academic community.

NPR covered these hearings gavel to gavel. Their engineer and commentator were completely unobtrusive—staying with us for almost 26 hours of airtime. And my mail reflected the fact that people were not only listening but were highly appreciative of the opportunity to tune in. I want to quote from a few of the letters of these listeners, because they point up the significance of this kind of broadcast coverage. A California listener wrote:

> I have learned more about how legislation is developed and shaped by listening to your committee on radio just A FEW TIMES *than in 15 years of reading newspapers!* Live coverage is essential if Americans are going to come to know and respect their government.

A Maryland woman listened throughout our 6 days of hearings—and expressed a desire for coverage of more congressional hearings. She wrote:

> We bless PBS for making all Congressional hearings available as they are able to. And listen to all of them. It would be a great service if we could have more of them.

An Arizona woman, noting that the broadcast coverage gave her a sense of participation and involvement, commented that the broadcast coverage is a "splendid way to build a responsible and informed electorate." She wrote:

> The radio broadcasting of your and other committee hearings has enabled me to feel participatory democracy working more than any other time of my 55 years. I am "glued" daily to these hearings and have learned more and become more involved in government issues than possibly pleases my legislators! I particularly wish to plug the radio rather than TV coverage. Listening, I can go about many activities that require only my physical attention which I could not do if I had to sit and *watch*. Also, I do not really see the added worth of "looking" at all you photogenic types to observe whether you are biting your lips or swiveling in your chairs. I'm more than *content* to listen to the essential *content* of words. In any case, the opening of all legislative activity at every level is the most splendid way to build a responsible and informed electorate. I hope you will continue to believe that "the American public" is capable of making reflective decisions if given the opportunity.

A student from Michigan sent along observations which I believe go to the heart of the matter. He wrote:

> We see, I fear, only one small aspect of our representatives in congress at present. We see them delivering thirty second segments on the evening news. And, at a time when government seems further than ever from the people whom it effects, this latter image does not help to lessen the gap.

And he continued:

> It is because I am a student (and therefore not working a nine to five job) that I am able to follow the committee's activities. Were I relying on major radio-tv networks (exclusive of NPR) coverage of the day's events, I would not even know (as of this date, at least) that such meetings were going on. This seems to make the creation of channels of communication between the Congress and its constituency a most vital project if this nation is to continue to be called a democracy. And these channels of communication must provide extensive information on the day's proceedings "on the hill' into the evening hours when working people and school children will have access to them.

And from Missouri, a man wrote:

> If it were not for National Public radio that carried your joint committee meeting, . . . I never would have known you were thinking of these things. I heard Senators Mondale and Humphrey and *completely* support what they have to say. You Can't have Democracy & Secrecy at the same time.

Mr. President, most of us have public radio stations in our States. We know they are partially funded by the communities they serve. The stations that are able to offer full service can then obtain additional support and funding from the Corporation for Public Broadcasting—the body we created in 1967 for that very purpose.

I am pleased that KUFM-FM at the University of Montana in Missoula, is presently taking steps to join the ranks of the CPB qualified public radio stations and to obtain eligibility for membership in the National Public Radio network. If these negotiations are successful Montana will have its first full-service, public radio station.

Last Friday was NPR's third anniversary. I am delighted, on this occasion, to learn that live coverage of congressional hearings and other educational and cultural programs offered through the network's interconnection system may soon become available to the people of my State.

I commend NPR for the work that it is doing to improve public knowledge and understanding of the Congress and its vitally important role in the American system. I hope that, by calling attention to the availability of their broadcasting, more of our citizens will take an opportunity to listen in and to support their coverage. With continued excellence and imaginative programing I trust that the potential of this service for public affairs education will be fully realized.

WHITE COLLAR CRIME HANDBOOK

Mr. BIBLE. Mr. President, whether it is the better known crimes in the streets or the business-oriented crimes in the suites, these nefarious activities are increasingly sapping this country's economic and social strength. A Commerce Department survey says property thievery totals $16 billion per year and other estimates say fraud and embezzlement add another $1½ billion per year with the increases going upward.

Therefore, may I commend the U.S. Chamber of Commerce for its affirmativeness in just publishing a handbook, "White Collar Crime: Everyone's Problem—Everyone's Loss," which it hopes to distribute nationwide to business executives and professional people.

This 92-page booklet, concise and easily readable, certainly is one of the most excellent, down-to-Earth guides to control business crimes I have ever seen. It offers practical advice to curb the criminal who preys on businesses of all types. To Mr. Arch N. Booth, executive vice president of the U.S. Chamber of Commerce, and his crime prevention and control panel made up of outstanding business and law enforcement leaders from across the country, I want to say that your job is a fine contribution.

As our Small Business Committee has learned in some 5 years of hearings on the impact of crime on business, police and law enforcement personnel alone cannot control it. Crime against prop-

erty, and that is what business crime is all about, represents preventable economic injury. Therefore, the suggestions this Chamber of Commerce guide provides to executives and supervisory help, should pay dividends in stopping the criminal whether he plies his trade by thievery on the shipping docks or by embezzlement or fraud inside the office suites.

This handbook spells out how various management policies and procedures can help deny to the potential white-collar criminal the means, opportunity and motive to commit these offenses of bankruptcy fraud, bribes, kickbacks, payoffs, computer-related crime, consumer fraud, illegal competition, deceptive practices, embezzlement and pilferage, insurance fraud, receiving stolen, property and securities theft and fraud.

This anticrime, probusiness handbook deserves a "must read" label for all businessmen, from chairman of the board to the night shift supervisor. Crime, whether ordinary thievery or the under-the-desk white collar variety, can only be stopped by businessmen who do their part to stop it.

COMMUNITY EDUCATION

Mr. HARTKE. Mr. President, the Senate will shortly be considering legislation to amend the Elementary and Secondary Education Act. Included in those amendments is provision for community education programs.

Community education includes: adult education programs, health programs, recreational programs, vocational programs, academic programs, and enrichment programs. It is a community concept, because it involves schools, churches, civic organizations, agencies, business, industry, and government.

I have long believed in expanding the concept of education to all of the people. I was involved in the creation of the adult education and cooperative education programs. Each of us should have the opportunity to learn, for there should be no such thing as a specific school age.

Recently, I received a letter from Dr. John A. Fallon, who is a consultant for the Institute for Community Education Development at Ball State University in Indiana. Dr. Fallon cites two concerns with the Senate bill's provisions regarding community education.

Mr. President, I request unanimous consent to have printed in the RECORD following my remarks the text of Dr. Fallon's letter together with a listing of current statistical data on community education in the United States.

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

BALL STATE UNIVERSITY,
Muncie, Ind., April 29, 1974.

Hon. Senator VANCE HARTKE,
U.S. Senate,
Old Senate Building,
Washington, D.C.
Attention: Mr. Howard Marlowe.

DEAR SIR: After visiting your office last week while in Washington, D. C., I thought a follow-up letter reaffirming my concern about Senate Bill #1539 would be most appropriate.

As I had discussed with your aide, those of us working in Community Education Development are most appreciative of the fact that federal support for such development may be forthcoming. On behalf of the Institute for Community Education Development (serving Illinois, Indiana, Kentucky and Ohio) and the Mid-America Community Education Association, I would however like to express two concerns with the Senate bill.

First of all, the fact that the Senate bill provides for project grants from U.S.O.E. to locales is a great concern. The efforts of the Institute for the past several years have been geared toward establishing the State Department of Public Instruction as the community education development agent within the states. To that end, Indiana currently employs a State Director of Community Education and Illinois is considering both legislation and a position. Should the Senate bill pass and subsequently become law, the State Departments would be "shortcircuited" and thus only peripherally involved. Ideally, State Departments would be involved directly with funding, technical assistance, and other appropriate services. As you are no doubt well aware, the House version of such legislation (H.R. #69) directly involves State Departments.

Secondly, the Senate bill provides for technical assistance from U.S.O.E. As one who has had experience with such a situation, I find this theoretically sound but pragmatically absurd. With the existing decentralized technical assistance support system in operation (45 University and College Centers for Community Education Development located throughout the U.S.), approximately 15 State Departments currently operating in such a capacity, and hopefully all State Departments in the future, the need for such U.S.O.E. support would be slight. The University and College Centers represent at least seven years with technical assistance to date and current statistics available on Community Education Development in the U.S. indicate that they have been most effective.

I would greatly appreciate your views on this matter as well as the probable route, timetable, and prospects for the legislation. This information will help those of us in the field to determine our role and subsequent strategies in the matter.

Again, the fact that federal legislation for Community Education Development has been proposed is greatly appreciated. I'm quite hopeful that those of us back home can count on your assistance.

I will anxiously await your reply.

Sincerely,

DR. JOHN A. FALLON,
Consultant, Institute for Community Education Development.

CURRENT STATISTICAL DATA ON COMMUNITY EDUCATION

1. 900 communities across the U.S. are involved in C.E., involving 3% of the nation's schools.
2. In 1973—2,000 community schools were open involving 1,800,000 people a year.
3. 15 regional centers for community education exist across the U.S.
4. Over 30 Cooperating Centers assist the regional centers in C.E. Development.
5. The National Center for Community Education in Flint collects research and provides short-term training.
6. 4 State Departments have Community Education person on their staff.
7. 20,000 persons have participated in Community Education workshops in Flint, Michigan and regional centers.
8. Over 700 Community Educators have been trained in Flint and Regional Centers.
9. National Legislation is pending on community education as part of the ESEA.
10. Five states have laws reimbursing schools for ⅓–½ of a coordinator's salary: Florida, Utah, Michigan, Minnesota, and New Jersey.
11. National PTA has endorsed C.E. as a desirable concept.
12. National Jaycee's have adopted C.E. as a national project.
13. November, 1972 Issue of Phi Delta Kappa devoted entirely to C.E.
14. Nearly a dozen foundations have put money into C.E. including Lilly, Danforth, Sears, Rockefeller, Mott, Ball, Kellogg, Amos, and Ford.

NEW YORK TIMES PUBLISHES ARTICLE BY SENATOR THURMOND ON PANAMA CANAL

Mr. HELMS. Mr. President, today's New York Times carries a very fine article by our distinguished colleague, the senior Senator from South Carolina, Senator THURMOND. The article deals with current negotiations with the Republic of Panama for a new Panama Canal treaty. Senator THURMOND is one of the Senate's outstanding authorities on the Panama Canal, whose operations and defense come under the Senate Armed Services Committee, of which he is the ranking minority member. His work over the past many years has brought him outstanding recognition in this field.

The New York Times has a policy of running articles on its op-ed page dissenting from the Times' usual views on matters. Senator THURMOND was invited by the Times to articulate a view on the canal which, needless to say, is quite opposite that of the Times. It is a view which has strong support in the Senate. Senator THURMOND joined with the distinguished Senator from Arkansas (Mr. MCCLELLAN) and 33 others in sponsoring Senate Resolution 301 in opposition to the basic principles of the canal negotiations being conducted by the administration. I have the honor of being among these cosponsors.

Mr. President, I ask unanimous consent that the article by Senator THURMOND from today's New York Times be printed in the RECORD at the conclusion of my remarks. This article is a concise summary of the situation as it now stands, along with the historical background necessary to understanding that situation. I congratulate the Senator for his fine piece of work.

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

FOR PERPETUAL U.S. CONTROL OVER THE PANAMA CANAL

(By Strom Thurmond)

WASHINGTON.—Secretary of State Kissinger and the Panamanian Foreign Minister, Juan Antonio Tack, on Feb. 7 signed a "Joint Statement of Principles" to serve as the basis of treaty negotiations for the surrender of United States sovereignty in the Canal Zone.

In my judgment, the Secretary committed an egregious blunder in committing the United States to a course of action on a new Panama treaty without a reasonable assurance that the requisite two-thirds majority of the Senate supported the abrogation of sovereignty.

In consultations with members of Congress before signing the statement, Mr. Kissinger and his chief negotiator, Ambassador Ellsworth Bunker, were advised that the surrender of United States sovereignty in the

Canal Zone was not a negotiable item; they apparently chose to ignore this advice.

On April 5, a sense-of-the-Senate resolution was introduced calling for continued United States sovereignty over the Canal Zone. At this time, 35 Senators—more than one-third of the members of the Senate—have joined in sponsoring to pick up co-sponsors for this resolution; in fact, most of the signatures were collected in a single afternoon.

This list of co-sponsors is noteworthy not only for its numbers, but for its leadership quality. It includes the chairman and ranking Republican of the Agriculture and Forestry committee, the chairman and ranking Republican of the Appropriations Committee, and chairman and ranking Republican of the Judiciary Committee, the chairman and ranking Republican of the Veterans Affairs Committee, and the chairman and ranking Republican of the Select Committee on Presidential Campaign Activities. It also includes the ranking Republicans of the Aeronautical and Space Sciences Committee, the Armed Services Committee, the Banking Committee, the Commerce Committee, the Finance Committee, the Interior Committee and the Public Works Committee. At the other end of the seniority spectrum, it includes every freshman Republican Senator.

There is no way in which the Joint Statement of Principles can be reconciled with the Senate resolution. There is no way that any treaty can adequately protect and defend our interests in operating the Canal when it has as its basis the abrogation of sovereignty. And sovereignty is the nub of the issue. In the complicated power relationships of the modern world, the continued exercise of sovereignty is the only way to keep the canal operating efficiently and continuously, not only for the benefit of the United States but also for the entire world.

Indeed, perpetual United States control was an essential arrangement that enabled the United States to build the canal and keep it operating through war and peace.

At the turn of the century, the French-owned canal company in the Colombian province of Panama had virtually failed. On the other hand, the United States already was involved in construction of an isthmian canal in Nicaragua. It was the Columbian Government that opened negotiations with the United States to abandon the project in Nicaragua and, instead, build the canal in Panama.

In the Spooner Act of 1902, Congress authorized Theodore Roosevelt to negotiate with Colombia but only on the basis of perpetual United States control. When the internal dissensions of Colombian politics denied the people of Panama the benefits of the proposed canal, Panamanian patriots risked their lives and property to proclaim independence. In ensuing negotiations with the United States, the new Government of Panama agreed to perpetual United States sovereignty over the Canal Zone as the necessary inducement to divert United States interests from Nicaragua to Panama.

The Canal Zone is United States territory. It was obtained both by grant of sovereignty in the 1903 treaty, and by purchase of all outstanding rights and titles in perpetuity. In all, we have paid $163,718,571 for these rights and titles, including the assumption of the annuity formerly paid by the Panama Railroad to Colombia.

The total United States investment, including defense, amounts to nearly $6 billion. There is no "lease" involved whatsoever. In fact, the purchase of the Canal Zone is the most expensive territorial acquisition in the history of the United States, outstripping by far the Louisiana and Alaskan purchases of $15 million and $7.2 million respectively.

The treaty of 1903 specifically excluded Panama from an exercise of sovereignty in the Zone. Congress is, therefore, the legislature for the Canal Zone. Congress has set up a Canal Zone Code, a Federal District Court at Balboa, and a government for the Zone. Much of the domestic legislation of this country applies in the Canal Zone, unless specifically excepted.

If the United States were to surrender its sovereignty, Panama could easily destroy herself under unbearable pressures, both internal and external.

Without continued United States sovereignty over the Canal Zone, any treaty signed with Panama would become a mere scrap of paper, subject to the escalating demands of internal Panamanian politics.

The Suez Canal is a mute reminder of what happens when a powerless nation assumes a responsibility it is unable to support.

It is unfortunate that the giveaway mentality of some in the State Department has misled the Panamanian people about the true status of the Zone and the mood of the American people.

The United States can continue to make proper adjustments in our treaty relationship with Panama, within the framework of the retention of sovereignty. Through appropriate legislation now introduced in the Senate and House, the United States should make a commitment for the major modernization of the present Canal under the present treaty. Such a project, whose cost has been estimated at $950 million, would have a major impact upon all levels of the Panamanian economy, establishing the job skills and economic base that would give Panamanians one of the highest standards of living in the Western Hemisphere.

Creative negotiations would re-establish a harmonious partnership as these two nations work together for their mutual benefit and the world's.

OIL-IMPORTING COUNTRIES TO BE AIDED BY OIL-PRODUCING COUNTRIES

Mr. JAVITS. Mr. President, I would like to call to the attention of my colleagues an article from the New York Times, dated May 7, disclosing that the oil-producing countries, including the Arab oil-producing countries, have pledged credits of $2.75 billion to a special oil facility of the International Monetary Fund. This is a recognition by the oil-producing countries, of their new international responsibilities to countries with balance-of-payments problems.

With proper encouragement, this "oil facility" should grow.

Responsibility among oil-producing states in using their new wealth also takes U.S. leadership. In this respect it is particularly important that the Senate take early action to approve U.S. participation in the fourth replenishment of IDA, the window of the World Bank designed to assist the poorest of the developing countries.

Mr. President, I ask unanimous consent that the article referred to be printed at this point in the RECORD.

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

OIL PRODUCERS PLEDGE CREDITS OF $2.75 BILLION FOR IMPORTERS

(By Edwin L. Dale, Jr.)

WASHINGTON, May 6.—The International Monetary Fund disclosed today that Arab and other oil-producing nations had "indicated their willingness to lend to the fund" about $2.75-billion to help establish a special new "oil facility" that would lend money to oil-importing countries at a time when these countries will nearly all have deficits in their balance of payments because of higher petroleum prices.

The announcement said "several" of the oil-producing countries "saw the possibility of adding to that total later in the year." Although the pledges were not fully broken down, the announcement said Saudi Arabia had offered $1.2-billion; Iran, $720-million, and other countries $840-million.

In a related development, the managing director of the I.M.F., H. Johannes Witteveen, disclosed further details of how the oil facility would operate and said he was hopeful it "can be put in place before the middle of the year."

Mr. Witteveen discussed the plan in a speech to the Economic Club of Detroit, the text of which was made available here.

The problem is how to channel the huge surpluses of the oil countries back into the rest of the world. Mr. Witteveen said that "unavoidably" this money must flow back in one form or another to the oil-importing countries, but he added that "the key question is how to assure that the pattern of such flows helps rather than hinders the achievement of monetary and economic stability."

The "main contribution" in channeling the return flow of money will be that of private financial markets, chiefly what is called the "Eurocurrency" market, he said. This is the intricate interbank network of depositing, lending and borrowing of various currencies owned by citizens, companies and governments of numerous nationalities.

But Mr. Witteveen said that for several reasons "the Eurocurrency markets do not provide a complete answer," and he added that in the near future there was no certainty "that the surplus funds of the oil countries will find their way to where they are most needed."

It was for this reason, Mr. Witteveen said, that he proposed last January the new oil facility, a kind of separate borrowing "window" for the member countries of the I.M.F. He disclosed these features of the new facility today:

It would operate for only two years, 1974 and 1975.

It would make funds available to countries "which have a balance-of-payment need and which have difficulty in obtaining finance elsewhere." The amount to be borrowed would be "related to the higher costs of oil, subject to an upper limit related to the [country's] quota in the fund."

The drawings, or borrowings, "may be outstanding as long as seven years, with repayment beginning after the third year."

The money for the new facility would come "for the most part from borrowing"—presumably chiefly from the oil countries—"thus keeping the fund's existing resources available to meet the other demands of its members."

The interest rate would be higher than on normal fund drawings but "somewhat below" what countries would have to pay for alternative sources of funds.

The loans from the oil countries "would be demoninated in terms of Special drawing Rights"—the new international money created by the I.M.F.—and "by the time the loan agreements come to be ratified, we hope that a new basis of valuation for the S.R.D. will have been approved." The Special Drawing Right is now linked in value to the official price of gold, but an international agreement is likely to link it instead to a "basket" of leading currencies.

"The proposed new arrangements in the fund will be a success only if they help to promote a smooth transition to a sustainable medium-term balance-of-payments

situation" Mr. Witteveen said. "At present, we cannot see any clarity what arrangements will eventually be established to provide for the orderly investment of surplus oil revenues in the medium term."

Speaking of the "most difficult" economic problem facing the world generally, Mr. Witteveen indicated his belief that inflation remains a greater danger than stagnation and unemployment.

ADDRESS BY CHILEAN SENATOR SERGIO JARPA

Mr. HELMS. Mr. President, I recently had the great honor to be one of three honorary cochairmen of the World Anti-Communist League's seventh conference, held here in Washington. For the first time this international organization of men and women who are fighting for the principles of freedom and justice for all men against world communism held its annual conference in the United States.

Nearly 350 freedom-loving delegates from 54 free nations and 19 captive nations participated in one of the most interesting and informative conferences to be held in this city for many years.

The host organization, the American Council for World Freedom, its outgoing president, Maj. Gen. Thomas A. Lane, U.S. Army, retired, and the new president of ACWF, and WACL, Mr. Fred Schlafly, of Alton, Ill., can be proud of this conference and the impact it has made on men and women throughout the world.

Now I know that outside of Washington, D.C., word of the seventh World Anti-Communist League conference went to the people through the press, radio, and television. But if the residents of Washington, D.C., did not read out-of-town newspapers, magazines, or hear the news on out-of-town radio and television, they would never have known that this conference was held. They would never have heard from the men and women who have suffered under the yoke of brutal Communist dictatorships. The citizens of Washington, D.C., would never have heard, for example, of Mr. Avraham Shifrin or Mr. Antaol Radygin who spoke at the WACL conference about their 20 years in the notorious "Gulag Archipelago" labor camps at the Soviet Union.

I would like to point out to my colleagues that the Washington Post did not publish one line about the conference while the Washington Star-News carried only one brief item of three paragraphs on the WACL conference. Thus, this international conference never happened so far as most of the citizens of this city knew, or the Members of Congress and their staffs, and the international community here, and the thousands of Government employees whose daily work is affected by international affairs.

Mr. President, I commend the American Council for World Freedom and the World Anti-Communist League for bringing this conference to the United States, and salute the many men and women who participated and told the story of their trials and tribulations under communism.

I would like to list some of the distinguished men and women who participated in the WACL Conference.

Mr. Bruce Herschensohn, Deputy Special Assistant to the President; the Honorable Nathan Ross, of Liberia; Adm. John McCain, Jr., U.S. Navy, retired; Hon. Yaroslav Stetsko; our colleague from the House, Representative RICHARD ICHORD, Democrat of Missouri; Dr. Han Lih-wu, Republic of China; Mr. Mario Lazo, Cuba; Mrs. Suzanne Labin, France; Mr. Hoang Van Chi, Vietnam; Prof. James Dornan, United States; Gen. Anatasia Somoza Debayle, Nicaragua; Mr. William F. Buckley, Jr., United States.

I want to pay particular tribute to Dr. Ku Cheng-kang, of the Republic of China, who as honorary chairman of the World Anti-Communist League, has provided WACL inspiration and leadership since its birth in Korea 8 years ago.

These are just a few of the men and women who spoke so eloquently to acquaint the citizens of the United States and the world of the dangers of communism.

I wish to thank my fellow honorary cochairmen, Representative CLEMENT ZABLOCKI of Wisconsin, and Representative PHILIP CRANE of Illinois, for working to make the conference a tremendous success.

One of the speakers at WACL conference, Mr. President, brought a message to all freedom-loving people from his countrymen—the men and women of Chile who only a few months ago overthrew a Marxist dictatorship—that of Sr. Salvador Allende. Chilean Senator Sergio Onofre Jarpa presented the WACL conference and the world with a concise and documented presentation of the facts surrounding the coming to power of Allende and the forces behind the coup which ended 3 years of Communist control of Chile. Of the Allende-Communist takeover Senator Jarpa said:

> The international Communist party used a new tactic in Chile. The Cuban model had lost all prestige in the western world and the attempts to create subversion through guerrillas and terrorism had failed. . . . In Chile they had to attempt an operation without pain, that is, with enough anasthesia to prevent the patient from rebelling in time.

He traced the history of the Communists' ruination of his nation's economic policy, of the Allende-Communist regime's derogation of the law and Chile's judicial system, and of the abandonment of the constitutional and legislative systems. Of the revolution for freedom from the Communist tyranny, Senator Jarpa said:

> It was the people of Chile who mobilized to reject the marxist dictatorship. The free women and men of Chile assumed their responsibility and did what they understood to be their duty.

He warned the conference that—

> It is difficult to comprehend the attitudes of those organs of the media and those political leaders who are supposed to be the defenders of liberty and democracy, and yet, now they fall into all the traps laid by the international communist forces.

Speaking of those Americans and the American media who are wringing their hands over the overthrow of Allende-communism in Chile, Senator Jarpa declared:

> The international Communist party has been able to count on the support of apparently democratic or neutral organizations for their campaign. However, we find it very curious that the representatives of these organizations have so suddenly been hit by an interest to visit our country to interview those who are being tried for their crimes or their thefts. All this is being done, they claim, to guarantee respect for human rights. A very commendable but belated concern, because we never saw them in Chile, nor did we hear their protest, when the marxists were in power and were commiting all sorts of abuses and crimes. Nor are we aware that they have ever shown any concern for the concentration camps in Soviet Russia, Eastern Europe, Cuba or any other communist country.

Mr. President, I ask unanimous consent that the full text of Senator Jarpa's address before the seventh conference of the World Anti-Communist League be printed in the CONGRESSIONAL RECORD so that all of my colleagues may have the advantage of reading firsthand the reasons why the Chilean people overthrew the Allende-Marxist dictatorship and returned to freedom.

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

SAVING FREEDOM IN CHILE

(Hon. Sergio Onofre Jarpa)

We are thankful to the world anti-Communist league and to the American council for world freedom for their invitation to participate in this their seventh conference to expose recent events in Chile and talk about the situation at present.

A PERSONAL EXPERIENCE

We hear very often a series of judgments and criticisms of our country from foreign journalists, politicians and intellectual leaders which bear no reflection of our reality. In many cases they are the opinions of people with a vested interest who seek very precise political ends. In others, they come from people who have paid quick tourist visits to Chile, where they have gathered a very superficial and biased picture of events and who appear later on as the great specialists on Chile and Latin America.

We can understand the position of the Marxists: After their shameful defeat in Chile they must build up a black legend to justify their own failure. However, it is difficult to comprehend the attitudes of those organs of the media and those political leaders who are supposed to be the defenders of liberty and democracy, and yet, now they fall into all the traps laid by the international Communist forces. Unfortunately, in every country there are those who prompted by populist demagogy, by personal ambition, by the need to have a public platform, or simply as an apology for their own private wealth, feel that they must echo all the slogans which the Communists fabricate and spread all over the world. The Communists will always flatter them but only for as long as they serve the Communists purposes, then, when the objectives have been fulfilled, they will be thrown overboard as a useless burden.

In Chile this sort of people have already learned their bitter lesson: they know now that if you make an alliance with the communists and you win, it is in fact only the communists who win. The theoreticians of social democracy also seem to fall into the

category of those who refuse to see things as they are. They are indeed more respectable than the opportunist bourgeois politicians, but no less mistaken in their views and in their concepts. Candidly, they dreamt that Chile would become the paradise of "socialism with a human face". Now they moan their painful awakening. But instead of blaming Chile for the failure of their experiment they would do better to analyze the conduct and the methods of their communist partners. We have not come here to compare doctrines, nor to give magical recipes. We have come here as Chileans, with no official representation, to tell about an experience, an experience which may have as its only merit the fact that it is a personal experience.

SITUATION IN CHILE BEFORE 1970

The Marxist Government of Salvador Allende was not the cause of all Chile's evils. The popular unity represented the last stage in a long process of decadence which had its roots in many and varied factors. Marxism succeeded in contaminating the body politic of the nation when it was already weakened by chronic, long standing illnesses, the most important of which were a decline of all national spirit and the overpowering effect of foreign political organizations, sectarian party governments, a crippling and expensive bureacracy, an ever increasing tendency towards greater and greater state control which corrupted and depressed the country's economy, an educational system which discouraged initiative, audacity and the spirit of risk and adventure, and led the young towards the pursuit of a life of mediocrity, with no sacrifice and no horizons. The ultimate aims of the system seem to have been to work as little as possible and retire on a pension as soon as possible. All this was aggravated by a remarkable inability to resolve the grave social problems which affected vast sectors of our people.

In 1964 the vast majority of the country voted against the Marxist candidate of Mr. Allende and elected as president of the Christian Democrat Eduardo Frei. Nevertheless, during the Christian Democrat Government, the deep changes that the country required remained undone; instead, the government continued the road towards state control and party political sectarianism. The Marxists continued to undermine the institutional foundations of the country behind an apparent but superficial appearance of stability and for those six years they extended their influence and control in the most important centers of social and political power, in the corporations, in the unions, in the universities, in the television channels and in the cultural, scientific and technological organizations.

The propaganda, directed by government circles, was bent on negating or distoring our history and provoked a reaction of either indifference or spite against our national values, thus creating a profound generational chasm.

The Christian Democrats led by fear of being thought reactionaries and by an uncontrollable tendency towards a dialogue or a compromise with the Communists, made ever greater concessions to them, so much so, that a government that was elected as an alternative to communism ended in practice being its best ally.

The same attitude was observed in external affairs. This was reflected in our relations with eastern Europe and above all with Cuba. Chile had broken off relations with Cuba as a gesture of solidarity with Venezuela and other Latin American nations which were the victims of aggressive Castroite infiltration. Under the Christian Democrat Government relations with Cuba were renewed for no pragmatic reasons, but merely to tune in to the well orchestrated Communist campaign. In 1970 Chile in fact was not the solid, efficient and progressive democracy which some claim. The bureaucratic mentality and the party political interests ruled in all government institutions. Resources were wasted and development was paralyzed. Meanwhile the people were submerged by the pressure of masive demagogy, anti-Chilean propaganda and became the victims of greater confusion while their real problems remained unsolved.

THE ELECTION OF ALLENDE

It has been said, with reason, that democracy must be efficient in order to survive. Nevertheless, in spite of the ineffectiveness to which we have referred and to all the negative factors which were operating, the majority of Chileans repudiated once again the idea of a Marxist government in 1970. The Marxist popular unity obtained 36% of the votes, but got in because the democratic majority was divided into two. They were helped by an electoral campaign which was a masterpiece of simulation and camouflage. But had the democratic forces fought together, their success would have been even greater than in 1964. Unfortunately the differences that existed between them were so profound that any kind of a united front became impossible.

The Christian Democrat candidate Mr. Tomic proposed a government programme which was *etatiste*, while the national party supported by vast sectors of independent groups advocated private enterprise, freedom of work, a return to our national values and backed the candidature of ex-president Alessandri. At the election no one candidate obtained an absolute majority, therefore, according to our constitution, it was up to congress to choose between the two candidates that polled the greater number of votes: Mr. Allende and Mr. Alessandri. Mr. Alessandri announced publicly before the election in congress that if he were elected, he would resign to leave room for a new election where the democratic forces could react and fight in a united front. What was not known was that a secret pact existed between Allende and Tomic which enabled the Marxist candidate to negotiate with the Christian democrat leadership their support for him in congress. The basis of their agreement was a constitutional reform intended to clarify and extend the guarantees and rights of Chilean citizens, so that Mr. Allende would not be able to trample them under any pretext. This constitutional amendment mentions specifically individual civil rights and the rights of trade unions, universities and community organizations, poltical liberties, the freedom of expresson, education and work and reaffirms the prohibition to create armed groups outside those established by law. When the amendment was passed in the senate, Allende said:

"We and the President of the Christian Democrat Party and its executives, had no other desire than to seek the road which is herewith consecrated. We wished it so, in order to show that Chile can and must find its own way on the basis of its own idiosyncrasy, its tradition and its history."

Later on he added:

"I have come here to say that these laws must be understood not only as principles which are from now on enthroned in the fundamental charter, but also as the moral rule of a commitment before our own conscience and before the judgment of history."

When he had been president for a few months Mr. Allende was interviewed by the French Marxist Journalist Regis Debray. Debray asked him, "Was it absolutely necessary? Was it indispensable to agree to the statute of democratic guarantees?" Allende answered, "You must place yourself in the context of the time at which it happened and you will see that it was a tactical necessity". And then he adds: "At that moment it was necessary to take the Government".

Mr. Allende then, was not elected by the majority, nor by the people as it has been said. He was nominated by Congress conditional on the statute of guarantees which he solemnly promised to respect in its entirety, but which we now know he only did as a matter of tactical necessity, not principle.

THE CHILEAN ROAD TO SOCIALISM

The International Communist Party used a new tactic in Chile. The Cuban model had lost all prestige in the western world and the attempts to create subversion through guerrillas and terrorism had failed, therefore, it became necessary to present a new attractive face which could allow the Communists to attain their goals without provoking the repudiation they had incurred in other countries. They also had the added obstacle in Chile that they were in a country with a well established libertarian tradition. They could not use the brutal means they had used in Soviet Russia, Eastern Europe, Cuba and other Communist countries. In Chile they had to attempt an operation without pain, that is, with enough anesthesia to prevent the patient from rebelling on time. With this purpose they eliminated from their rethoric all signs of violence, threats or oppression and adopted attitudes of goodness and sanctity. They appeared open to dialogue, respectful of religion, of freedom, of democracy, of private property, of ideological pluralism and peaceful co-existence. This posture contributed without any doubts to dissipate many fears about the intentions of the Marxist candidate.

In the famous interview with Debray which we have mentioned, Allende clarifies perfectly the tactic used. Debray says: "One can ask oneself if the proletariat and its allies will be imprisoned with the bourgeois institutions, whether they will be appeased with reforms, or if it will be possible at some point to break away from these patterns? Is it the proletariat which will impose itself over the bourgeois or will the bourgeois absorb the proletariat in its own world? Who is using who? Who is kidding who? This question is important".

To which Allende replied: "The answer is brief: The proletariat," and added, "Well, so the question is who is using who? Even accepting that this is the question, the answer is: The proletariat. And if it weren't so, I would not be here".

If we bear in mind that in the same interview Allende claimed that the Marxist parties represented the proletariat, the aim of the Chilean way is self-evident. It was not democratic socialism, it was dictatorship of the proletariat through the Marxist parties.

Once power was in their hands, the Communists put forward the second stage of the Chilean way. They tried to win the support of the majority in order to establish a socialist state by means of a plebiscite. No one would then be able to doubt that Chileans had freely opted for a Marxist regime.

RISE AND FALL

The programme of the popular unity was a mystification designed to win electoral support through deception. It was based on premises which were alien to the Chilean situation and contained a series of measures intended to produce a temporary and apparent improvement in the social and economic situation to win time for the Communists to consolidate their positions.

With this object in mind, prices were frozen, wages and salaries were raised and hundreds of thousands of people were employed by government institutions with a clear political purpose. In order to finance this plan private enterprise was taxed beyond all economic viability and inflationary currency was emitted.

The price freeze plus higher taxation and wages led the majority of private enterprise either to bankruptcy or to a total paralysis

of their activity. At that point the government offered the major shareholders of the most important industries to buy their shares, at far higher prices than those of the Stock Exchange. This was, to say the least, immoral since it meant the ruin of small shareholders. And, of course, there were those who hurried to offer their shares to the government: There are always some merchants ready to sell even the cord that will hang them. The government then, purchased the shares with public money freshly emitted for the purpose and without parliamentary consent or legal justification.

The second means for financing the programme was copper. With the nationalization of the great mining companies and the new development investments which had been made, Chile should have increased considerably its income from copper. The Chilean government after it had spent all foreign reserves, 400 million dollars which it had inherited from the previous government, proceeded to draw on the revenues it expected to collect from copper.

Again this background and with a well staged populist demagogic propaganda, with the economic mirage which had been created by these measures and still without a united opposition, Chile faced the municipal elections of April 1971, where the Marxist government increased its vote to 50% of the total. The Chilean way to socialism was working very efficiently. It seemed a matter of time and perseverance and a clear mandate from the electorate could be won to allow for a plebiscite to be called.

But very soon the effects of this deceptive economic policy began to be felt as the first symptoms of what would become a boundless inflation and shortages of essential goods, began to be felt, followed by the immediate consequence of popular discontent.

On July 18th, 1971, the government lost a parliamentary by-election at Valparaiso. For the first time the democratic opposition had joined forces against marxism. After that, at every by-election the government lost more and more support. This was true not only in parliamentary elections, but also in elections in the trade unions, in the corporations, in the universities, school federations and community organizations.

The Marxist Government answered with massive expropriation of industry, agriculture and all private enterprise. The objects were two: In the first place, to destroy the alleged economic support which private enterprise gave to the democratic parties and secondly, to subjugate the workers through the control of all source of employment. Naturally, all this was done on the pretense of giving the land to the peasants and the factories to the workers. But very soon the Marxist leaders realized that their situation did not improve because the peasants and the workers demanded that these promises should be fulfilled, while farms and factories began to decrease rapidly their productivity, managed as they were with the utmost clumsiness by the political commissaries who had replaced the professional managers and technicians.

In 1973 the astronomical losses of the nationalized industries, the decline in production of good and services, the waste and corruption that prevailed in the management of public finances, were leading the country's economy to disaster and the people to misery.

At the time and today we hear it again, the economic crisis was attributed to an economic blockade of our external trade and to the suspension of foreign credits. Nothing could be further from the truth. During the popular unity government, Chile was able to import more goods than under any other previous government and our foreign debt increased in three years by 800 million dollars, and this in spite of higher copper prices and the fact that all foreign reserves were used up.

MARXISM WITHOUT A MASK

The Marxist then abandoned the propaganda for "socialism with liberty" and presented a new objective: revolution. From then on, they justified all kinds of abuses and illegalities. Those who protested were disqualified as "enemies of the revolution" and were publicly threatened with elimination.

With this change in tactics Allende was faced with a dilemma: Either he respected his constitutional commitments, leaving aside the Marxist revolutionary objectives which incited such opposition or he broke off definitely with the institutional channels and established a totalitarian dictatorship. We do not know what he would have chosen had he been free to act, but the Communist control over him left him with no alternative.

From that moment on the popular unity government began to imprison the free journalists, shoot workers on strike, jailed and tortured opposition political leaders, tried to suppress the freedom of the press through economic pressures and the control of newsprint. It prevented arbitrarily the extension of the Universities' television channels while it used the state television to cheat the people and to libel and slander all dissenters. It attempted to destroy the free corporations, the strong trade unions, the professional and technical associations. It took the law in its hands depriving the judiciary of its legal prerogatives and openly said that the courts' decisions would be implemented only in certain cases and under certain conditions. It ignored the powers of congress and refused to sanction a constitutional reform which had been approved by congress without calling a plebiscite to resolve the conflict of powers as the constitution demands.

The control of the distribution of food fell into the hands of the state for which they created government run committees in every neighborhood and settlement in an attempt to make people submit by the threat of hunger. It expropriated, intervened or simply seized illegally new industries and factories every day. It deprived farmers and peasants of their land and of their production. It persecuted shopkeepers and transport workers and imposed the massive Marxist indoctrination of the young through a political educational plan. Finally, it took the decisive step: It created its own military organization incorporating in its ranks more than 10,000 foreign extremists to whom it gave arms which had been smuggled into Chile.

One hundred people were killed throughout Chile in three years, an omen of the fate that awaited anyone who opposed the Marxist power.

The parliamentary elections of 1973 were an organized fraud. An investigation of the law faculty and the faculty of engineering of the Catholic University into the electoral results showed conclusively that more than 300,000 votes were polled in favor of the government by non-existent voters. For this, two, or three and even five identity cards were issued to one person so that they could register and vote as many times. In spite of this, the democratic forces obtained once again a clear majority. But this did not change in the slightest the policies of the government.

On July 27, 1973, the naval aide-de-camp of the President, Captain Arturo Araya was assassinated by Castroite agents because he was known to oppose Cuban infiltration of high government spheres. Naturally the government blamed this crime on the opposition, but one of the accomplices, afraid of being eliminated for knowing too much, gave himself up to the police and confessed.

The political storm caused by this asassination prompted Carlos Rafeal Rodiguez, number two in the Cuban Communist Party, together with Castro's chief of secret police Manuel Pineiro, to travel to Chile to consult with Allende.

Neither the crimes, the abuses, the corruption nor the constant threats weakened the spirit of most Chileans. Resistance to the Marxist government which originally came only from militant members of the the national party became stronger and more widespread as the true purposes of the Marxist coalition became clearer. Once the democratic political forces began to act together, they were joined by the trade unions, the student federations, the professional associations, the technicians, the peasants, the dockers, the bank employees, the transport workers, the copper miners, the neighborhood organizations and above all by the women.

The women of Chile in these bitter years gave the highest example of courage, sacrifice and decision at every difficult stage.

It was the people of Chile who mobilized to reject the Marxist dictatorship. The free women and men of Chile assumed their responsibility and did what they understood to be their duty.

The other constitutional powers, also rejected the Marxist dictatorship and protested against the government's arbitrary abuses. The Supreme Court, the Comptroller General of the Republic and the House of Deputies made written statements of protest which all the country knew.

On May 26, 1973, the Supreme Court wrote to Mr. Allende in the following terms:

"The Supreme Court must point out to your Excellency, for the tenth time, that the illicit intrusion of the government in judicial affairs is illegal". On the 25th of June in another statement to the president it said:

"The prerogatives of the judiciary are being ignored by your Excellency and thereby you are becoming an accomplice of the government's rebellion". And it adds: "The President has assumed the difficult and painful task for someone whose knowledge of the law is only vicarious, of trying to give instructions to this court about the interpretation of the law which is exclusive prerogative of the judicial power. If this court has always respected the attributes of the President, it is entitled to demand in exchange, respect for its judiciary functions."

The House of Deputies, on the other hand, denounced on August 22nd in a transcendental vote the unconstitutionality of Allende's government. It stated:

"It is a fact that the present government from its beginnings has been bent on the conquest of total power with the evident purpose of submitting all persons to the strictest political and economic control of the state in order to establish a totalitarian system absolutely opposed to the democratic, representative system which the constitution establishes. In order to achieve this end, the government has violated the constitution and the law, not only in isolated instances, but has made it into a permanent system of conduct". The resolution lists a long series of illegal acts committed by the government.

It has usurped Congress' legislative prerogatives.

It has failed to promulgate the law which defines the areas of the economy.

It has led an infamous campaign of libel and slander against the Supreme Court.

It has made a mockery of the orders of the courts of justice, whenever they affect members of the government parties.

It has failed to implement the judicial resolutions.

It has violated the dictators of the Comptroller General.

It has violated the principle of equality before the law through the sectarian discrimination in the distribution of food.

It has attempted against the freedom of expression, exercising all sorts of economic pressures against the opposition press.

It has illegally imprisoned opposition journalists.

It has violated the autonomy of the universities.

It has prevented the free exercise of the right of assembly.

It has attempted against the freedom of education applying an educational plan aimed at the Marxist indoctrination of the young.

It has systematically violated the constitutional guarantee of private property.

It has arrested people illegally for political reasons and the victims have been submitted to tortures and flagellations.

It has ignored the rights of the workers and of the trade unions.

It has broken the constitutional right which guarantees the free access to and from the country.

It has encouraged and protected seditious organizations which act as the pillar of a totalitarian dictatorship over the people.

It has protected the organization of armed groups which attempt against the security and the rights of individuals and are meant to confront the armed forces.

This document ends up by calling on the members of the armed forces which are collaborating with the government "to put an immediate end to all aforementioned infringements of the law and of the Constitution".

Two days later, on August 24th, the Association of Engineers agreed to "demand of the President that for the good of the country and of peaceful co-existence, he should resign his office in order to allow for the establishment of a democratic government".

The Association of Doctors with a well known tradition of leftwing bias and once presided by Allende himself, addressed the following message to the President:

"You have already been asked to change your policies, to obey the rule of law, to respect the Constitution, but to this moment you have showed no sign that you intend doing so. This is why we consider that the moment has come to ask you that, as a patriotic duty to your country, you should resign from the Presidency".

On August 30th the Confederation of Professional and Technical Workers agreed to "ask the President of the Republic that he should make an immediate rectification of his policies, restore the Nation to the rule of law or that he should resign his office". It then called on all its members to join the general strike which had been called by "the institutions and organizations which uphold the same democratic principles that we do". This agreement was signed by the following associations and unions: Lawyers, doctors, chemists, constructors, dentists, librarians, engineers, agronomists, doctors, chemists, public administrators, social workers, accountants, nurses, midwives, veterinarians, medical practitioners, psychologists and technicians of Chile.

On September 22nd, the president of the National Union of Journalists denounced to the secretriat general of the United Nations the government's attack on the freedom of the press and on the free journalists and asked the U.N. to intervene "to protect the values and principles which are fundamental for the full exercise of the democratic rights of Chileans".

INTERVENTION OF THE ARMED FORCES

At the beginning of September, the country had reached a state of practical standstill. The provision of food became more and more difficult every day. The Marxist militias had occupied all the factories, industries and strategic positions around Santiago and other cities. Government officials were daily calling their followers to unchain violence and prepare for the civil war. Only the intervention of the armed forces could prevent the disaster.

The Chilean Armed Forces have always been strictly professional institutions. They have prided themselves in their firm adherence to constitutional and legal norms. The Chilean Constitution gives the President wide faculties over the armed forces. Allende used these powers and appealed to their patriotic duties and asked them to collaborate with the Government in order to find solutions to the country's problems. For three years Allende counted on the full support of the armed forces, so much so, that on more than one occasion they were represented in his Cabinet. The armed forces were often criticised for their support of the Allende government which many considered a mistake since at the time it was difficult to understand why they were helping out a government which was leading the country to an internal crisis and weakening its independency and sovereignty.

Recently, numerous documents have come to light which show that the armed forces were fully aware of the situation and had expressed their concern to the President consistently with the greatest honesty and clarity.

When no one in Chile could any longer doubt that the country was being driven to disintegration and civil war, the armed forces had to intervene. As Chileans and as soldiers they had no other alternative. Having decided to act, they did it with the greatest efficiency and decision, thus avoiding the bloodbath and destruction which the Marxists had forecast.

To those who criticize Chileans for having rebelled against the Marxist government we ask: What do you expect? That we should have remained unmoved while our country was being destroyed? That we should have accepted meekly the tyranny they were trying to impose on us? That we should have followed the same fate as Hungary, Czechoslovakia, Cuba and so many others who today lie crushed by the most inhuman Communist tyranny?

In the light of all the existing evidence, no one in good faith can argue the popular unity government was a constitutional government. It was constitutional in its origins, but it lost its legitimacy when it abandoned the legal channels and when it trampled over the political constitution and the rights and freedoms of the people. The rebellion of Chileans was therefore, a legitimate act, as it has always been legitimate, throughout history, to fight for one's country's liberty and independence.

THE CAMPAIGN AGAINST CHILE

After the collapse of the Marxist regimes, the International Communist Party had mobilized all its agents and used their influences throughout the world to discredit Chile. This campaign is not merely the product of spite, nor is it an obsessive compulsion for revenge. It was the very clear aim of preventing world public opinion from knowing objectively what the Chilean Marxist experiment was really like: How the people were cheated, how the economy was destroyed, how the democratic groups which believed the promises of Allende were betrayed, how the Marxist leaders led a life of luxury and corruption of all sorts, while the people struggled in the midst of hunger and misery.

The International Communist Party has been able to count on the support of apparently democratic or neutral organizations for their campaign. However we find it very curious that the representatives of these organizations have so suddenly been hit by an interest to visit our country to interview those who are being tried for their crimes or their thefts. All this is being done, they claim, to guarantee respect for human rights. A very commendable but belated concern, because we never saw them in Chile, nor did we hear their protest, when the Marxists were in power and were committing all sorts of abuses and crimes. Nor are we aware that they have ever shown any concern for the concentration camps in Soviet Russia, Eastern Europe, Cuba or any other Communist country.

Today in Chile human rights are being respected and the law is being abided by. According to the law, those who have committed offenses are being judged without any political or ideological discrimination.

The position of the Communists is not very strange. But we must admit that certain events have taken us by surprise. For example, the behavior of the ex-Swedish Ambassador in Chile, a Mr. Edelstam, who, while head of his mission in Santiago, provoked any amount of incidents to create problems for the Chilean authorities. Now, after his visit to Havana to meet Fidel Castro, his real identity as a Communist agent has been shown up. Equally surprising and inexplainable has been the attitude of Sweden's Prime Minister, Mr. Olaf Palme. He seems to have perfected what we might call the technique of "voluntary schizophrenia". He claims either candidly, or very cynically, that in his capacity as a party political leader he can head a campaign against Chile and that this does in no way interfere with his obligations as the Prime Minister of a country which claims to believe in the principles of non-intervention in the internal affairs of other nations. It wasn't long ago that another Swede using the same tactic of supporting one thing on principle, but acting in the opposite way in fact, surrendered to the Soviet Union a group of refugees from the Baltic countries who had sought asylum in Sweden, trusting that country's avowed respect for human rights.

The inevitable crooks who use it as a lucrative business are also participating in this campaign. Notable amongst these are certain Chilean Ambassadors of the popular unity government who go round the world begging for money for the Chilean guerrillas which only seem to exist in their own imaginations.

There is also the case of a film where the alleged tortures in Chilean jails are shown, but we know for certain that this film was made in Czechoslovakia. This film is shown to arouse sympathy and feelings of solidarity and compassion in the audience which is then asked to contribute generously to the so-called liberation of Chile.

MARXIST METHODS

Amongst the multiple lessons we have learned from the Chilean experience, we would like to give some idea of the way in which the truth was deliberately hidden and manipulated during the Allende Government.

On June 8, 1971, the ex-Minister and ex-Vice President, Mr. Edmundo Perez was assassinated by Marxist terrorists. His strong stand against the Communists within the Christian Democrat Party was well known. His assassins had already been condemned once for other offences, but they had received amnesty by Allende himself. Nevertheless, Allende tried to blame the crime on the opposition. Once the criminals had been identified and their political affiliations become publicly known, the government maneuvered to divert public attention from the fact that one of the leading members of the opposition had been gunned down, he had been killed by Marxist terrorists who only recently had received amnesty for previous crimes by the President himself, because as he said at the time, "they were only young idealists" and his death had been blamed on the opposition, although the government had the evidence that proved the contrary. To divert attention the government announced on June 16th, that they had discovered a vast quantity of armaments being smuggled into Chile by the opposition in a merchant vessel and they called on the people to defend the government to defeat the conspiracy. After a long inquest it was estab-

lished that the ship carried no arms at all and that the photographs which showed lorries unloading the alleged arms in an isolated place on the coast, had been taken by government agents using lorries from the Department of Public Works.

A few months later, a customs officer announced that the Minister of the Interior himself had received several packing cases from Cuba and had refused to go through the normal customs refusing to have them revised by the custom officers on duty. When parliament ordered an investigation, the president solemnly declared that the cases contained works of art sent by Castro as gifts for himself. After the 11th of September a list of the contents was found in the apartment of the Socialist head of civil police which clearly showed that they contained arms and munitions.

At the same time as the president was signing a law which forbade the private possession of arms, guerrilla schools existed in his private residences and arms which had been smuggled were distributed to extremist groups.

The major lesson we learned in three years was that Marxist groups act in concert, under the direction of the Communists who in turn receive direct order from Soviet Russia. There was an apparent discrepancy as to the aims of the Communists and the extreme terrorist groups. The latter openly encouraged and provoked violence and terrorism while the Communist leaders appeared to be moderate, serious, and constructive. But in the final analysis it was the Communists who controlled events and profited from the positions conquered by the extreme left. When the extreme left seized at gun point a factory or a farm, the Communists protested but they sized control over it immediately appointing a good party member to run it.

The organization of armed groups and the existence of guerrilla encampments were publicly denounced by the communists, but we have since discovered that the arms for them in fact came from Russia and Czechoslovakia and were negotiated by distinguished members of the communist party.

Let those, therefore, who are gambling on a division of the Marxist groups, be under no illusion.

Another interesting aspect is the communists' use of drugs in their political affairs. Drugs serve three purposes for them. In the first place to corrupt bourgeois society, dragging the youth and the intellectual elites to the use of drugs. Secondly, to obtain financial resources for their political activities, and finally, to use them eventually against terrorist groups. Since September the 11th, the Chilean police has uncovered a vast international network of pushers and manufacturers of drugs which operated under the protection of the government not only in Chile, but also had connections in other Latin American countries and even in the U.S.

THE RECONSTRUCTION OF CHILE

For three years, a predominantly communist government failed to break our will to survive in freedom. Hundreds of thousands of workers who voted in favor of Allende realized their mistake and joined the cause of democracy. Many citizens who had never participated in politics took up their posts at the front and joined in the struggle. The young, who until so recently had been blinded by demagogy and poisoned by the excess of rhetorical politics, threw off the false idols and the myths. Today the young in Chile are fighting to forge their destiny, to create a new society based on personal freedom, on the desire to excel, on righteousness and social solidarity.

The existence and the conduct of the young is the best guarantee we have, that there will be no return to a mediocre and decadent past and that we shall never again fall into the vicious circle that could lead us into communism. Chile has woken up from a nightmare and has got over a profound crisis. We have left behind corruption, sectarianism and political and economic dependency on foreign interests. The experience we have gone through has made us more united and has increased our solidarity. A new aspiration for moral government and for a return to spiritual values has arisen. This rebirth of our nation will be the highest and only compensation for those who fought and fell for the sake of Chile's liberty.

We are fully aware that we have difficult days ahead; days of deprivation and sacrifice. We are fully aware that the International Communist Party will try every means to create both internal and external problems. We know that having lost the chance of transforming Chile into a Soviet base for their operations in the Americas and the South Pacific, they will attempt to use other countries and other governments for their purposes. But the more we are attacked, the harder our will to resist will be, and the more we will support our new government. Let no one try to put their fingers in our country or else their fingers will be cut off. We are great pacifists by nature, but we do not want even again either communists or their puppets.

CONCLUSION OF MORNING BUSINESS

Mr. MANSFIELD. Mr. President, is there further morning business?

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

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. 514) to amend the act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 510. An act to authorize and direct the Secretary of Agriculture to convey any interest held by the United States in certain property in Jasper County, Ga., to the Jasper County Board of Education;

H.R. 5641. An act to authorize the conveyance of certain lands to the New Mexico State University, Las Cruces, N. Mex.; and

H.R. 12884. An act to designate certain lands as wilderness.

The message further announced that the House had agreed to the concurrent resolution (H. Con. Res. 485) requesting the President to return the enrolled bill (H.R. 11793) to the House of Representatives, rescinding the signatures of the Presiding Officers of the two Houses on said enrolled bill, and directing the Clerk to make a correction in the reenrollment of said bill, in which it requested the concurrence of the Senate.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred to the Committee on Interior and Insular Affairs:

H.R. 510. An act to authorize and direct the Secretary of Agriculture to convey any interest held by the United States in certain property in Jasper County, Ga., to the Jasper County Board of Education;

H.R. 5641. An act to authorize the conveyance of certain lands to the New Mexico State University, Las Cruces, N. Mex.; and

H.R. 12884. An act to designate certain lands as wilderness.

RETURN OF ENROLLED BILL H.R. 11793

Mr. MANSFIELD. Mr. President, I understand that one of the measures just reported in the message is House Concurrent Resolution 485. Is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. MANSFIELD. What does it seek to do?

The ACTING PRESIDENT pro tempore. The clerk will state the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 485) requesting the President to return the enrolled bill H.R. 11793 to the House of Representatives, rescinding the signatures of the Presiding Officers of the two Houses on said enrolled bill, and directing the Clerk to make a correction in the re-enrollment of said bill.

Mr. MANSFIELD. Mr. President, if my understanding is correct, this is the emergency Federal Energy Administration bill.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. MANSFIELD. And the sum in the bills which has been agreed to by the House and Senate is listed as $2 million, whereas the sum, I understand, should be $200 million.

The ACTING PRESIDENT pro tempore. That is correct.

Mr. MANSFIELD. And I understand further that the President has announced that he intends to sign the bill at the hour of 12:15 this afternoon.

The ACTING PRESIDENT pro tempore. The Chair does not know.

Mr. MANSFIELD. I have been so informed. I will ask the acting Republican leader to corroborate that statement.

Mr. GRIFFIN. Mr. President, that is my understanding. I appreciate the cooperation of the distinguished majority leader in making it possible to make this technical correction and have what is strictly an oversight remedied.

Mr. MANSFIELD. Have I stated the case correctly?

Mr. GRIFFIN. Yes.

The ACTING PRESIDENT pro tempore. Without objection, the Chair lays before the Senate House Concurrent Resolution 485, which the clerk will state.

The assistant legislative clerk read the concurrent resolution as follows:

Resolved by the House of Representatives (the Senate concurring), That the President of the United States is requested to return to the House of Representatives the enrolled bill (H.R. 11793) to reorganize and consolidate certain functions of the Federal Government in a new Federal Energy Administration in order to promote more efficient management of such functions. If and when said bill is returned by the President, the action of the Presiding Officer of the two

Houses in signing the bill shall be deemed rescinded; and the Clerk of the House is authorized and directed, in the re-enrollment of said bill, to make the following correction:

In section 29 of the enrolled bill, strike out "$2,000,000" and insert in lieu thereof "$200,000,000".

The concurrent resolution (H. Con. Res. 485) was agreed to.

SECOND SUPPLEMENTAL APPROPRIATIONS, 1974

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of H.R. 14013, which will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 14013) making supplemental appropriations for the fiscal year ending June 30, 1974, and for other purposes.

The ACTING PRESIDENT pro tempore. The bill is open to amendment.

Mr. PASTORE. Mr. President, I believe that at this juncture, I should invite the attention of the Senate to an amendment which was proposed by me in the committee, which appears on page 3 of the bill. The amendment reads as follows:

Following the word "project" at the end of section 204(b)(3) of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, insert the following: ", except that, in the case of an industrial firm that would face extreme economic hardship, and, as determined by the Administrator of the Economic Development Administration, would thereby be unable to continue in business in the applicant's community due to the necessity of paying its proportionate share of the Federal cost of construction of such works, the grantee, if its application for a grant had been received and accepted for processing by the Environmental Protection Agency and found to be in conformity with regulations in existence on the date of acceptance by the Environmental Protection Agency and prior to March 2, 1973, may waive for the industry any payment due. The Administrator of the Economic Development Administration shall redetermine eligibility of the industry for such waiver on an annual basis.".

Mr. President, the reason why I offered this amendment was to alleviate a very serious and catastrophic situation that confronts the city of Woonsocket, R.I.

We passed the water quality bill in a spirit of enthusiasm and compassion because we felt that the time had come that in our environmental and ecological endeavors, we should do something about cleaning up the waters and the streams of our country. Woonsocket, being conscious of its responsibility and being determined to do something about it, did begin a plan and had 40 separate meetings and exchanges of correspondence with the EPA officials extending over a 2-year period.

The people of Woonsocket voted on referendum an amount of $2.5 million in order to clean up the Blackstone River. In the process of the plan, it was determined that if we in Woonsocket began to clean up our part of the river, the fact remained that the river began up in Massachusetts, and in Massachusetts they were dumping raw human waste into the river. So if we had begun in Woonsocket, without doing something about Blackstone, Mass., we would have been wasting our money. As a matter of fact, the money we appropriated would have been going down the drain, to use the vernacular.

In order to accomplish an overall plan the mayor of Woonsocket had conversations with the people of Blackstone and also Smithfield, in Rhode Island, and it was necessary for Blackstone to comply and cooperate in this regional plan. It was necessary for them to pass legislation, which took time. Then the city of Woonsocket, once it had formulated its plan, filed an application with the EPA on February 6, 1973. It just so happens that in October of 1972, the Congress of the United States amended the law requiring the formulation of new regulations. So it took the EPA some time to do it and the law required that after March 1, 1973, no grant was to be made unless it was in conformity with these rules.

On February 6, 1973, which is almost a month before March 1, the city of Woonsocket submitted its application under the existing law. It had no other alternative because the new rules were passed and promulgated on February 28.

So, Mr. President, you cannot fault the city of Woonsocket. The city officials did everything they were supposed to do under existing rules, when the application was filed. Nothing was said until after March 1, and then they were notified that no grant could be made after March 1 unless it was in conformity with the rules promulgated February 28, irrespective of the fact that the application was filed on February 6.

This is the situation. If Woonsocket is to comply with the new regulations after spending $600,000 for formulating these plans and it has to institute a user charge, we are going to be in severe trouble. We are going to be in the same trouble that Appalachia was in in 1965 and 1967.

This is what we did for Appalachia, because we realized the dire need. We passed a bill in 1965 on a vote of 62 to 22. And where was PASTORE? PASTORE was with the 62. Why? Because PASTORE understood from compassion that something needed to be done. So we authorized $41 million for the construction of medical health facilities on an 80-20 matching basis; we authorized $17 million for land development; we authorized $5 million for loans for timber development; we authorized $21 million for reclaiming strip mining areas; we authorized $5 million for a water resources study; we authorized $16 million for vocational education; and we authorized $6 million for sewage treatment facilities, without any matching funds, and $90 million in Federal grant-in-aid programs.

Now, why do I say this? I say this because when the chips are down this Senate and its Members are not without compassion and they are not without understanding, and that is the reason PASTORE introduced this amendment, in the hope that this Senate would understand the predicament.

The Senator from Maine well knows that we in New England have lost most of our textile industry. Why? Because we have old mills that are struggling along. First, they went to the South and then finally much of the business went to Japan, Portugal, Italy, Taiwan, and Hong Kong. We lost most of our textile industry.

What is going to happen here if we have to comply with this user charge? What is going to happen? Every mill on the Blackstone River will have to close and we will have accelerated unemployment in Rhode Island after we have suffered that death blow that was given us by the Navy Department when they closed down Quonset Point and Newport and put 22,000 people in New England out of work. Add insult to injury and where are we going to be? Do we want to give to the Administrator the opportunity to use his discretion that where the user charge would cause economic chaos he could use some compassion to save jobs in America? What good is it going to do to clean up the Blackstone River if everyone living near it is out of work? What good will it do? What are they going to do? Are they going to swim all day long? Where are their jobs going to be? That is our problem. That is why I introduced this measure.

Now I am being told this is subject to a point of order. Of course, it is. I knew at the time I introduced the amendment. I had Mr. Train in my office and I had in my office the mayor of Woonsocket. Mr. Train is very compassionate and he wants to do something but he said, "I cannot do it under existing law. The law will have to be amended."

EPA has the money. This is money already appropriated that has not been used and do Senators know why it has not been used? It has not been used because some communities cannot afford to comply. After the inspirational eloquence we heard on this floor urging that we clean up our rivers, what are we going to do? Are we just going to clean them up for the rich and are we just going to clean them up for the affluent communities? What are we going to do? Is it just for a company, perhaps like General Motors, that would not find it to be a strain? Are they the people we are talking about? Is that what we are trying to do? Or are we trying to do it for the economically depressed community like Woonsocket?

Mr. President, let me tell you something, and I make this statement from the bottom of my heart. If we do not do something about cleaning up that river in Blackstone, we are not only endangering the lives of people who live in that part of Rhode Island, because the raw human waste is coming down from Massachusetts and some of it out of Rhode Island, as well. Unless we do something about that situation we not only jeopardize the health of our people, and if we do not show some compassion here, taking into account the distress situation, insult will be added to injury, because, Mr. President, on top of the possibility of disease, we will have unemployment as a further scourge.

That is why I submitted the amend-

ment. I ask my colleagues to look deep in their hearts and look at the many times PASTORE understood their predicament. Appalachia meant nothing to me but I supported the legislation out of compassion. I remember at the time Bob Kennedy stood up here in the Senate and said, "Look, it is not only Appalachia; it is upstate New York, too." We supported his amendment and included extra counties.

Mr. President, I realize that in order to override rule XVI need a two-thirds vote if a point of order is raised. In all probability, if I insisted, that point of order would be raised. I have been in the Senate for 24 years and I have been in active political life for 40 years, and if I have learned one single thing, it is that politics is the art of the possible. I know I cannot get a two-thirds vote.

If I had 100 Senators on the floor to hear what I am saying I would have great confidence, but that is not going to happen. They will be straggling in here and asking, "What is this for?" There will be a man standing at that door and a man standing at this door, and maybe the word will be, "PASTORE is planning to get something—a handout."

Mr. President, that is not the case at all. It is not the case at all. I am looking for justice, that is all. I am looking for fairness.

I have had a discussion with the distinguished Senator from Maine, Mr. President. He tells me there are certain problems because he would like to know just how many other projects this might affect. That is logical. They have been trying to get that information. They have not been able to get it.

Certainly, if they insist on a point of order, I shall not pursue it, because I know it is subject to a point of order, but I have been assured that this matter will be looked into. I hope it will be looked into immediately. Something needs to be done. Something needs to be done to review the consequences of a bill that was passed in October of 1972 and the effect that it has upon communities that are already distressed.

I am hopeful that they will all be conscious of the fact that what we are trying to do is clean up the waters. That is all we are trying to do in Woonsocket—clean up the Blackstone River. If we do not do something about the user charge, we will be on the horns of a dilemma and our alternatives will be zero. And so I appeal to my friends. If they insist that they are going to insist on a point of order, I would hope that in their hearts they would see the way clear within a week or 10 days to hold hearings, at which time the mayor of Woonsocket will appear, at which time I will appear, and we will make our case, which hopefully will remove this inequity.

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

Mr. PASTORE. I yield.

Mr. McCLELLAN. I wish to express my sympathy with the distinguished Senator from Rhode Island and this problem, and it would be my purpose to support legislation to correct this situation. I commend him for being willing to let the legislative process take its proper course under the rules of the Senate. I think it is the best course to pursue, and I appreciate his doing that, because I think I have a project in Arkansas—maybe more than one—that has comparable merit, but not of the same proportion or of the same magnitude, possibly, and there may be a few in some other States that should have a look-see, and we should try to do equity among all of us.

I commend the Senator for bringing this matter to the attention of the Senate and for the splendid remarks he has made here this morning in support of his position.

I would asure him that if we can get hearings before the proper committees and the Muskie committee, every Senator should be diligent in presenting any comparable projects he may have in his State, and then the Senate and the Congress should take immediate remedial action so that these inequities and injustices may be promptly corrected.

I again commend the Senator for bringing this matter to the attention of the Senate.

Mr. YOUNG. Mr. President, I yield myself 3 minutes. I have always been strongly opposed to legislating on appropriation bills except in cases of emergencies where a strong case can be made that there is little or no money involved.

I think the Senator from Rhode Island made the strongest case possible for the project in his State. It is a necessity. I do not know how one could make a much stronger case.

I support his amendment. I want to commend him for the very strong case he made, not only on the floor of the Senate but in committee, of a worthy project in the State of Rhode Island.

Mr. MUSKIE Mr. President, I think that I should take some time now to outline the history of the legislation which leads us to the issue we have before us this morning.

In the first place, I would like to commend the distinguished Senator from Rhode Island, my good friend, for pressing the interests of his constituents not only because that is his responsibility but also because their problem raises a question for legitimate legislative consideration in this national forum of the U.S. Senate and the U.S. Congress.

Let me, if I may, briefly outline the history of the provision which has caused the Senator from Rhode Island such great concern. Prior to 1966, Mr. President, no provision was made under any Federal program for the use of Federal funds to deal with the treatment of industrial wastes.

The waste treatment program which had been originated in 1956, in the legislation of that year, dealt with municipal wastes and provided for Federal funding of some portion of the cost of municipal waste treatment plants. There was no provision, I repeat, prior to 1966 to have the building of waste treatment plants with Federal money deal with industrial wastes.

In the 1966 act, it seemed to us that it might be useful to experiment with the construction of combined municipal-industrial waste treatment plants with a view to dealing with the problems of smaller communities, perhaps even larger communities, and benefiting from the economies of scale. So the 1966 act did authorize the initiation of that kind of limited program. There was no provisions for repayment of the Federal share of the cost of constructing such plants. To the extent that they were planned and built, they were built with the Federal share without any requirement for repayment.

Let us review the implications of that. Under the 1966 act the Federal share of the cost of constructing municipal waste treatment plants ranged from 30 percent of the cost to a maximum of 55 percent.

The percent of the Federal share depended, first, on the extent to which States contributed to the cost of construction, and to the extent to which plants were built in accordance with regional planning requirements, and to the extent to which plants met water quality requirements. So the range of Federal support was between 30 and 55 percent of the cost.

If the plant included provisions for dealing with industrial wastes, there was a requirement under Federal regulations that the portion of the cost of Federal construction that related to industrial wastes should be repaid insofar as the local share of the cost was concerned. In other words, if a plant were built costing a million dollars, to use a number, if the Federal share of the cost of construction were 30 percent, and if there were no State matching program, then the local proportion of the cost would be 70 percent, or $700,000.

If a portion of the capacity of that plant were constructed to deal with industrial wastes in that community, then that industry was required to repay to the community its portion of the cost of the local share for building in that industrial capacity. There was no requirement that the Federal share of 30 percent, or $300,000, should be paid in any way by the local government, by the State government, or by the Federal Government.

In the 1972 act, we were confronted with a greatly expanded Federal waste treatment program. We were confronted with the need, if that program were to get off the ground, to increase the Federal share. We were also interested in stimulating the use of the combined industrial-Federal waste treatment in the best way we could. The Federal share was increased from a range of 25 to 75 percent across the board. That was an enormous Federal commitment, representing the spending of billions upon billions of Federal dollars into the future.

That commitment had not been made because of the impoundment of funds by the President and the failure of Congress to overcome that decision of the President—which is still pending in the courts, I might add—so the commitment has not been made, and the commitment will not be there until such time as the impoundment decision has been made.

We still have the maximum 75-percent

cost of construction for waste treatment facilities, greatly reducing the local responsibility and the State responsibility, and representing billions upon billions of dollars.

We felt that, inasmuch as we had thus increased the Federal commitment to build plants, we needed to review some of the other provisions of the 1966 law. So we provided with respect to building industrial waste capacity into municipal plants that the Federal share of the cost should be repaid to the Federal Government, at no interest. The Federal share of the cost should be repaid, and that repayment should be made under the system of user fees that were mandated in the law, and which applies not only to industrial users, but also to individual users, to small users, to all users. In other words, the user charge system was not directed to industry, but was directed to all users as a way of cutting the enormous investment requirement, to put these enormous waste treatment plants on a sound fiscal basis, and to provide the reserves necessary to expand the waste treatment facilities as the population grew, as the problem grew, and so on.

In other words, we wanted to build a sound economic basis which would insure, first, that we would catch up with the backlog, but would also build into the program a means for keeping our plants current and relevant to the growing problem which was sure to come.

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

Mr. MUSKIE. I am glad to yield.

Mr. PASTORE. What the Senator is talking about is the act passed in October 1972. Am I correct?

Mr. MUSKIE. The Senator is correct.

Mr. PASTORE. That act would require that the EPA substitute certain guidelines. Is that correct?

Mr. MUSKIE. The Senator is correct.

Mr. PASTORE. Those guidelines were not instituted as of February 28. Is that correct?

Mr. MUSKIE. The Senator is correct.

Mr. PASTORE. Our people filed on February 6 under existing law. They could have granted this money to the city of Woonsocket before February 28, which would have been absolutely legal, would it not?

Mr. MUSKIE. The Senator is correct. I was about to touch that point.

Mr. PASTORE. All right. I hope the Senator will touch that point.

The point I am making, if the Senator will permit—and I do not want to trespass too much on his time—is that the city of Woonsocket had no other alternative but to do what it did; and if the EPA would have granted that money before February 28, I would not be here this morning, speaking about it, and would have spared the Senator the trouble of making the statement he is making now.

Mr. MUSKIE. I shall get to the point. I wanted to give the history, so that we might minimize the number of questions that might be raised.

I have described the provisions of the 1972 law. Why did we not provide for Federal funds without repayment of the industrial waste treatment capacity that was built into the municipal plants anywhere in the country? Obviously, that kind of open door would have more than doubled the Federal commitment. The act in 1972 provided a total of $24 billion of Federal money, $18 billion of it to fund the Federal portion of building waste treatment facilities. We simply did not feel that we could recommend to Congress a program involving a Federal commitment that would have included the total cost of building into every municipal waste treatment plant the treatment of industrial waste where that treatment would be compatible. We estimated that the additional cost would have been $9 billion. So we did not build it in. It was the sheer numbers that dictated our judgment. Since we were faced with the problem of moving from one policy, under the 1966 act, to a new policy, under the 1972 act, obviously we were confronted with the problem of a cutoff date. We were changing the policies and had to have a cutoff date somewhere.

There was some disagreement between the House and the Senate. The House wanted a date later than March 1, 1973. We wanted an earlier date than that. But we finally agreed on March 1, 1973, as the cutoff date. Of course, that cutoff date was public knowledge as of the date which Congress passed the legislation, which was in the fall of 1972.

We passed the bill, and the President vetoed it in October of 1972. So the cutoff date was public knowledge as of the time we overrode the veto. As of that time, many communities undertook to begin the processing of their applications for planning projects in order to get them in before the cutoff date of March 1. I think that the EPA was remiss in not getting the regulations promulgated before February 28, 1973.

Its failure to do so created real problems, not just for Woonsocket, R.I., but for Fort Fairfield, Maine, and some other communities in my State and throughout the country.

So there was a hardship created. You always have it when you have cutoff dates set by law. But we saw no alternative to writing in a cutoff date.

Now with respect to the amendment of the Senator from Rhode Island: In the first place, I am concerned about writing this legislation on an appropriation bill. Appropriation bills have been used in the other body for at least a year as a way to write in legislation to undercut the Clean Air Act, and I am sure that efforts will be made this year to use it for the same purpose. I do not like, by this action, to set a precedent for using that route to amend environmental laws. That causes me some concern.

Second, with respect to the specific language of the Senator's amendment, which obviously has been carefully written in response to the dimensions of the problem of Woonsocket, we are not sure what the implications of this amendment would be, how many projects would be covered, and so on.

In April of this year, I wrote to Mr. Russell Train, the Administrator of EPA, asking for information that would have given me the basis for analyzing the Senator's amendment. I ask unanimous consent that that letter be printed in the RECORD at this point.

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

APRIL 25, 1974.

Hon. RUSSELL E. TRAIN,
Administrator, Environmental Protection Agency, Washington, D.C.

DEAR MR. ADMINISTRATOR: The Subcommittee on Environmental Pollution is in the process of evaluating EPA's implementation of the Federal construction grant program under the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500).

Section 204(a) of the Act lists six determinations which the Administrator shall make before approving grants for any project for any treatment works under section 201 (g)(1). One of these determinations is ". . . that the size and capacity of such works relate directly to the needs to be served by such works including sufficient *reserve capacity*."

To enable the Subcommittee in its evaluation of the environmental effects and the cost-effectiveness of the Federal grant program, I would like the following information for every grant that has been made under section 201(g)(1) of P.L. 92-500:

1. Identification of the treatment needs (in terms of million gallons per day) for (a) industrial users and (b) non-industrial users existing at the time the grant was awarded.
2. Identification of the reserve capacity in the grant for (a) industrial users and (b) non-industrial users (to be expressed as a percentage of the needs identified in (1) above).
3. The ratio (expressed as a percentage) of the existing population to the future population to be served by the publicly owned treatment works.
4. The target date for the reserve capacity.
5. Identification of the:
(a) Location of project (city and State).
(b) Size of grant (dollars).
(c) Date of grant.

I would like to receive this information by May 20. If you have any questions concerning this request, please contact Jim Readle of the staff of the Environmental Pollution Subcommittee.

Sincerely,

EDMUND S. MUSKIE,
Chairman, Subcommittee on Environmental Pollution

Mr. MUSKIE. But to my amazement, the information is not available. It could not be made available for this morning, so we do not know how many projects across the country might be triggered by the Senator's amendment. I think we ought to know this because the total dollar cost ought to be a matter of record before Congress acts on such an important amendment. The best that I could get from EPA this morning—and I have received this letter just a few minutes ago; I ask unanimous consent that it be printed in the RECORD—in effect is a report on that proportion of the waste treatment plants across the country that are usually treated as a part of the industrial waste problem. That proportion, I gather, is about 20 percent, but that figure does not give us much to work on.

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

U.S. ENVIRONMENTAL PROTECTION AGENCY,

Washington, D.C.

HON. EDMUND S. MUSKIE,
Chairman, Subcommittee on Environmental Pollution, Senate Public Works Committee, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your telephone request of May 6, I am pleased to furnish the following information which I hope will be useful to you. You requested to know the amount of monies that would be foregone to the U.S. Treasury if the requirement for industrial cost recovery were waived for all municipalities who had applications for grants into the Environmental Protection Agency before March 2, 1973.

In order to obtain this figure the following methodolgy was used:

(a) The percentage of industrial use for these municipal plants was considered to be the same as the national average which was generated by last years Needs Survey. The Survey showed that 20 percent of the municipal use was attributable to industry.

(b) As stated in regulations, 50 percent of the monies generated by cost recovery reverts to the U.S. Treasury, the other 50 percent remains for local use.

(c) All municipalities who had grants filed with EPA before March 2 are included even though a later grant has been made. This method was used since these municipalities could also request that their grants be reconsidered.

The total amount of grants that fall within this category is approximately $342,000,000. Using the methodology as outlined above, the approximate amount that might be foregone to the U.S. Treasury by the waiver of this portion of the grants from cost recovery would be $34,200,000.

Sincerely yours,

ROBERT G. RYAN,
Director, Office of Legislation.

Mr. MUSKIE. In addition, I have received from EPA a list of the projects applications for which were pending on March 2, 1973. There are listed some 38, plus a possible additional 6. I ask unanimous consent that this list be printed in the RECORD at this point.

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

LIST OF PROJECTS ORIGINALLY SUBMITTED BY REGION FOR CONSIDERATION FOR A STEP III GRANT PRIOR TO MAR. 2, 1973

State and city	Award date	Grant amount
REGION I		
Connecticut:		
Norwich	Feb. 28, 1973	$10,900,000
Killingly	do	13,300,000
Stonington	Mar. 1, 1973	6,200,000
Derby	Feb. 28, 1973	1,300,000
Montville	do	5,400,000
Avon		2,200,000
Bristol		300,000
Maine:		
Lisbon	Feb. 28, 1973	1,818,000
Fort Fairfield		2,000,000
Brewer	Feb. 28, 1973	5,900,000
Paris Ut. District	do	4,000,000
Kennebec SD	do	18,000,000
Massachusetts:		
Fitchburg East	do	1,600,000
Ludlow	do	800,000
Holyoke		9,000,000
Hatfield		660,000
Webster	Feb. 28, 1973	2,600,000
Merrimack		535,000
Greater Lawrence SD	Feb. 28, 1973	44,200,000
Upper Blackstone	do	20,000,000
Ipswich	Feb. 1, 1973	2,700,000
Springfield	Feb. 28, 1973	48,000,000
Gloucester		6,150,000
Pittsfield		7,500,000
Millersfalls		945,000
Ware		1,800,000
Hoosac W.Q.D		$3,809,000
Haverhill	Feb. 28, 1973	18,450,000
Orange		2,000,000
Chicopee		8,200,000
New Hampshire:		
Lebanon	Mar. 1, 1973	3,300,000
Manchester	Feb. 28, 1973	18,000,000
Rhode Island:		
East Providence	do	5,950,000
Woonsocket		6,000,000
Cumberland	Feb. 28, 1973	1,102,800
Vermont:	June 28, 1973	820,000
Sheldon Falls		810,000
REGION II		
New York:		
Niagara Falls	Mar. 1, 1973	47,379,800
Onondaga County	do	829,500
Do		59,537,745
Do	Mar. 1, 1973	3,910,050
Do	do	2,690,000
Oakwood Beach	do	81,922,300
Red Hook	do	11,035,500
New Windsor	do	2,077,500
REGION III		
ennsylvania:		
City of Chester		24,800,000
Darby TWP		3,936,750
Derry TWP	Feb. 28, 1973	13,614,520
Hamburg	do	641,770
Morrisville		3,969,000
Virginia: Danville	Feb. 28, 1973	2,200,000
West Virginia: Huntington		7,900,000
REGION V		
Illinois: Chicago, MSD (8)		8,000,000
Wisconsin: Racine		6,750,000
REGION VI		
Louisiana: Kenner SD 1	Mar. 1, 1974	147,370
Texas:		
Center		660,000
Corsicana		1,136,250
Donna		112,500
REGION VII		
Iowa: Mason City		2,300,000
Missouri:		
Eldorado Springs	Mar. 1, 1973	375,000
Milan	do	251,000
Southwest City		307,000
Caroliton		2,100,000
Bethany		810,000
Meosho	Mar. 1, 1973	1,200,000
Campbell		66,000
Nebraska:		
Omaha	June 29, 1973	3,200,000
Omaha	Mar. 1, 1973	6,500,000
Grand Island		3,700,000
Lexington	June 30, 1973	600,000
York		1,250,000
Waverley	Jan. 10, 1974	400,000
Arlington	June 30, 1973	123,000
REGION IX		
California: City of Los Angeles	Feb. 28, 1973	9,733,500
Hawaii: City of Honolulu		5,570,000
Nevada:		
Kingsbury GID	Feb. 28, 1973	960,440
Tahoe Douglas GID	do	2,461,700

Mr. MUSKIE. The problem is that there is no indication as to which of those projects include industrial pollution.

The total additional cost of those projects is $176 million, so obviously we are talking about a figure that is of some significance.

The third point I would like to make this morning, and then I will yield for whatever questions I may be asked, is that the Pastore amendment undertakes to write into the policy of the clean water law a hardship basis for providing Federal funding.

There is no hardship basis in present environmental law. There is in other legislation which comes before the full Committee on Public Works. The Economic Development Act, the Land Area Redevelopment Administration, and the disaster relief legislation that comes out of our committee have such a basis, so our committee is concerned with that problem. The Appalachia legislation came out of our committee. We are concerned about this matter in the work of our committee, but never before have we written into the environmental laws a hardship basis for environmental funding. I think before we write that into the law, we ought to have hearings to develop a rational basis for implementing such legislation.

Therefore, I would like to suggest to the Senate, first, that this matter be dropped from this bill, and that we on the Public Works Committee commit ourselves to hold hearings. I am not sure that we can hold them within 10 days, but it will not be our purpose to delay; second, that we take testimony not only with respect to the problem of Woonsocket and other communities in like situations, but also with respect to other proposals to write into this whole program a hardship basis for funding, and other possible solutions.

I have discussed this matter with the Senator from West Virginia (Mr. RANDOLPH) who is chairman of our Public Works Committee, the Senator from Tennessee (Mr. BAKER), the ranking Republican on the full committee, and the Senator from New York (Mr. BUCKLEY), the ranking Republican on the Environmental Pollution Subcommittee, and they are all sympathetic with the Senator's problem. They are all interested and willing to do whatever we can, with as little delay as possible, to deal with the problem, to hold hearings, to consider it, to discuss it, and to try to develop an answer for it. I make that commitment, and am delighted to do so.

At this point I yield to the distinguished Senator from Tennessee.

Mr. BAKER. Mr. President, I thank the distinguished Senator from Maine for yielding. As the ranking Republican member on the committee, I am more than happy, in fact I enthusiastically endorse the proposal that we have early, thorough, and effective hearings on this very delicate subject that has been brought to our attention by the diligent, industrious, and distinguished Senator from Rhode Island.

It has been a matter of some interest to me to follow the description of the evolution and development of the environmental legislation with which we are concerned, as it was outlined by the Senator from Maine, and then to see the unintended consequences, in effect, that were described by the Senator from Rhode Island.

Such a result is not untypical of the legislative experience, however. We do our best, and then we find we have not picked up all the stitches, and there are genuine problems that we had not anticipated and that must be accounted for.

This problem falls into that category. The basis for providing an economic hardship test is one, if my memory serves me, that we did think of and rejected as we wrote up the several pieces of environmental legislation that make up the body of our effort in that regard. But that does not mean we should not con-

sider it, and I am willing now to assure the Senator from Rhode Island, as the senior Republican on the committee, that we will consider the whole range of suggestions and ideas, and will look forward, most assuredly, to his observations on how we can take care not only of this problem, but others similar to it which may arise throughout the country.

I think the Senator from Rhode Island has done us all a great favor by bringing this matter to our attention, and I thank him for his agreement not to pursue his efforts on this appropriation bill. He is very eloquent and persuasive, and his efforts might succeed. I think his willingness not to pursue it, but to hold hearings in the Public Works Committee, is testimony to his respect for our institutions and his confidence in this body.

I thank the Senator from Maine for yielding.

Mr. MUSKIE. I yield now to the chairman of the committee, the distinguished Senator from West Virginia.

Mr. RANDOLPH. Mr. President, the Senator from Maine (Mr. MUSKIE) has very properly used his time to sketch the background of the Clean Water Act and amendments which bear directly on modification of industrial user charge requirements under which projects could be eligible for assistance. I quickly, commend the able Senator from Rhode Island (Mr. PASTORE) for once again speaking so eloquently and effectively about something that concerns not only a community in his State, but many other communities throughout the country.

We have through the years developed a body of law not only on clear water and clean air but also on solid waste disposal. All of these matters have been of continuing concern to us. The subcommittee headed by the knowledgeable Senator from Maine, and all the members of the committee, have given their time to the writing of legislation which would be applicable to the Nation, its communities, and the people as a whole.

I feel that what has been said today by Senator PASTORE, Senator MUSKIE, and Senator BAKER, has not in any sense muddied the waters. We have through the colloquy clarified the situation. As chairman of the committee, I reinforce what has been said about the necessity for prompt action within the committee on this matter.

But I have some thoughts about attaching the amendment of the Senator from Rhode Island to this legislation. It would be more practical to consider it in relation to legislation that is under the jurisdiction of our committee and also the Public Works Committee in the other body. I am sure we will attempt to be resourceful and creative in finding the answers to the problem of the Rhode Island community and similar problems in other parts of the country.

In Huntington, W. Va., because of this incident, we have been checking certain projects in our State. The same is true in other parts of the country.

So what has been said here has been wholesome and I am sure that it will be helpful. The committee members pledge to the Senator from Rhode Island (Mr. PASTORE) our attention and our desire, as well as our determination, to move this matter forward.

Mr. MUSKIE. Mr. President, I thank the Senator from West Virginia (Mr. RANDOLPH) for his typical cooperation, understanding, and commitment to deal with this problem.

I hope that the Senator from Rhode Island will now understand this is a real promise and not a brush-off. We do want to come to grips with the matter. We do want to be helpful.

Mr. PASTORE. Mr. President, first of all, I want to thank my colleagues for their cooperation in this matter. I realize that this is legislation on an appropriation bill and, for that reason, it is subject to a point of order. In order to waive rule XVI, which would require a two-thirds vote in the affirmative which, under the circumstances—because of the pleas already made—might be rather difficult to obtain, I only hope that we would do this as expeditiously as possible.

The only reason why I had it written on an appropriation bill was that I had no other vehicle to use. This is an emergency, as I have already said. This is a poor town in terms of its wealth, but it is a rich town in terms of its people and very progressive in terms of its people.

Much of this condition is concentrated within the environment of Woonsocket. We have done a tremendous job in diversifying and trying to bring in industries. We have a progressive mayor in John Cummings. He has really worked assiduously on this. He started two or three years ago. It has required a lot of planning and many conferences. It has required speaking to officials of municipalities in another State. It has required the municipalities in another State, Massachusetts, to wait for their legislatures to act. That all takes time, as we all know, the Senator from Maine in particular, having been previously a governor of his own State.

Mr. President, let me read one letter into the RECORD and I will have the other printed in the RECORD a little later, which points out dramatically exactly what the problem is.

The PRESIDING OFFICER (Mr. HATHAWAY). The time of the Senator from Maine has now expired. The Senator from Rhode Island has 13 minutes remaining on his own time.

Mr. PASTORE. Mr. President, I will take whatever time I may need and then will grant to my colleagues whatever time they may need to speak on this subject. I think we are nearly finished.

Here is the letter from Hanora Industries Division, First Republic Corp. of America, to Mayor John Cummings, City Hall, Woonsocket, R.I.

It reads:

DEAR MAYOR: I have been advised of recent events concerning a pending matter as between the city of Woonsocket and the federal government, whereby Hanora Industries as well as other companies will be required to pay an additional assessment of approximately $10,500.00 per year towards the improvement of the sewerage system and plant in our city.

I find this news both shocking and disturbing. Hanora Industries is currently paying $125,000.00 in real estate and machinery taxes to the city of Woonsocket. The tax burden at the present time is enormous. Our Company is presently enduring severe economic hardship. We are incurring enormous operating losses as a result of extremely poor conditions in the textile industry.

As a result of these poor business conditions,

And this is important—

we have recently laid off 135 employees.

Any additional assessments in our local tax structure by the City or the federal government, directly or indirectly, would create an untenable economic hardship. I look for every assistance possible from your office to deter and eliminate any proposed increase or additional taxes.

Thank you.

Sincerely,

BERNARD TURRET,
President.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from Alan E. Symonds, chairman, Quincy Dye Works, Inc., Woonsocket, R.I., dated April 2, 1974, to Mayor John Cummings.

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

QUINCY DYE WORKS, INC.,
Woonsocket, R.I., April 2, 1974.

Hon. JOHN A. CUMMINGS,
Mayor of the City of
Woonsocket, R.I.

Sir: It has come to my attention that there is currently a bill before the Congressional Subcommittee on Public Works relative to a particular water pollution bill that will necessitate the construction of a new sewage treatment plant for the City of Woonsocket. It is my understanding that the cost of this sewage treatment plant will be paid for by local industry and a proration of this cost to our company will increase our tax bill by $15,266 per year. This additional charge will represent an approximate 100% increase over our present annual tax charges.

While one cannot dispute the value of pollution abatement and while this company itself spent substantial sums of money a few years ago for this very purpose, we certainly are not prepared for any additional tax charges of the amount contemplated. With the continuing and dramatic increases in costs of raw material and labor in an industry which is particularly being hard hit with the current economic crunch, we would appreciate your passing along to the proper authorities our opposition to this plan for the indefinite future.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

ALAN E. SYMONDS,
Chairman.

Mr. PASTORE. Mr. President, in conclusion, let me say that this is a serious situation. I am appealing to my colleagues to use their best judgment, to be compassionate in achieving some kind of solution for those municipalities where it would be disastrous to insist that in order to clean the water we must create widespread unemployment.

I know the compassion of my colleague from Maine, and also my colleagues from West Virginia and Tennessee, and I would hope that we would not wait too long before we resolve this problem.

Mr. MUSKIE. Mr. President, I give the Senator from Rhode Island my commitment on that.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MUSKIE. 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. MUSKIE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MUSKIE. Is it in order now to make the point of order we have been discussing?

The PRESIDING OFFICER. Yes, it would be in order.

Mr. MUSKIE. Then, I make the point of order.

Mr. PASTORE. Mr. President, in view of the commitment, I shall not proceed with the notice I have already placed on the desk to ask for the suspension of rule XVI.

The PRESIDING OFFICER. The point of order is sustained. This amendment obviously is legislation on appropriation bills, and under rule XVI it is not in order. It is, therefore, stricken from the bill.

AMENDMENT NO. 1246

Mr. KENNEDY. Mr. President, I call up my amendment No. 1264.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 73, line 21, delete section 406.

The PRESIDING OFFICER. How much time does the Senator yield?

Mr. KENNEDY. Mr. President, a parliamentary inquiry. How much time is there on each amendment?

The PRESIDING OFFICER. One hour on each amendment.

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

Mr. KENNEDY. I yield.

Mr. MANSFIELD. I point out that at 12 o'clock noon, if action on this bill has not been completed, it will be laid aside, and a bill will be taken up having to do with the extension of the National Labor Relations Board.

Mr. KENNEDY. I yield myself such time as I may require.

Mr. President, this is an amendment to strike section 406 of the bill before the Senate. That provision, in turn, would repeal section 718 of Public Law 92–238.

Section 92–238 has two different provisions. It says that of those people who go into the Armed Forces, not less than 45 percent may be those who do not have a high school diploma. So 55 percent of those who go into the Armed Forces have to have a high school diploma.

It also has a second provision which recognizes that intelligence tests are given to young people who go into the Armed Forces of our country, and those tests categorize the young people into four categories. Under the existing provision in the law, not more than 18 percent of category 4, which is the lowest category, can be taken. The law at the present time is that the Armed Forces cannot take more than 18 percent of the lowest category, and it requires that at least 55 percent of those who go into the Armed Forces at the present time are going to be high school graduates.

The effect of section 406 of the appropriations bill is to repeal that requirement and, in effect, give complete discretion to the Army recruiters to take anyone they wish—no requirement at all in terms of graduation from high school, and it will permit them flexibility to reach down into the lowest achievement quartile for the bulk of its recruits into the Armed Forces of the United States.

Mr. President, since 1967, I have expressed concern over possible dangers in the All-Volunteer Army concept. In 1971, I expressed concern that there might be inequitable minority representation in the Volunteer Army, particularly in the combat units, which is supposed to defend all Americans. The statistics of the past year, since the institution of the Volunteer Army in July 1973, largely bear out many of my concerns.

I have consistently said that I would support a peacetime Volunteer Army, though I continue to maintain that we may have to resort to a draft system in a time of war, so as to equitably spread the hazards of war.

But even in peacetime, we must assure that our Volunteer Army policies encourage representation of the broad spectrum of our citizenry.

In the past I have warned that a Volunteer Army could result in an army consisting largely of disadvantaged citizens. Indications now are that there are greater proportions of poor whites, blacks, Chicanos, Puerto Ricans, Indians, and other minorities in the Volunteer Army than in the general population. These disadvantaged poor and minorities also happen to be among our population with the least education. They are drawn to the Volunteer Army largely because the financial alternatives available to them in civilian society are less attractive.

This is a form of economic coercion. Our democratic society should not have to rely on this segment of our population to defend the rest of the country.

Mr. President, Department of Defense statistics show that, as of December 31, 1973, 19.9 percent of enlisted personnel in the Army were black, and 17.7 percent of enlisted personnel in the Marine Corps were black. These compare with only 13 percent of our total American population being black. By contrast, the numbers of black officers were 4.2 percent in the Army, 1.1 percent in the Navy, 2 percent in the Air Force, and 2 percent in the Marine Corps. Furthermore, among new volunteers of the past year, blacks comprise up to 27 percent of the Army.

Most disconcerting is the fact that even higher proportions of blacks comprise the combat units of infantry, artillery, and armor. Statistics for other minorities and volunteers from disadvantaged backgrounds generally are not yet available; but indications are that they swell even further the ranks of the combat units. Enlistment and reenlistment bonuses have been increased to $3,000 and $5,300 (average) respectively, and they tend to entice the poor and disadvantaged to join and remain in the combat units. Such bonuses are obviously less attractive to the more advantaged youths of middle- and upper-class families. Their education and acquired skills, in any event, would qualify them for enlistment and reenlistment bonuses in other noncombatant areas where such skills are needed. In fact, recent legislation would authorize a reenlistment bonus of up to $15,000 for a reenlistee with nuclear skills.

The lower educational pattern of the Volunteer Army is seen in the fact that the Department of Defense is having a difficult time fulfilling the congressional requirement that at least 55 percent of military manpower in each service be high school graduates, and is requesting that this limitation be relaxed. Congress also imposed a requirement that at least 82 percent of military personnel in each service be in the average or above average mental categories (categories I, II, III). The Army and Marine Corps with their greater infantry, artillery, and armor needs, are having a more difficult time meeting these standards than the Navy and Air Force. Enlistments and reenlistments in the Army and Marine Corps during this past year have been running at increasingly higher levels of nonhigh school and below average personnel.

I have high regard for the ability and desire of disadvantaged enlistees to improve themselves, make good soldiers, and serve their country. Indeed, their ambition and voluntarism is greatly to be praised. However, I do regret that their social and economic status allows the rest of our society to profit by offering them financial inducements that middle- and upper-class families would scarcely be tempted by.

Two other concerns regarding the Volunteer Army continue to remain unanswered. They are the fears that a professional military force might become isolated from, and therefore a danger to, civilian society and second that the costs might be prohibitive. The first question remains for the future to determine.

While the costs have clearly risen for military manpower, the Defense Department argues that increased pay cannot be attributed to the Volunteer Army concept and that economic benefits also accrue from the anticipated deduction in manpower turnover costs. However, the fact remains that miltary manpower costs under a Volunteer Army of reduced size continue to escalate.

One basic advantage of having moved from the draft system to a relatively small Volunteer Army in peacetime is that in the event the President would wish to commit these troops to an extended war situation, the Congress would have the opportunity to fully discuss such a decision. This would occur not only by virtue of the war powers law, but also because the President would have to ask for authority to raise the congressionally established manpower ceiling. Such a decision would necessitate a full-scale national debate of the kind that was totally absent during the mas-

sive buildup of forces during the Vietnam war.

After nearly a year of trial, the reports of the Volunteer Army progress have been mixed. Its predicted success has not materialized. Many inadequacies predicted have, indeed, occurred. Although Defense Department officials are optimistic that these can eventually be overcome, many older officers and recruiters are less sanguine.

The inadequacy I am particularly concerned about is the inequity of having our disadvantaged citizens undertaking a greater share of the Nation's defense than their proportion of the population warrants.

Mr. President, the Department of Defense maintains that its forces are representative of American society at large, perhaps even ahead of the rest of society in the area of equal opportunity.

However, I believe further improvements can be effected, and that we should make every effort to avoid aggravating the problem of having disproportionate numbers of disadvantaged personnel in our armed services, particularly in the combat units.

For this reason, I cannot agree with the provision in this bill to repeal section 718 of Public Law 93–238, the fiscal year 1974 DOD appropriations bill passed last December. That section prohibits enlistment of non-prior-service personnel who are not high school graduates when such enlistments of the service concerned will exceed 45 percent, and limits mental category IV (below average) enlistments to 18 percent. That provision was enacted for good reason, and I believe it should be maintained until all other measures for filling current manpower shortfalls have been fully tested or at least until full examination has been made of the impact of raising that level of non-high-school graduates above 45 percent.

Does the committee believe it could go to 60 percent, to 75 percent or to 100 percent without endangering our Defense Establishment?

The House of Representatives on April 4 passed its fiscal year 1974 supplemental defense authorization bill (H.R. 12565) only after a provision to waive the non-high-school-graduate restriction of Public Law 93–238 was deleted. Instead, a vaguely worded amendment was substituted simply prohibiting denial of enlistment to a volunteer solely on the grounds of his not having a high school diploma. No mention was made of waiving the restriction contained in Public Law 93–238.

Mr. President, I would not wish to establish quotas for assuring that our Armed Forces are representative of our population at large. And I commend again our Armed Forces for affording an opportunity for service and advancement to all segments of our population—with the exception of unnecessarily restricting the opportunities for women. However, what I do wish to assure are programs that will attract as many volunteers as possible from all segments of our society, that will provide education and skills training for as many volunteers as are truly eligible, and that disadvantaged volunteers are not arbitrarily relegated to combat assignments—even with pay incentives—because they are led to believe that they are not eligible for any other opportunities. The Army has noted that, in addition to combat arms, there are about 26 other critical skill areas in which it is not getting sufficient volunteers, and where less than 70 percent of school seats are filled. I would like to be assured that disadvantaged volunteers are given as much opportunity to apply for these 26 critical skill areas as they are for the combat arms area.

Let me comment briefly on one area of potential utility for meeting military force levels which is being bypassed. Only 2.9 percent of total Active Forces are women. Surely, when over 50 percent of our population is comprised of women, we can find a greater use of women in our armed services. Nearly all the services are meeting their goals for women officers and enlistments; the only problem is that their goals are very low. Furthermore, requirements for women are much more strenuous than those for men: All women must be high school graduates, and they are required to achieve higher mental and physical scores on eligibility tests.

The effectiveness of women in the Israeli Armed Forces should be enlightening enough for the United States to make better use of women who wish to volunteer in our armed services. There seems to be little reason why equal qualifications cannot be required of women volunteers as are required of male volunteers. In the past year, thousands of eager women volunteers have been turned away because very small quotas have been met and qualifications have been restrictively high. I am pleased to note that the Department of Defense plans to increase the number of women service-wide from 55,400 last year to 93,500 in 1975. This near doubling of women in the Armed Forces although only a small step forward, plus further civilianizing of certain assignments, should contribute to filling current shortfalls.

Mr. President, I am concerned that the repeal of section 718 of Public Law 93–238 at this time might cause an even greater disproportion of disadvantaged volunteers in that armed services, and that these might comprise 50 percent or even more of our combat units.

I believe it is grossly unfair for our disadvantaged youth, who cannot hope for successful opportunities in civilian society, to find a role in our society only by serving in our armed services in disproportionate numbers to their percentage of our population. What is still more unfair is that this segment of our population is being assigned increasingly—and more and more unwillingly—into the combat units of our armed services.

A current excellent study of the Volunteer Army in the Washington Star-News underscores my concern. It reports:

> In the combat arms—men for infantry, artillery and armored units—the Army was able to recruit only 84 percent of its goal last month, in spite of a $2,500 bonus offer. The goal for the month in combat arms was 2,498—it paid bonuses to 911, and 1,177 went into combat arms without a bonus. What about the 410 empty combat arms spaces? To fill them, the Army simply orders people to become riflemen—and they get no bonus.
>
> The people who make up shortfalls in combat arms present quite a contrast to the bonus soldiers, who all must be high school graduates, must sign up for four years, and be in the upper intelligence categories. The individual who fills the shortfall is typically a man who has flunked out of technical school, is not a high school graduate, and is in a low intelligence category. If the effort to fill the combat unit falters further, the combat arms increasingly will be filled with unwilling, lower-quality men—a complete reversal of the volunteer Army's philosophy.

Mr. President, I sympathize with the shortfalls in volunteers that the Army and Marine Corps are having, particularly in the combat units. And I desire to see sufficient numbers to assure the combat effectiveness of our Armed Forces. However, I do not believe that repealing the high school and mental category provision of our current law is the best solution at this time. There seems to be no doubt that the increased numbers of non-high-school graduates and category IV enlistments would be given little opportunity for service in other than combat units—without even a pay bonus.

The House of Representatives did not vote such action in either its authorization or appropriations bills. The Senate authorization bill makes no such recommendation. Indeed, the basic principal of the Armed Services Committee in considering the defense supplemental authorization should be maintained here as well: That any Department of Defense request in this supplemental which can be deferred for consideration in the fiscal year 1975 authorization and appropriations bills—which I understand are nearly ready for consideration—should be so deferred. Fiscal year 1974 is practically at an end, and the little time remaining hardly warrants rushing so hastily into repealing a provision of current law with such enormous social and national security implications.

Mr. President, rather than repeal section 718 of Public Law 93–238 for the remainder of fiscal year 1974, I would make the following recommendations. I would recommend that the Congress direct the Department of Defense to make further efforts to devise and implement enlistment programs that would fill its armed service shortage while maintaining equitable opportunities for all segments of the population represented among volunteers. Specifically:

First. That further incentives, in addition to pay bonuses, be devised for the purpose of attracting personnel to fill shortages in the military services;

Second. That increased efforts be made to afford educational opportunities for disadvantaged volunteers, including critical skills training;

Third. That every effort be made to attain a more equitable distribution of disadvantaged volunteers among combat and noncombat units;

Fourth. That shortages in manpower goals be compensated for through civilization of assignments to the greatest extent possible.

Fifth. That every effort be made to increase the numbers of women and personnel from middle and upper economic levels in the military services; and

Sixth. That improved testing methods be devised for determining the eligibility of volunteers for combat and noncombat assignments.

Mr. President, I earnestly hope the provision to repeal section 718 of Public Law 93-238 will be deleted from this measure, and that my colleagues will give due consideration to my recommendations.

I ask unanimous consent that Department of Defense statistics and an article on the Volunteer Army published by the Washington Star-News be printed in the RECORD at this time.

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

Mental Groupings: High School Graduates. Mr. Brehm said that in March about 91% of all non-prior-service enlistees were in Mental Categories I-III, which are the average and above average mental groups; only 9% were in Mental Category IV, the below-average group. High School graduates amounted to 62% of enlistments; this is unchanged from February and is more favorable than seasonal trends. The data for July-March is shown in the following table along with the March results:

HIGH SCHOOL GRADUATES AND MENTAL GROUPINGS (NON-PRIOR-SERVICE MEN AND WOMEN)

	High school graduates			Mental groups, I, II, III [1]		
	March		Year to date	March		Year to date
	Number	Percent	percent	Number	Percent	percent
Army	7,760	58	54	11,390	85	82
Navy	3,420	60	71	5,480	96	97
Marine Corps	1,520	35	48	4,010	92	92
Air Force	5,400	92	94	5,850	99	99
Total DOD	18,100	62	65	26,730	91	90

[1] Above average and average categories.

PARTICIPATION OF BLACKS, AS OF DEC. 31, 1973

	Black officers	Percent	Black warrant officers	Percent	Black enlisted	Percent	Total	Percent	Overall population: Officers	Warrant officers	Enlisted	Total
Army	3,927	4.2	702	4.8	133,511	19.9	138,140	17.8	93,779	14,569	669,998	778,346
Navy	610	1.1	116	2.7	38,955	8.1	39,681	7.1	67,086	4,398	482,978	554,462
Air Force	2,371	2.0	1	.5	76,882	13.8	79,254	11.8	113,394	98	556,278	669,764
Marines	356	2.0	48	3.8	30,129	17.7	30,533	10.5	17,522	1,272	170,598	289,392
Total	7,264	2.5	867	4.2	279,477	14.8	287,608	12.6	291,781	20,331	1,879,852	2,291,964

Note: Total number of blacks, 287,608 over total population, 2,291,964 equals 12.6 percent.

WOMEN IN THE ARMED SERVICES, AS OF DEC. 31, 1973

Category	Women	Total force	Women percent of total
Army: [1]			
Officer	[2] 4,350	108,347	4.01
Enlisted	20,547	670,051	3.07
Total	24,897	778,398	3.10
Navy:			
Officer	[3] 3,459	68,189	5.07
Enlisted	10,744	480,707	2.24
Total	14,203	548,896	2.59
Marine Corps:			
Officer	340	18,787	1.81
Enlisted	2,088	170,612	1.22
Total	2,428	189,399	1.27
Air Force:			
Officer	[3] 4,764	113,494	4.20
Enlisted	17,353	556,234	3.12
Total	22,117	669,728	3.30
Total Active Forces:			
Officer	12,913	308,817	4.18
Enlisted	50,732	1,877,604	2.70
Total	63,645	2,186,421	2.91

[1] Active Army.
[2] Includes WAC, ANC, and AMSC.
[3] Includes healing arts.

RECRUITING—STILL THE BIG PROBLEM

(By Duncan Spencer)

COLUMBIA, S.C.—A thin, blond recruiting major, James Coleman, a man of facts and figures and many graphs, pointed on the map to the eastern portion of the state of South Carolina. "This is the area that's really producing," he said.

"The Florence area is the top recruiting area in the nation," he continued, turning to the chart propped up on a chair. "Sparse population . . . 4-5 percent unemployment . . . little industrial activity. Farming, cotton, tobacco, corn, some peanuts. Maybe they're not really happy with their lives."

He was talking about some of the things that make young men and women come to the colors in 1974. If the rest of the country were like the flat piedmont around Florence, the ranks would fill quickly.

The Army offers its recruits $326 a month, and steady work. It offers them food and clean clothes. It will fix their teeth, minister to them if they're sick, insure them, promote them, teach them a skill they can turn into a job when they leave. These things seem considerable in a countryside of wood stoves and bare feet and trailer parks.

But the entire nation is not worn-out farm land and non-union mill towns. And the South, though it has provided much more in proportion to its population than any other section of the country, is not enough to fill an Army, even though that Army is only 40 percent as large as it was during the height of the Vietnam buildup.

Lt. Gen. George Forseythe, the man who was given the job of planning the shift from the draft force to volunteer, focuses the problem in a single area. "Our biggest problem is getting high-quality enlistments in combat arms. We felt if we could lick the combat arms problem we could lick them all."

Nobody wants to get shot.

Last month, it was the Army's hope to enlist 16,300 men and women. It actually got 14,850, or 91 percent of the goal, and for the fiscal year to date, it has met 89 percent of its recruiting goal, the lowest percentage in the entire Defense Department.

In the combat arms—men for infantry, artillery and armored units—the Army was able to recruit only 84 percent of its goal last month, in spite of a $2,500 bonus offer. The goal for the month in combat arms was 2,498—it paid bonuses to 911, and 1,177 went into combat arms without a bonus. What about the 410 empty combat arms spaces? To fill them, the Army simply orders people to become riflemen—and they get no bonus.

The people who make up shortfalls in combat arms present quite a contrast to the bonus soldiers, who all must be high school graduates, must sign up for four years, and be in the upper intelligence categories. The individual who fills the shortfall is typically a man who has flunked out of technical school, is not a highschool graduate, and is in a low intelligence category. If the effort to fill the combat units falters further, the combat arms increasingly will be filled with unwilling, low-quality men—a complete reversal of the volunteer Army's philosophy.

In South Carolina, though, these problems evaporate like the puffy clouds above the fields. "In the last fiscal year," said Maj. Coleman, "we were well over 100 percent of our goals." His monthly figures showed excesses of 108 to 135 percent, and for women, the recruiting district came in with 185 percent of its goals.

Soil like this is heavily tilled. There are 76 recruiters assigned to Coleman's Columbia headquarters and there are 24 recruiting stations in the state. About 70 miles from Columbia is the recruiting station of M. Sgt. Rudy Smith, who was feted this year as the nation's top recruiter.

In a recruiting area like Coleman's all systems seem to work for the Army. A basic favorable factor is history—the South has always had a strong military tradition, so a young man is likely to have known military men or to have idolized local boys who made good, like Gen. William C. Westmoreland, the former chief of staff who is now running for governor of the state.

Campus radicalism, which still bedevils recruiters in the Northeast, parts of the Midwest and the West Coast, had little impact in the Deep South. Schools welcome recruiters, and many high schools make Army qualifications tests mandatory for their seniors. Coleman and his men are invited to join job fairs, and high school principals work with them. This is a policy of the state Department of Education, Coleman said. High School guidance counselors usually promote the Army.

Recruiting is far more sophisticated under the Volunteer Army than under the draft. It is no longer a matter of setting up a storefront with a couple of posters and waiting for whoever comes in the door.

"First," said Coleman, "we isolate the people above the minimum cut-off score." The Volunteer Army must have no more than 45 percent of its ranks non-high school graduates. That is a congressional mandate. "Then contact follows—phone calls, letters, personal visits. Schools make time avilable for us to do this. Sometimes we go knocking on doors."

Who are they getting. Farm hands, mill employes, gas station workers, and many young men who are drifting without any particular skills, ambitions or schooling, bouncing from job to job.

They are also getting great numbers of black youths. Of the 2,096 persons enlisted in the Florence recruiting area between last July and December, 69.8 percent were black.

The population of the state as a whole is about 50 percent black.

Many who wished to join were rejected out of hand after Coleman gave his tests. Of the total, 35.9 percent failed for mental or medical causes in the first quarter of 1974.

Though black men are one of the recruiting district's strengths, few black women enlist, possibly because all women recruits must be high school graduates.

The increasing blackness of the Volunteer Army, officially, is not a worry. After a year of the Volunteer Army, blacks make up about 20 percent of the total Army enlisted force. The Defense Department's policy toward this trend is simple. "Whether or not there is a higher percentage of minorities in the service than the population is not a concern to us," says Defense Secretary James R. Schlesinger.

The trend began long before the volunteer concept. In 1949 in all services, there were 7.5 percent minority enlisted men; in 1968, 9.9 percent. But since the end of the draft, the numbers and percentages have accelerated rapidly.

Beneath the official attitude Army officers reflect two main fears about the larger numbers of minorities. They are worried, first that a large body of black enlisted men may become resentful if they continue to be led by an overwhelmingly white officer corps.

The percentage of black officers has grown slowly, from about 1 percent in 1949 to 3.5 percent in 1964 to 4.3 percent in 1974. The other fear is that if war comes, black casualties will become a political issue, as they did during the Vietnam War.

[From the Washington Star-News, May 2, 1974]

SUBURBIA ARID

WHITE PLAINS, N.Y.—When recruiter Sgt. Charles Funari, a city New Yorker, first came out here to work two years ago, the locals were waiting with a picket line. "They told me I might not continue my good health," he said.

Since then, the antiwar fervor has calmed down, he reports, but recruiting has not gained much. His district, 265,000 in population, which includes the sprawling commuter city of White Plains in Westchester County and "bedroom suburbs" like Scarsdale, Port Chester, Rye and Mt. Kisco is not the least productive of volunteer soldiers in the nation, but it is one of the least.

The way Funari sees it, the draft will have to come back if the Army is to meet its goal of maintaining a 785,000-man force. "It has to come back," he says. "There's too much question about the Volunteer Army—outside the Army and inside it, too."

His pessimistic view is shared by powerful members of Congress; the only difference between them and the sergeant is that he is talking from experience in his area and they are talking from long-held convictions that young Americans ought to be obligated to serve their country.

Funari's problem is very much the Army's. It's not just that he finds it very difficult to produce more than about 50 percent of his monthly goal ("Why not call it a quota—that's what it is," he said sadly, but that his quota is so low in one of the most densely populated parts of the U.S.

The Army considers Funari to be doing well if he can deliver 12 men or women a month from his district. He's got five so far this month, and it hasn't been easy. The Defense Department calculates that one of every three available young men will have to enlist to maintain the Army at projected levels. Funari could as easily fly to the moon.

"Look," he said, "around here, even if the kid doesn't want to go to college, the parents make him go. That's the kind of place it is." College, in recruiting terms, pretty well ends the Army's chances to get a young person.

"Westchester Community College has open enrollment," said Funari gloomily. He made it sound like a disease. "But I just shipped one young man—he was 17, a category II (mental category II is next to the top)—a middle income family, father was a plumber. He wanted a trade, and thought he might be an MP, but he was too short."

White Plains has made Sgt. Funari into a frustrated man, but in larger terms its attitudes strike deep at the vitals of the volunteer concept. It is a prosperous area. It is surrounded by institutions of higher education, it is near the great industrial complex of New York. Its sons and those of the wealthy nearby suburbs are part of the upper middle class probably destined to become leaders of local business, industry, education and government. The volunteer Army is getting very few of them. Instead, it is getting the poor white farm boys of South Carolina and Alabama, young black mill hands, high school dropouts.

The new Army simply can't compete for the youth of much of the Northeast. Economic and attributes both play a part. The result is an increasing departure from the ideal of a "representative" Army.

If economics seems to be the deciding factor to success in recruiting for the enlisted ranks, attitudes play a more important part with young people who might become officers.

It seems logical that a high-income area like White Plains would produce a healthy number of young officers through Reserve Officer Training Corps programs in its colleges. But the reverse is true. Funari explains that the Army in many cases is simply unable to get its message to youth.

One of the things that recruiters work with is the high school student list. Armed with this, a recruiter immediately has a grip on who is near graduation. But of the 22 high schools in his area, Funari has been able to get lists from only two. The others simply refuse, he says. "We've had no cooperation from private schools, good to excellent cooperation from some public schools, and poor to miserable cooperation from parochial schools," he said.

"Up here it's tooth and nail even to get the kid time to take tests," he added. His plans to get a junior ROTC program started in a school at Newburgh, N.Y., have been stalled, and the only college in the district that still offers ROTC is Fordham.

The ROTC picture nationwide is not so gloomy. There are more than 290 colleges and universities participating and with West Point and a small Officers Candidate School program within the service, the supply of officers is assured. But Princeton is the only Ivy League college which offers ROTC and many of the colleges that have rejoined the program since its low point during the late 1960s are small and little known. Most of them are in the mid-South and Southwest.

Some scholars regard this change in the source of officers more serious than the changes that have been seen in enlisted recruits.

"The bottom has not dropped out of ROTC," wrote Gen. DeWitt Armstrong III, a Princeton Ph.D. who retired from the Army in 1972, "but the top has. Among the dozen or so universities which dropped Army ROTC were some of the nation's best, ones which attract the brightest, most ambitious of our young. There are some perfectly splendid youngsters becoming Army officers via ROTC, but far fewer than before . . . between the 'influentials' and the Army a distinct new gap has been growing."

Sgt. Funari has little time for philosophy as he toils in White Plains with a recently increased staff of five. His life-style, he admits, is lousy. For one thing, he can't afford to live near his job on a sergeant E-7's salary. Every day, his total commutation from a town far upstate is over 100 miles.

The attitudes of local parents, particularly the mothers of teenage sons, is another problem. "I talk to these people all the time," he said, "They all think it's a great thing to have no draft—but not their sons.

"YES, WE ARE REPRESENTATIVE," GENERALS SAY

Lt. Gen. Bernard W. Rogers, deputy chief of staff for personnel of the Army, and his second in command, Maj. Gen. DeWitt Smith, assistant deputy chief of staff for personnel, are the Army's top two generals in personnel matters. Both note encouraging trends in recruiting despite past and current problems.

ROGERS. "We find ourselves defending ourselves based on the questions we are asked, and the question is, are we representative? And the answer is yes, we are representative. Now we don't have as many college graduates as we have in society, in the enlisted ranks. We have more blacks than we have in society. If you take the 18-year-olds, the country has about 13 percent (blacks) We have more than that. But there's no way you're going to come out with the same break-out as you have in society. Sure, if we wanted that we'd want about 13 percent (blacks) We'd like to have 30 percent Catholics.

"I have asked everybody I can ask what percentage of blacks is going to be alarming. I don't know of any percentage that is going to be alarming to me. But what does concern me is the other side of the coin. At what percentage would it cause concern to black society? We don't know what that figure is, either. But let's project this into the future. We're bringing in somewhere between 26 and 27 percent black enlistees for this year. It's going to level off at about 25 percent. Their reenlistment rate is running at about 21 percent. If you string that out, you're going to end up in fiscal year 1977 with about 25 percent black content of the Army."

SMITH. "We can tell from what the black people tell us, both the commissioned and the enlisted alike. They are quite certain that they have a better shot at getting as far as their talents merit in the armed services than they do in any part of our society. If there's a leveling out of opportunity, then you'll see a leveling out of where people go. Now the opposite happens in respect to officers. Here, you're basically talking about college graduate blacks. And there aren't so many, and they're in enormous demand by other segments of society, so we have one hell of a time getting in the numbers young black men and women officers we'd like to have. We've made king-sized efforts to shift that ration."

ROGERS. "We have gone down from about 72,000 in the ROTC program—about three years ago—to about 33,000 now in the ROTC program. One of the encouraging signs was that, this year, the losses were down.

They were about 300 percent less this year than they were last year. So it may be that we are seeing a leveling off now of the losses in the ROTC program."

"We don't have Harvard: Princeton remains with us. There are some others that went out of the program—11 or 12—at the time of much of the opposition to the Vietnam War. But we do have a waiting list of other colleges which want to come into the program. Now I'll have to add this. We have to evaluate the output of each of these universities and colleges, because there's a certain number that should come out each year, if it's going to be cost-effective.

"Obviously, there's going to be less output

from ROTC. But we anticipate getting out of the program this year, available for assignment in the Army, just over 6,000. Now of that 6,000, we will bring just over 4,000 on active duty—you see 2,550 of them have commitments to us, either as scholarships, distinguished military graduates, and so forth—so we have to bring them on. And then we're bringing on an additional number that brings us to 4,020. And they will go on active duty with the Army. That leaves about 2,000 in excess to active Army needs. But the point that you don't want to lose is the requirement of about 4,000 officers to go into reserve complement units every year. So this year we will not have sufficient to come out of the ROTC program to provide for that group of reserve units."

SMITH. "To characterize the Volunteer Army as mercenary is real slander. First of all, people in the Army resent very deeply the word mercenary. Mercenary is a word very clearly and simply defined in the dictionary. It implies a certain degree of venality; it implies that you would sell your soul or your arms or legs to the nearest emperor for a campaign. Not your own country, but anybody's country. It implies that monetary incentives are the only incentives that motivate people. And there isn't a shred of evidence to indicate there's a monetary incentive in the Army sufficient to cause a man to get shot at. So to use the word mercenary at any level in the Army is demeaning and inaccurate.

"You might take a look at the representative nature of numbers of your large business institutions and contrast them with ours. I don't think you would find the leadership corps, or the people paying for this, stem any more from one segment of our society than those who are in the military. Among enlisted people there are fewer from the collegiate group. But there are more high school graduates than there are in our population. You're not dealing with a peasantry, or a yeomanry or mercenaries who are ignorant or poor, and have no aspirations or no soul being run around by the eldest children of the English noblity. You're talking about something entirely different."

ROGERS. "To carry on the point. If you look at the representation within the other professions, the medical profession, the legal profession and other professions, and contrast them with ours, I think you'll find the officer corps is as representative as other professions.

"If you took a picture of the Army today, we have 71 percent high school graduates, you'll find that also above the percentage in our general population, which is 67 percent.

"The ceiling of 45 percent on non-high school graduates doesn't make much sense to us, because we're the ones who ought to be determining quality, and we're the ones to measure that quality. We had a self-imposed ceiling of 19 percent on Category IV, that's the lowest mental category, because our studies show we could use 19 percent in our force. The tests are supposed to show if a man can be trained in a skill we need. But what the test actually measures is arithmetic reasoning, verbal knowledge, and spatial perception. We want to measure more than these three things. We believe we have tests that are a better measure.

"The other thing, the traditional measure, is high school graduation. We believe it's better to put the man in the environment of a soldier, and to scrutinize him closely, and to see if he has the motivation and the self-discipline that a high school diploma is supposed to measure. But to do it in the environment of a soldier, under drill sergeants and a company commander and platoon leaders, and then if he doesn't cut the mustard in the first 179 days, then we'll separate him with an honorable discharge. We think that is a better way and a far better measure than point scores. We don't need the other tests, we ought to get rid of them. What I'd like to see done away with is categorizing a soldier as a Category I to IV. It's not meaningful as far as trainability.

"The most difficult part—that we have not yet licked—is providing the input to our schools for training in what we call hard skills. We have in addition to combat arms, skills in other areas, about 26, in which we have difficulty getting enough individuals. Now Congress in both houses has just passed a bill to allow us to pay bonuses to fill those school seats.

"These are critical skills that we have to have, and we consider them critical when less than 70 percent of the school seats are filled. That will remove the last major deterrent from the Volunteer Army from being a complete success."

Mr. KENNEDY. Mr. President, some years ago, I opposed the Volunteer Army because I believed that the Volunteer Army was going to end up with poor people fighting rich men's war. I warned this body that this was going to be the very impact and effect of moving from a random selection system which would have spread the burden and the responsibility as well as the honor equitably, to a complete volunteer system.

The fact remains that we are getting a disproportionate amount of poor people as well as minorities who are going into the Armed Forces of the United States.

The number of disadvantaged and minority group members who are going into the combat arms have increased even more dramatically, with the Armed Forces offering a $3,000 combat arms enlistment bonus I find that repugnant, quite frankly.

We can look back in the course of our history to the time of the American Civil War, when one could buy one's self out of going into the Armed Forces of the United States. At that time, we had draft riots in New York and many other eastern States, because of the resentment of the American people for the system permit some young men to pay others to take their place.

Irrespective of our individual attitude about the future of the Volunteer Army, I think this provision is objectionable from a number of points of view. First, it is objectionable from a procedural point of view since it is legislating on an appropriations bill. Second, it is objectionable because we have not had full hearings and examination of this particular issue by the appropriate committee, the Armed Services Committee. Finally, we have not considered the very serious broad implications that this kind of amendment can have on the quality of our military force and the equity of placing the burden of military service on the disadvantaged groups in this land.

For these reasons, I believe this amendment should be adopted.

Finally, Mr. President, I recognize that there are those who say that you cannot equate high school graduates and intelligence; that in some instances a point will be made that even if they do not have the diploma, perhaps they have the intelligence, and therefore the level of intelligence that is going into the Armed Forces has remained about the same. But it is important to recognize that we have not had any testimony on this matter. There have been some studies. I have reviewed those studies. I think they are open to serious questions. It is the kind of issue on which we ought to have a full hearing.

Second, not only does section 406 relate to the question of high school graduates, but also, it would eliminate the category 4 limitation I have mentioned previously, which only permits the acceptance of 18 percent of "below average" achievement into the Armed Forces. It would effectively permit the Armed Forces complete discretion to go to 60 percent, or 75 percent or even 100 percent of nonhigh school graduates and those who score in the lowest quartile on achievement tests.

This has broad implications in terms of our preparedness, in terms of the efficiency and the effectiveness of our Armed Forces; and, as a policy matter, it has brought implications relating to the equity of our manpower policies that merits the closest scrutiny and examination. For these reasons, I am hopeful that this amendment will be adopted.

I feel that this matter could be very easily delayed or deferred until the Armed Services Committee has had an opportunity to examine it and report back to the Senate. Then we would have a complete record to discuss and to debate.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. YOUNG. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. YOUNG. Mr. President, General Cushman, Commandant of the Marine Corps, especially asked for relief from this requirement for high school graduates.

This amendment is especially hard on the Indians of the United States, and we have many Indians in North Dakota. When one joins the Marine Corps or any other branch of service, he has a better chance for education than he would have otherwise. Indians have been among our best fighters in every war in which we have been involved. They like the service. But a very high percentage of them do not have a high school education.

Speaking of a high school education, a great hero of World War I, Sgt. Alvin York, did not have a high school education. In World War II, Audie Murphy, a Medal of Honor winner, did not have a high school education. Of the seven Marine heroes of Iwo Jima who raised the flag, one-half of them did not have a high school education. So, it follows that a person with a high school diploma may or may not be a better fighter. When a person enlists in the services now he has a good chance of getting a good education in addition to carrying out his military duty.

I think if we are going to continue the all volunteer service we will have to provide relief from this requirement. They will establish their own standards, which will be very high. But we will make a mistake if we delete this section of the bill. We did so last year, and we found to our dismay that it was a mistake.

Mr. KENNEDY. I would like to ask

the distinguished Senator from North Dakota if this provision of the bill was requested by the Department of Defense. Did this request come from the Department of Defense?

Mr. YOUNG. It came from the Marine Corps, in particular; the commandant, General Cushman, and other Marines.

Mr. KENNEDY. So it did not originate in the Department of Defense.

Mr. YOUNG. They are part of the Department of Defense.

Mr. KENNEDY. Did the Senator have a spokesman for the Department of Defense? Has the Department of Defense taken a position on this issue?

Mr. YOUNG. I do not believe Secretary Schlesinger has done so, but the Army and the Marines know the problems. They made the request, and we honored their request.

Mr. KENNEDY. I understand there was a request only by the Marine Corps and not by the Navy or the Air Force.

Mr. YOUNG. I do not think the President got into it either.

Mr. KENNEDY. It is difficult for me to believe that the Defense Department, in a matter affecting the quality of individuals serving in our Armed Forces, did not have a formal position on this matter. It is also interesting to note that in 1969, 16 percent of the enlisted men in the Armed Forces actually were college graduates. As of March 31 of this year, the figure is probably about 4 percent.

The Senator has made a statement about high school graduates. Why did they ask for the elimination of the requirement that provides they cannot recruit more than 18 percent of category 4? The amendment applies not only to high school graduates, but, in effect, new recruits would be filling in the quotas in the Army and the Marine Corps, and they are young people who scored in the lowest category of intelligence. This amendment did not say, "Let us provide a waiver for those who received a high school diploma."

Mr. YOUNG. Is the Senator making a speech on my time or asking a question?

Mr. KENNEDY. I am interested in learning why the Senator extended the amendment to eliminate the requirement that no more than 18 percent would be brought to category 4.

Mr. YOUNG. We did it at the request of the services. We went into this quite thoroughly with the House last year. This provision was included by the House last year. Representatives of the Marines have said they do not think that a high school degree is a necessary requirement of a good fighter. I agree with them. I have read a list of some of our great heroes of the past who were not high school graduates.

If the Senator wishes to eliminate the other section, I would be willing to consider it, but I would like to have the opinion of the chairman.

Mr. McCLELLAN. With respect to whether the Secretary of Defense has testified, he has not testified. I cannot conceive that representatives of the other services, the Marines and the Army, would come up here and testify contrary to the policy of the Secretary of Defense. They come up here and testify on these matters all the time, and when they give testimony on matters of this kind, we assume it is the policy of the Department of Defense.

Mr. KENNEDY. Is this a matter considered by the Committee on Armed Services or just by the Committee on Appropriations?

Mr. McCLELLAN. It was considered by the Committee on Appropriations. I cannot answer for the Committee on Armed Services. But the House Armed Services Committee repealed it.

Mr. KENNEDY. I am asking about our responsibility here.

Mr. McCLELLAN. I know, but the Senator asked about it, and I am pointing out where we are going. The House enacted H.R. 12565 which provides that no volunteer for enlistment into the Armed Forces shall be denied enlistment solely because he does not have a high school diploma. They repealed that part of it.

I have no special interest in this except that the Marines pointed out they were 10 percent short in their enlistment goals. The Army is in about the same situation. In the draft we had no requirement that one had to have a high school education or that so many had to have a high school education to be accepted. I think we should get the standard as high as we can and have the goals to do that. But as to this restriction which may be and apparently is already developing in the first year of experience under it to be a harsh restriction, one that is going to have a severe impact on the ability to have a volunteer Army, we better give some thought to it or whether we want to go back to selective service.

I agree with the Senator. I was not very enthusiastic about the repeal of selective service, but everyone wanted to try a volunteer Army.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield?

Mr. McCLELLAN. I do not wish to take the time of the Senator from Massachusetts. Mr. President, I yield myself 5 minutes.

Mr. HARRY F. BYRD, JR. I wish to ask the Senator if there is any money involved in this amendment.

Mr. McCLELLAN. No.

Mr. HARRY F. BYRD, JR. It is not an appropriation.

Mr. McCLELLAN. But it was in an appropriation bill. The original provision was in an appropriation bill.

Mr. HARRY F. BYRD JR. But it is a policy matter. I wonder whether it should be considered by the Committee on Armed Services.

Mr. McCLELLAN. I think it should be, but it is presently in an appropriation bill. It did not come from the Committee on Armed Services.

Mr. HARRY F. BYRD, JR. I am fearful that what the armed services are doing is to lower the standards in order to just get more bodies into the military service. I am wondering whether or not this matter should be considered by the Committee on Armed Services in relation to the entire manpower program.

Mr. McCLELLAN. Frankly, I think it should. I think that is really where it should be, but it was included in the appropriation bill, the regular appropriation bill, and that is where it is at the present time. This would simply repeal it insofar as it being in the appropriation bill, not to keep the Committee on Armed Services from considering it. I think it should consider it and if it should be deemed advisable, wise, and prudent to establish these standards, I think it originally belongs in that committee. But it did not come from there. This was placed in the regular appropriation bill.

Mr. HARRY F. BYRD, JR. The services undoubtedly have lowered the standards in order to get more bodies into the service, and this despite the fact that there have been seven pay raises in the Armed Forces in the past 6 years.

Mr. McCLELLAN. That is right; they still cannot get them.

Mr. HARRY F. BYRD, JR. If we still increase those in category 4; namely, those of low qualification, we are further reducing the quality of the men who might be called upon to defend our Nation.

Mr. McCLELLAN. To some extent, the Senator is correct. To some extent, it is true that if we required them to be college graduates, we would further reduce them. If we required 55 percent of them to be high school graduates, we would further reduce the numbers. That is true in spite of the fact that we are paying them bonuses to keep them. In spite of the fact that we are paying bonuses, the Marines are 10,000 short of their quota and the Army is 10,000 short of its quota.

I do not know what the answer is. I think it is a question for the Armed Services Committee to address itself to and bring in permanent legislation after holding hearings and ascertaining what is the wisest and best course to pursue.

Mr. HARRY F. BYRD, JR. Frankly, I am disappointed that the Commandant of the Marine Corps would recommend this. The Marine slogan is that the Marines need a few good men. Apparently he is discarding that slogan and going out to get numbers, if I correctly understand the colloquy this morning.

Mr. McCLELLAN. Well, Senator, I think we can all recognize the fact that there is not the enthusiasm any more for joining the military services that there once was in this country, and inducements are being offered to have a voluntary Army. We would like to have as high standards as we can get, but if we cannot get them after offering these inducements and these bonuses and cannot get high school students to fill the quotas, what is the alternative? To pay more bonuses or to do away with the requirements and give some discretion, as they do in the draft, to evaluate each individual with respect to his capabilities of making a soldier or making a marine or making a sailor, and let them accept him?

I do not know the answer, but we are confronted here not with a theory but with a reality. We have to try to deal with it. I do not know the best answer, but, again, I think the Armed Services Committee is the proper authority, the

proper legislative entity, to give it attention and bring its recommendations to the Congress of what should be the standard, and we should enact a law accordingly.

Mr. KENNEDY. Mr. President, I yield myself 5 minutes.

The Senator from Virginia, I think, has put his finger right on the nub of this particular problem, which is that we are, I feel, in a crisis of quality in the armed services of this country—in spite of the efforts which have been made to make the Volunteer Army work.

Let me direct a question to the Senator from Virginia. As I understand the legislative proposal, there would be nothing that would prohibit the Armed Services Committee, at the time when the military authorization comes up, from making recommendations to the Senate on this particular matter. As I understand, it would be possible to review this problem, to study it, and then to offer an amendment to the authorization bill which could alter or change what is in existing law.

Mr. HARRY F. BYRD, JR. Yes, that is correct, and the Armed Services Committee is prepared to go carefully into this problem to try to determine just how our country can get quality military personnel. That is what we really need. The question of numbers does not solve the problem, as I see it. If we fill the Army up with unqualified people we would be worse off than if we did not have an Army.

Mr. KENNEDY. The Senator is correct. It just seems to me that with the trend that has developed, in terms not only of fewer high school graduates but also of greater number of those in the lower achievement percentile, the effect of this amendment is extremely distressing. It is a matter I hope the Armed Services Committee itself will consider in view of what has happened with the recruitment program in the last 2 or 3 years.

My amendment is offered to express the very same genuine concerns that have been expressed by the Senator from Virginia about the whole question of quality of those that are going into the armed services. The committee provision would alter in a significant way the very modest restrictions that have been placed on the recruitment practices of the Armed Forces.

Mr. HARRY F. BYRD, JR. I cannot speak for the Armed Services Committee as a whole, of course, but my feeling is that the entire committee is greatly concerned with the problem of recruiting quality personnel. There have been discussions of it within the committee, and as the markup sessions continue—there will be one tomorrow, one the following day, and one the day after that—undoubtedly there will be more and more discussions of this subject, particularly on how we can best determine the needs and how to meet the needs of the armed services and at the same time keep an acceptable standard. No formal vote has been taken, but if I can judge the attitudes of my colleagues on the committee correctly, they are concerned that the standards have been lowered and that something needs to be done to increase the standards rather than reduce the standards.

Mr. KENNEDY. The only point I would make, on the issue both of quality and also of equity, with respect to the level of the people that are coming into the Armed Forces themselves, is that we want to insure that we are going to get quality individuals to assume their responsibilities in the Armed Forces. I would hope that in that pursuit we will make sure that there is no particular group in our society that will have to bear an undue burden for the defense of the Nation.

Mr. HARRY F. BYRD, JR. If the Senator will yield, I think he is quite right. I think the equity problem is a part of the total manpower problem, and we should attempt to take steps to see that the burden does not fall improperly or inequitably on any one group.

Mr. McCLELLAN. Mr. President, I may observe that this legislation on an appropriation bill was put in by the House, not by the Senate. We had it before us in conference, but we finally had to yield to the House on the language that is there now. It is language which is legislation which I thought all along properly should be the prerogative and responsibility of the Armed Services Committee. If the Armed Services Committee, in the bill that will come before us in a day or two, or perhaps a few days, for consideration, can deal with it, I think that is where it should be dealt with.

But in the meantime, we have got this situation, if this law is going to stay in effect. We talk about quality. I do not know whether we are lower in quality, because we are not changing what has happened in the draft in the past. After years and years and years under the draft, final discretion has been left to the military with respect to selection. There is no restriction on them like this in the draft today. With this restriction, if it is continued, as it is now, there are all indications that we are not going to be able to maintain the military strength we ought to have. It is a matter, I think, that addresses itself purely to the Armed Services Committee. I would be glad to see them take appropriate action.

Mr. YOUNG. Mr. President, since the Appropriations Committee has been called on with respect to legislation on appropriation bills in the past, I wonder whether the Senator from Virginia, for whom I have great respect, would consider having the Appropriations Committee leave this language in the bill, and thereby let the Armed Services Committee work its will in the authorization bill. Since the Appropriations Committee wrote in this language in the regular appropriations bill, would not the Senator think it would be logical if we take our own language out of the bill? That, in effect, is what we are doing by repealing section 718 of the Defense Appropriation Act of 1974.

Mr. HARRY F. BYRD, JR. The only aspect on which we differ is that it would be better not to remove the restriction until the Armed Services Committee has had an opportunity to examine the problem and present its views to the Senate. It is clearly an Armed Services Committee matter.

Mr. YOUNG. I think this provision in the bill does militate against the minority. They should not be prohibited from the honor of serving in the armed services. They should not be prevented from enlisting in the service. The provision that is in the law now prohibits them from volunteering for service unless they have a high school education. History has proved that the Indians have been among our best fighters in all the wars. I was particularly interested in our Indians, because they have made the best fighters, among the most loyal fighters we have in our services. They want to join. This would be a limitation on this American minority as well as other minorities.

Mr. HARRY F. BYRD, JR. I think the question of being a high school graduate is only a part of it. Category 4 is perhaps more important than the requirement of a high school degree.

Mr. KENNEDY. I would finally say, with regard to the previous lack of standards during the draft is that we were under a random selection system. Under that system, obviously, when the young people were taken at random, we had a reasonable distribution among most groups of both the burden and responsibility of serving in the Armed Forces. One reason those standards were established in recent times was the genuine concern I have found, quite frankly, among officers in the Armed Forces. My conversations with military individuals who are involved in combat arms is that they are, personally, extremely concerned about the lowering of the quality of enlistees. Second, there was a concern that the military would become disproportionately comprised of the poor and the black.

But rather than get into that issue, I think the Senator from Virginia has stated it correctly. I would hope that this amendment will be agreed to and that the Committee on Armed Services would be consulted. I would hope that the chairman of the Committee on Appropriations would write to the chairman of the Committee on Armed Services, asking him to review this exchange that is taking place in the Chamber, to gather all the information that is available from the Defense Department, and then to come back to the Senate and provide us with the best information that is available from the Defense Department and from those who have the responsibility for leading our young men in the combat services, with a recommendation for us.

I think this is really the way that it should be done. I say this as one who has been interested in our manpower policy for some time, as one who was opposed to the draft prior to the elimination of education deferments and occupational deferments and as one who supported the draft when it moved to a random selection system.

Now we are under a different system of selection. The new move, as contemplated by the supplemental appropriation, is extremely important. I know the chairman of the committee considers it to be so. But it is one in which I think we ought to have full consideration by the members of the Armed Services

Committee and give them an opportunity to examine that record before taking action.

I do not mean to continue the discussion. I hope the chairman of the committee would now join with me in my amendment and join with me in urging the chairman of the Armed Services Committee to review this particular matter. I would hope we could move ahead in that way. I think that would meet the particular needs of the Marines and also would provide us with the kind of information which is of such concern to myself and, I know, to the Senator from Virginia and, I am sure, many other Senators as well.

Mr. McCLELLAN. Mr. President, I may say it would be my hope that unless we will have a military bill up in the next few days, we will probably withhold any conference on the bill until the Senate acts on the authorization bill. Of course, we would be guided by whatever action is taken in conference. I think that is the way it should be done.

Mr. KENNEDY. I do feel that we should not leave this matter in limbo, so to speak. I think it is a matter, quite rightfully, that should be given the detailed attention that the Armed Services Committee can give to it. We do not know—the leadership has said that we have a busy program—when the fiscal year 1975 authorization bills will be coming up. I think we had best leave this question to the Armed Services Committee for at least their recommendations. I would hope that we could resolve the question in that way, if it is agreeable to the chairman. If not, we shall have to resolve it in another way.

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

Mr. McCLELLAN. I yield to the distinguished Senator from Maine such time as he may require.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the point of order that I previously raised cover only the following language:

From line 14, page 3, through line 11, page 4.

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

Mr. KENNEDY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Massachusetts will state it.

Mr. KENNEDY. I had hoped that we would be able to work this out, either with a joint letter or some kind of indication requesting the chairman of the Committee on Armed Services to give this question consideration.

Mr. McCLELLAN. I would be glad to join in sending such a letter.

Mr. KENNEDY. So would I, but I should like to have the letter sent with the understanding that we were going to let them make the decision rather than have us make it now.

Mr. McCLELLAN. That is what I am undertaking to do. But I said that we could withhold action on it. I do not think we will have a conference immediately. Certainly I do not have any intention of doing so until after the military authorization has passed. Then we would be governed accordingly, because the question will be resolved by that committee. Whatever is resolved there would be the will of the Senate and its committee, and we would certainly follow that recommendation.

Mr. KENNEDY. Mr. President, will the Senator accept the amendment?

Mr. McCLELLAN. I am prepared to accept it. The distinguished Senator from North Dakota sponsored the amendment, and I would like to defer to him. But I truly think this is the way it ought to be worked out: I think the Armed Services Committee should bring in, in the authorization bill, a provision dealing with it.

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

Mr. McCLELLAN. I yield.

Mr. YOUNG. Since there are about nine other money provisions in the bill that are not authorized, we should hold up a conference with the House of Representatives until armed services has acted. If we leave this provision in there, it will still be up to the Armed Services Committee to determine what should be done.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield?

Mr. McCLELLAN. I yield.

Mr. HARRY F. BYRD, JR. Would it be the intent, then, not to have a conference on this bill until after the authorization?

Mr. McCLELLAN. I have so stated. It is not my intention to hold a conference on this measure until after the Senate has acted on the authorization bill. Whatever the Senate does then will guide us.

Mr. HARRY F. BYRD, JR. But this is a supplemental bill. Presumably the money items require some speed.

Mr. McCLELLAN. There are several money items in this bill that are not authorized, and we have stated in the bill that the appropriations, where the money is not authorized, are made subject to their being authorized, which means that if these money items go through, there has to be authorization of them by legislation. These money items cannot be appropriated and will not be appropriated, under the terms of the bill, until and unless there is authorization legislation for them.

I have no special interest. I think we are fully protected. We would naturally do whatever was the will of the Senate in the matter. Whatever the Senate does. But this gives us an opportunity to go to conference with whatever provision is enacted in the authorization bill.

Bear in mind, the House of Representatives has already acted on its authorization bill, and we would have to go to conference, too, I am sure, to work it out.

Mr. KENNEDY. As I understand, the House of Representatives does not have this particular provision in its legislation.

Mr. McCLELLAN. It has part of it. It has "no volunteer for enlistment in the Armed Forces shall be denied enlistment solely because of his not having a high school diploma."

That is half of it.

Mr. KENNEDY. But that does not seem to repeal the particular requirement of the law which says there will not be less than a certain percentage. I think that should be open to legislative counsel's reading of that. Second, it does not include the waiving of the 18-percent restriction.

Mr. HARRY F. BYRD, JR. On the amendment submitted by the Senator from North Dakota, would it not prejudice the position of the Armed Services Committee?

Mr. KENNEDY. It would appear so to me. With the review of the record and our disclaimer, nevertheless it would have gone through, and I think it would have that effect.

Mr. HARRY F. BYRD, JR. I do not think we really have, today, the facts showing what percentage and category of personnel there are in each of the four services, what the enlistment rate has been in the last 30 to 60 days, and all that. It seems to me there is a great deal of information the Senate needs to have before making a basic decision like this.

Mr. KENNEDY. These are exactly the reasons why this amendment was raised. I would hope we could have acceptance of the amendment, with the understanding that we would inquire of the Armed Services Committee and ask their earliest possible attention to the entire question of the manpower policies of the Volunteer Army. I would hope the manager of the bill would accept the amendment in that spirit.

Mr. YOUNG. Mr. President, I would like very much to do that, but this is so important to the armed services: we either have to go back to the draft or try to get this voluntary system working. We cannot deny these minority groups the right to be in the armed services, and they can get a good education and still serve in the armed services. I think this is very important. So I would be unwilling to accept this amendment.

Mr. KENNEDY. This is the very issue, Mr. President, whether we are going to go back to a random selective service or draft, or how we make the Volunteer Army work in a way that achieves the goal of equity and in a way that assures the necessary quality of manpower. Quite frankly, I think it would be a matter the Armed Services Committee ought to consider carefully. So, Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. KENNEDY. Is it appropriate for me at this time to raise the question whether this particular provision that exists in the bill now, the section which is identified as section 406, is legislation on an appropriation bill and therefore out of order?

The PRESIDING OFFICER. The Senator can raise the point of order after time on the amendment has been yielded back.

Mr. KENNEDY. Well, Mr. President, I am prepared to yield back the remainder of my time.

Mr. McCLELLAN. I am prepared to yield back the remainder of the time on this amendment. I think the Senator

from Virginia wants to ask some questions.

Is that on this amendment?

Mr. HARRY F. BYRD, JR. On this amendment.

Mr. KENNEDY. I withhold that, then, Mr. President.

Mr. HARRY F. BYRD, JR. Before the Senator does that, could I address a parliamentary inquiry to the Chair?

The PRESIDING OFFICER. The Senator will state it.

Mr. HARRY F. BYRD, JR. What is the schedule of the Senate? Is it not correct that in another 2½ minutes the Senate will go on another piece of legislation?

The PRESIDING OFFICER. The Senator is correct. At 12 o'clock the Senate is scheduled to resume consideration of S. 3203.

Mr. MANSFIELD. Mr. President, there is a proviso, however, that if this bill could be disposed of within 12 or 15 minutes after 12 o'clock, that would be done. Otherwise, we would go on to the other legislation. I would hope we could get this bill out of the way as quickly as possible.

Mr. HARRY F. BYRD, JR. If the Senator will yield, we have, of course, the pending amendment, and then I had in mind a brief colloquy with the distinguished chairman of the committee on the bill itself, which would be separate from the amendment.

Mr. McCLELLAN. We would have time for that, I think.

Mr. MANSFIELD. A brief colloquy would allow the leadership to keep its word, but I believe the Senator from Massachusetts has raised a point of order, and I would like the Chair at this time to make its findings known on that.

Mr. McCLELLAN. We would have to yield back time on the amendment. I yield back the remainder of my time on the amendment.

Mr. KENNEDY. I yield back the remainder of my time. Then, Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. KENNEDY. Is section 406 legislation on an appropriation bill?

The PRESIDING OFFICER. The Senator is correct. It is, under rule XVI, legislation on an appropriation bill.

Mr. KENNEDY. Is it in order, Mr. President, to legislate on an appropriation bill?

The PRESIDING OFFICER. The Senator may make such a point of order.

Mr. KENNEDY. I make that point of order, Mr. President.

The PRESIDING OFFICER. The point of order is sustained. The bill is now open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read the third time.

The bill (H.R. 14013) was read the third time.

Mr. KENNEDY. Mr. President, as we consider the second supplemental appropriations bill today, we should be pleased that one request for funds does not appear. This was the administration's request for $29 million to expand U.S. Navy facilities on the British-owned island of Diego Garcia. Fortunately, the Armed Services Committee deleted this provision.

I say "fortunately," because I believe it is imperative for the United States and the Soviet Union to refrain from a new arms race in the Indian Ocean.

Many Americans are concerned that the prospective reopening of the Suez Canal will lead to a significant increase in Soviet naval power in the Indian Ocean. This may prove to be so and, if so, might require an appropriate U.S. response. Yet it is important in the meantime for the United States to refrain from taking any action that would make it more likely that the Russians would take such a destabilizing action.

In time, some U.S. naval facilities in the Indian Ocean, along the lines of that proposed by the administration for Diego Garcia, might prove to be in our national interest. It is not in our interest, today. Rather, we should be seeking in all ways to prevent a naval arms race with the Soviet Union.

I have returned this week from the Soviet Union, where I raised the issue of limiting arms in the Indian Ocean with top Soviet leaders. And I am now convinced more than ever that we must work with the Russians to prevent misunderstanding, naval competition, and perhaps even conflict, in this distant but important part of the globe.

To this end, I have joined with the distinguished Senator from Rhode Island (Mr. PELL) in introducing Senate Joint Resolution 76. This resolution calls upon President Nixon to seek direct negotiations with the Soviet Union on arms limitation in the Indian Ocean. These talks could take place either bilaterally, or within the U.N. Ad Hoc Committee on the Indian Ocean, of which the Soviet Union and ourselves are not now members.

Mr. President, as this resolution proceeds through the Senate, I will urge the support of my colleagues for it. In the meantime, it is important that we in the Senate support the action of the Armed Services Committee in deleting funds for the naval facility on Diego Garcia. The House has already approved this supplemental appropriation. Therefore, it is important that we be on record as opposing it, as the legislation goes to conference.

Mr. President, I urge the Senate's conferees to support the Senate's position on this issue when the supplemental appropriation goes to conference.

The PRESIDING OFFICER. The question is, Shall the bill pass?

Who yields time?

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator from Arkansas yield for a couple of questions?

Mr. McCLELLAN. I yield.

Mr. HARRY F. BYRD, JR. First, I want to commend the able Senator from Arkansas for the work that he has done, not only on this appropriation bill, but on all the appropriation bills since he has become chairman. I know of his deep concern and deep interest in bringing about some fiscal sanity and some fiscal solvency to our Government. I know that no one has worked harder to achieve that end than has the distinguished senior Senator from Arkansas. It is a very difficult job that he has, in serving as chairman of the Appropriations Committee, handling such a vast amount of tax funds.

I should like to address two questions to the distinguished Senator if I may. One question will deal with budget authority and the other with outlays.

In January of 1973, the President submitted a request to Congress for $288 billion in budget authority.

My question is this: If H.R. 14013 as it now stands as recommended by the committee becomes law, what will be the total budget authority for fiscal year 1974?

Mr. McCLELLAN. I am advised by our staff that the total budget authority would be approximately $306.1 billion. That would be the total budget authority for fiscal year 1974, including permanent budget authority and all other legislative actions not considered through the regular appropriation process.

Mr. HARRY F. BYRD, JR. That would be the total budget authority for fiscal year 1974?

Mr. McCLELLAN. Yes, sir.

Mr. HARRY F. BYRD, JR. I thank the Senator.

The second question deals with outlays. The President's estimated budget outlays for fiscal year 1974, when he submitted his budget in January 1973, was $269 billion. What is the estimate of the Appropriations Committee as to the total outlays for fiscal year 1974, assuming that the pending legislation as it now stands becomes law?

Mr. McCLELLAN. I believe the figure the Senator gave of $269 billion was in round numbers?

Mr. HARRY F. BYRD, JR. That is correct.

Mr. McCLELLAN. That figure was $268,772 billion, as originally submitted.

Mr. HARRY F. BYRD, JR. Yes. I rounded off the figure to $269 billion.

Mr. McCLELLAN. With this supplemental bill, it is estimated that the total outlays would be about $273.4 billion. I may say that the revised budget outlay estimate shown in the 1975 budget is $274,660 billion. That is the revised estimate for the outlays. But under the action that the committee proposes including inaction on legislative proposals, the outlays would be reduced somewhat from $274,660 billion to about $273,400 billion.

Mr. HARRY F. BYRD, JR. So what the committee did, it took the——

Mr. McCLELLAN. It would be a reduction of $1.2 billion.

Mr. HARRY F. BYRD, JR. Nearly one billion and a half?

Mr. McCLELLAN. No, $1.2 billion. Take $273.4 billion from $274.6 billion and that would be $1.2 billion less in outlays.

Mr. HARRY F. BYRD, JR. That the committee has reduced. That would include the legislation before us.

Mr. McCLELLAN. That includes the supplemental——

Mr. HARRY F. BYRD, JR. It deals only with the supplemental. That was the request for $11.1 billion and that is reduced to $9.6 billion, in new budget authority.

Mr. McCLELLAN. I believe that figure is correct.

Mr. HARRY F. BYRD, JR. I thank the Senator. If the Senator would yield me just 2 more minutes?

Mr. McCLELLAN. I am glad to yield.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks two tables which I have had prepared dealing with Government deficits, the interest on the national debt and other information, as well as figures showing the receipts and outlays for various years.

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

Mr. HARRY F. BYRD, JR. Mr. President, I again express deep concern about the Government's financial situation. It is very important that we get back to a balanced budget. We have had enough deficits in recent years. The continued and increasing large deficits are the major cause of inflation. The Senator from Arkansas and the committee which he heads is making an effort to bring some order out of chaos. But it is a very difficult job. I recognize that. It will take some time to get back to a balanced budget but I think it is important that an effort be made at the earliest possible time. Government spending is out of control. While I favor many of the items in this supplemental appropriation bill, I shall vote against it as a means of expressing my deep concern over continual deficit spending and the inflation which results from it.

EXHIBIT 1

DEFICITS IN FEDERAL FUNDS AND INTEREST ON THE NATIONAL DEBT, 1956–75, INCLUSIVE

[Prepared by Senator Harry F. Byrd, Jr., of Virginia]

[In billions of dollars]

	Receipts	Outlays	Surplus (+) or deficit (−)	Debt interest
1956	65.4	63.8	+1.6	6.8
1957	68.8	67.1	+1.7	7.3
1958	66.6	69.7	−3.1	7.8
1959	65.8	77.0	−11.2	7.8
1960	75.7	74.9	+.8	9.5
1961	75.2	79.3	−4.1	9.3
1962	79.7	86.6	−6.9	9.5
1963	83.6	90.1	−6.5	10.3
1964	87.2	95.8	−8.6	11.0
1965	90.9	94.8	−3.9	11.8
1966	101.4	106.5	−5.1	12.6
1967	111.8	126.8	−15.0	14.2
1968	114.7	143.1	−28.4	15.6
1969	143.3	148.8	−5.5	17.7
1970	143.2	156.3	−13.1	20.0
1971	133.7	163.7	−30.0	21.6
1972	148.8	178.0	−29.2	22.5
1973	161.4	186.4	−25.0	24.2
1974 [1]	185.6	203.7	−18.1	27.6
1975 [1]	202.8	220.6	−17.9	29.1
20-yr total	2,205.6	2,433.0	−227.5	296.4

RECEIPTS

[In billions of dollars]

	Fiscal years—							
	1968	1969	1970	1971	1972	1973	1974 [1]	1975 [1]
Individual income taxes	69	87.0	90	86	95	103	118	129
Corporate income taxes	29	37.0	33	27	32	36	43	48
Total income taxes	98	124.0	123	113	126	139	161	177
Excise taxes (excluding highway)	10	11.0	11	10	11	10	11	11
Estate and gift	3	3.0	4	4	5	5	5	6
Customs	2	2.0	2	3	3	3	4	4
Miscellaneous	3	3.0	3	4	4	4	5	5
Total Federal fund receipts	116	143.0	143	134	149	161	186	203
Trust funds (social security and highway, less interfund transactions)	38	44.0	51	54	60	71	84	92
Total	154	188.0	194	188	209	232	270	295

EXPENDITURES

Federal funds	143	149.0	156	164	178	186	204	221
Trust funds (less interfund transactions)	36	36.0	40	48	54	61	71	83
Total	179	185.0	196	212	232	247	275	304
Unified budget surplus (+) or deficit (−)	−25	+3.1	−2	−24	−23	−15	−5	−9
Federal funds deficit	27	6.0	13	30	29	25	18	18

[1] Estimated figures

Source: Office of Management and Budget and Treasury Department.

Mr. McCLELLAN. Mr. President, I should like to observe for the benefit of the Senate that, after all, the Appropriations Committee does not deal with the total amount of the budget by any means. It is only about—what? —40 percent of the budget in budget authority and less than 30 percent in outlays that we really have any control over. The remainder is backdoor spending, permanent authority, and fixed expenditures, over which we can make no reduction.

Mr. HARRY F. BYRD, JR. But the part the Senator has control over he has made reductions on.

Mr. McCLELLAN. We do, but I want to emphasize that we probably could make greater progress if we had complete control, but we do not have it. But for the current fiscal year, 1974, in action on appropriation bills prior to this supplemental we have reduced budget authority by $3.3 billion with a reduction on estimated outlays of one-half billion.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. BELLMON. Mr. President, I rise to call the attention of the Senate to one item in chapter XII over which I have serious misgivings. I refer to the supplemental appropriation requested by the Postal Service. The postage rate increase planned for January 5, 1974, was delayed until March 2, 1974, as a result of action by the Cost of Living Council. Therefore, the Postal Service revenue from mailings was reduced by $236 million in fiscal year 1974. The $236 million was requested by the Postal Service in this supplemental, but that request was cut by the House to $230 million and further cut by our committee to $200 million. In my opinion the full $236 million requested should be appropriated if the Postal Service is to avoid a minus cash position.

Mr. President, the Congress created the Postal Service with the purpose of making the Service largely self-supporting and independent of congressional appropriations, except for amounts necessary to cover the cost of handling Government mail and the other services provided at congressional direction. Also, in creating the Postal Service, many Members of Congress expressed the hope that the level of service provided to the citizens of this country would be materially improved.

At present, the Postal Service has many critics. Most of these are individ-

uals who have been impatient for more rapid progress than has been possible in an organization of some 700,000 Postal employees, operating 35,000 post offices.

Much of the equipment was obsolete and it is taking a considerable amount of time to get the personnel retrained and the facilities modernized. In its efforts to provide better services within the revenues which postal rates produce, the Postal Service has depleted its operating fund down to a level less than the $350 million cash required to meet the payroll every 2 weeks.

Mr. President, we simply cannot have it both ways. If this country is to have prompt, efficient mail delivery, the Postal Service must have the finances available to secure the personnel and facilities needed to move the Nation's mail. In my opinion, the $36 million cut which the Senate is making in this supplemental item is without justification and can only have the result of further damaging the delivery of mail in this Nation.

Having called this matter to the attention of the Senate, it is my intention to support this bill, and urge its speedy adoption by the State.

Mr. CRANSTON. Mr. President, I have a number of reactions and comments regarding the Labor-HEW portion—chapter VII—and the Veterans' Administration portion—in chapter V—of the committee's reported Second Supplemental Appropriations Act, fiscal year 1974, H.R. 14013. Once again, the distinguished Senator from Washington (Mr. MAGNUSON) who serves so ably as chairman of the Appropriations Labor-HEW Subcommittee, has shown himself to be remarkably compassionate and responsive regarding previously unfunded needs in this crucial human resources program area. The country continues to owe him an enormous debt for his vigilance and dedication to insure that these programs receive all the funding that can be squeezed out of a tight budget.

I congratulate him, and the ranking minority member of his subcommittee, Mr. COTTON, as well as the learned Appropriations Committee chairman, Mr. MCCLELLAN, and its ranking minority member, Mr. YOUNG, for their excellent work on this bill as reported, especially chapter VII. And I also want to express my personal appreciation to the committee members with whom I have worked so long and who have been so courteous and cooperative on various programs: the Senator from Missouri (Mr. EAGLETON) on emergency medical services; the Senator from South Carolina (Mr. HOLLINGS) on the veterans cost-of-instruction program; the Senator from Indiana (Mr. BAYH) on public service employment programs; the Senator from New Mexico (Mr. MONTOYA) on bilingual education; and the Senator from Wisconsin (Mr. PROXMIRE) on VA medical care and other veterans' matters.

SOCIAL SERVICES

REHABILITATION ACT OF 1973

Mr. President, as acting chairman of the Subcommittee on the Handicapped during consideration of S. 1875, the Rehabilitation Act of 1973 (now Public Law 93-112), and as chairman of the House-Senate Conference Committee on this legislation, I strongly urge the Senate to support the committee recommendation to appropriate an additional $20 million for basic grants to assist States to meet the needs of handicapped individuals so that they may prepare for and engage in gainful employment. This additional amount would bring the total available for State rehabilitation services to $650 million, the full amount authorized for fiscal year 1974 in section 100(b)(1) of the public law.

This is the same amount, Mr. President, that I recommended to the committee and which was intended in the authorization legislation to represent a minimum authorization level, rather than—as is often the case—a more ideal amount if unlimited Federal dollars were available for expenditures to meet all the program needs authorized in the law.

Further, it should be pointed out that when the Senate and House originally voted an appropriation of $630 million in the first Supplemental Appropriation Act (Public Law 93-245), it was understood that if additional amounts were needed, a supplemental appropriation would be requested. The States have now indicated that they have sufficient funds to match the full Federal allotment of $650 million.

The administration, I might add, has also proposed, in a belated supplemental budget request, a like additional amount for this purpose.

Mr. President, I also concur with the committee recommendation to the Secretary to reconsider the Department of Health, Education, and Welfare's self-imposed spending plan for SRS and spend the previously appropriated funds as intended and provided for by the Congress. The administration's announced policy of cutting back and eventually phasing out the training of rehabilitation personnel continues to concern me gravely, and I have so stated in my own recommendations to the committee.

If the Senator will yield, I have already indicated my support for the recommendation that your committee has made to the Secretary of Health, Education, and Welfare to spend the previously appropriated training funds, as intended and provided by the Congress.

However, on behalf of myself and our distinguishing colleagues on the Labor and Public Welfare Committee's Subcommittee on the Handicaped—the subcommittee chairman, Senator RANDOLPH, whom I had the privilege of collaborating with as author of the Rehabilitation Act of 1973; Senator WILLIAMS, chairman of the full committee; and Senator STAFFORD, ranking minority member of the subcommittee—I would like to raise a question with regard to the fiscal year 1975 training appropriation.

Although the fiscal year 1974 funding level for training represents the level authorized in the law—$27.7 million—it is actually money from two different pots—$15.6 million which was appropriated in the fiscal year 1974 first Supplemental Appropriations Act (Public Law 93-245), and $12.1 million in carryover balances from fiscal year 1973. This latter money was actually obligated in fiscal year 1973 but it is being spent, we are told, for programs in operation during fiscal year 1974.

Our question to the distinguished chairman is this: if SRS now in turn obligates the $15.6 million appropriated in fiscal year 1974, but again does not spend the money until fiscal year 1975, the actual amount of Federal dollars being expended on rehabilitation training programs in fiscal year 1974 will be only $12.1 million and not $27.7 million, the level both Houses of Congress have indicated as the level of rehabilitation training for fiscal year 1974. Using the argument that there are unexpended fiscal year 1974 funds available for fiscal year 1975, the administration can again come back with a budget request for fiscal year 1975 that is considerably below the authorization level, despite the recommendation of your committee for an annual program level of $27 million. I and my colleagues on the Subcommittee on the Handicapped do not believe that this was what was intended when we established the target authorization figures in Public Law 93-112—those figures were meant to be actual program operating levels.

Are we correct in assuming that for fiscal year 1975 it will not be acceptable to justify a lower appropriation on the grounds that obligated money from the previous year is being spent in that fiscal year?

Mr. MCCLELLAN. That is correct.

Mr. CRANSTON. I would now like to turn to other matters.

CHILD ABUSE PREVENTION AND TREATMENT ACT

Mr. President, the Child Abuse Prevention and Treatment Act, signed into law by the President on January 31 of this year as Public Law 93-247 authorizes the creation of the first systematic, national program to prevent, identify, and treat child abuse. As a sponsor of the original Senate bill, S. 1191, I had the privilege of chairing joint hearings held in Los Angeles and San Francisco by the Special Subcommittee on Human Resources—which I chair—and the Subcommittee on Employment, Poverty, and Migratory Labor on which I and Senator MONDALE, the author of the bill, serve. Again and again during the hearings on S. 1191 the tragic story of abused children—victims of psychological and emotional abuse as well as the truly shocking incidence of physical abuse—was told.

The new law is a most important law, designed to attempt to come to grips with this appalling national tragedy. Some 100,000 cases of child abuse occur in this Nation annually. I know that no Member of the Congress—and certainly no private citizen—believes that we can let this continue; the cost is simply too great.

Mr. President, the Child Abuse Prevention and Treatment Act would direct the Children's Bureau within the Office of Child Development, DHEW, to begin a program of demonstration projects to local communities and units of Government in an effort to develop successful child abuse prevention programs. I urge the Senate to include in the second supplemental appropriations bill the $4.5 million recommended by the committee

to start up this program, and to extend the availability of these funds through December 31, 1974.

EXTENDED AVAILABILITY OF FUNDS FOR EMS TRAINING PROJECTS

Mr. President, I am particularly pleased that the committee has included language in H.R. 14013 which would make the $6.6 million which has been appropriated in fiscal year 1974 for training grants in emergency medical techniques available through the first quarter of fiscal year 1975. These training authorities result from a provision in the Emergency Medical Services Systems Act of 1973, Public Law 93-154, overwhelmingly accepted in both the House and the Senate last fall.

Mr. President, the extension included in H.R. 14013, which I suggested with Senator EAGLETON, has been made necessary, because of the serious delay in the publication of regulations governing the granting of awards under this authority. These regulations were finally published on April 29, 1 week ago, which is some 5½ months after Public Law 93-154, which I authored in the Senate, was signed into law. This delay has meant that the grant application kits could not be distributed to potential applicants. In fact, Mr. President, it is estimated that the earliest these applicants would receive their kits was yesterday, May 6, with a deadline date for submission of completed applications of May 30. Without an extension in the time for funding availability, it will be virtually impossible for these applications to be adequately reviewed and grants awarded on an equitable basis by June 30.

Training is a vital element of any emergency medical services system and is an area in which there are a large variety of fully justifiable training programs. By extending the time in which the $6.6 million already appropriated will be available for obligation, Congress will have insured that a fair proportion of these programs can be supported. The ability to utilize these training authorities will mean greatly strengthened emergency medical service systems with trained personnel capable of providing the essential emergency medical services.

I am very grateful to Senator EAGLETON and Senator MAGNUSON for their full cooperation in accepting and recommending to other members of the Appropriations Committee my suggestion that the availability of these funds be extended through September of 1975. They have been absolutely steadfast in their support of the programs within the Appropriations Committee and on the Senate floor.

BRAIN INFORMATION SERVICE

Mr. President, I would also like to express my full agreement with the committee's recommendation, included in the Senate report, that the Brain Information Service administered by the Center for the Health Sciences at the University of California at Los Angeles, should receive continued support at least at the level of $300,000 per year. This service has been supported for the last 10 years by the National Institute of Neurological Diseases and Stroke, and its value has been attested to by numerous specialists in the area of neurological sciences throughout the Nation. Last year, over 20,000 conference reports and 43,000 reference bibliographies were distributed; the monthly circulation of the current alerting bulletins was over 10,000. Today the Brain Information Service serves more than 14,000 neuroscientists, clinicians, and institutions. It is apparent the Brain Information Service provides a valuable and useful service to these specialists and, through them, to the improvement of the Nation's ability to advance knowledge in the field of neurological research. The committee's action in recommending continued support at least at the $300,000 level will prevent the imminent phaseout of this valuable program, which had been predicted as a result of severe reductions recommended by the National Institute of Neurological Diseases and Stroke.

DENTAL HEALTH CENTER

Mr. President, the committee has expressed concern that the Dental Health Center in San Francisco be continued at full operation at its present location until its future is discussed in the upcoming hearings on the fiscal year 1975 appropriations bills. I applaud this committee action vigorously. The center has become very much a part of the San Francisco community, and many citizens were quite upset at the prospect of its move to Washington, D.C. It is my understanding that there is considerable equipment invested in the San Francisco center, where, for some time now, the staff has been providing invaluable services to promote the development of innovative curriculums for dental schools throughout the country. This center has been given by HEW primary responsibility for education, research, and training activities in the dental and allied dental professions, and has developed demonstration projects with dental schools throughout the Nation. Its location on the West Coast has not inhibited its ability to be a leading force in the development of dental education. I would hope that when its future is discussed in the upcoming hearings, attention will be focused on whether it could fulfill this role, as the administration proposes, any more competently from Washington than from San Francisco.

EDUCATION

BILINGUAL EDUCATION

I am extremely pleased that the committee has honored the request of several Senators, including myself, by increasing the available funds for the Federal bilingual education program by $20 million. I believe this is a significant statement by the Senate that we will work harder to honor our legislative commitments to bilingual children throughout America. The committee action is especially encouraging, coming as it does so close after the Supreme Court law decision which mandates that the San Francisco Unified School District must take steps to meet the special educational needs of its non-English-speaking students.

FOLLOWTHROUGH

Although just 7 years old, the followthrough program has proved to be a major contribution to early childhood education programs serving disadvantaged children. The administration has sought to phase out the followthrough program over the next 3 years. The committee, however, has wisely provided an additional $20 million to continue the program for an additional year, thereby helping to sustain the impact this important program is having on children leaving Headstart and entering elementary school.

HEW'S REFUSAL TO SPEND MONEY FOR VETERANS COST OF INSTRUCTION

Mr. President, I am especially pleased by the committee's firmly voiced disapproval of HEW's refusal to spend, for use by eligible institutions in this fiscal year, the $25 million already appropriated this fiscal year for the veterans' cost-of-instruction—VCI—program, which I authored in the 1972 Education Amendments—Public Law 92-318. The Labor, Health, Education, and Welfare, and related agencies fiscal year 1974 Appropriations Act, Public Law 93-192, appropriated $25 million for the VCI program. Under the act's anti-impoundment language—that not more than 5 percent of the amount specified in any appropriation provision contained in the act or any activity, program, or project within such appropriation may be withheld from obligation and expenditure for the fiscal year ending June 30, 1974—a minimum of $23.7 million must be obligated for the VCI program during this fiscal year.

Using the Office of Education's theory that the fiscal year 1973 funds, which were finally made available in June 1973, were for use in academic year 1973-74, the law in section 420(d) clearly requires two additional installment payments in this academic year. Thus, the committee has directed that the $23.7 million appropriated and required to be obligated in this fiscal year "obligated without further delay" in order to make the required two remaining installment payments for this academic year. I thank the committee for making this point clear and the Senator from South Carolina (Mr. HOLLINGS) for his support of this program and cooperation with me.

LABOR DEPARTMENT

ADDITIONAL FUNDING FOR PUBLIC SERVICE JOBS

Mr. President, I am particularly gratified by the committee's strong support and recognition of the need for additional funds for public service jobs. This is a full response to the bipartisan recommendations of 13 Senators led by Senator KENNEDY, myself, and Senator JAVITS.

The approximately 117,800 new positions created by the $325 million added by the committee over the House allowance of $500 million, will do much to continue the successful experience of the Nation over the last 2 fiscal years with public service employment programs under the Emergency Employment Act of 1971, and will help alleviate the continuing high level of unemployment across the country. I congratulate and thank the Senator from Indiana (Mr. BAYH), a member of our bipartisan coalition, for taking the lead on this matter in committee.

Public service employment programs have clearly proven their worth, not only

in terms of providing the jobless with meaningful jobs, but also in decreasing the Nation's expenditures for welfare payments and unemployment insurance. In addition, based upon Bureau of Labor Statistics data, it has been estimated that for every 10 public service jobs created, 4 private sector jobs will be created immediately and that another 6 will be generated over the next 18 to 24 months from the gross national product increase resulting from those initial 14 jobs.

Mr. President, this past February, I was privileged to chair a most enlightening day-long hearing in Los Angeles on the unemployment situation in California, and the job impact of—what was at the time called—the energy crisis. This hearing was a joint effort of the Senate Labor and Public Welfare Committee's Special Subcommittee on Human Resources, which I chair, and the Subcommittee on Employment, Poverty, and Migratory Labor, chaired by my colleague from Wisconsin (Mr. NELSON).

Mr. President, at that hearing I called for a massive infusion of public service funding. Nearly every witness at this hearing testified to the past success and the very substantial current, as well as future, need for an adequate public service employment program. Mayor Tom Bradley, of Los Angeles, specifically recommended increased funding for public service employment, and public service employment specialist Prof. Walter Fogel of the UCLA Graduate School of Management, urged a substantial increase in the size of the public employment program.

The new jobs created by the additional funding recommended by the committee for public service employment would be especially helpful to chronically unemployed and underemployed persons, such as blacks and browns and young Vietnam-era veterans. The unemployment rate for veterans under 25 for the first quarter of this year has been 9.9 percent, and a staggering 18.9 percent for non-Caucasian veterans. For all Vietnam-era veterans it is 5.1 percent—meaning 291,000 unemployed veterans based on the Labor Department's first quarter figures. A provision of the new Comprehensive Employment and Training Act—CETA—requires not only that we give veterans special consideration in filling public service jobs, but also requires, in a provision I authored, that special emphasis be placed on the development of jobs which utilize the special skills these veterans acquired in the service, and that prime sponsors must specifically describe how they are going to accomplish these special emphases.

These provisions and the $825 million in the committee bill can be very instrumental in dealing with this national disgrace of intolerably high levels of unemployment among Vietnam-era veterans.

Mr. President, at hearings last week of the Veterans' Affairs Subcommittee on Readjustment, Education, and Employment, the Assistant Secretary for Manpower, William Kolberg, of the Department of Labor pledged, in response to my questions, first, to be an advocate within the administration for spending the full amount appropriated for public service employment, and second, to insure that an appropriately high proportion of the PSE jobs created thereby are filled by Vietnam-era veterans—27 percent of the EEA jobs were—and third, to reexamine the CETA regulations, and those under chapter 41 of title 38, to make appropriate revisions in accordance with the underlying law.

Mr. President, I ask unanimous consent that the full text of my March 27 testimony before the Appropriations Subcommittee on Labor and Health, Education, and Welfare, followed by my April 30 statement concerning veterans' employment problems at the hearing of the Veterans' Affairs Subcommittee on Readjustment, Education, and Employment, be printed in the RECORD at this point:

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

TESTIMONY OF SENATOR ALAN CRANSTON

Mr. Chairman, I very much appreciate your providing me—and my colleagues—the opportunity to testify on our proposed amendment to provide an additional $350 million this fiscal year for the immediate creation of almost 200,000 public service jobs with state and local governmental sponsors across the nation.

There are currently—and there have been for two months now—over 4.7 million Americans out of work. The February figure of 4.75 million very nearly approximates the 5 million level which plagued the nation throughout 1971 and 1972 and which precipitated our decision to appropriate $2.25 billion in that period to fund public service jobs. I think it is clear that the same need for public service job creation is with us today.

While it was somewhat encouraging that January's unemployment rate of 5.2 did not increase even further in February, Julius Shiskin of the Bureau of Labor Statistics, cautioned us—in his March 7th testimony before the Joint Economic Committee—not to expect any substantial decline in the unemployment rate in the near future.

Mr. Chairman, 4.5 million people approximate the entire civilian labor force of Iowa, Kansas, Missouri, and Nebraska being out of work at the same time. Or, if one could imagine the approximate total civilian labor force of Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, Alaska, Idaho, and Washington being unemployed at the same time, then one could begin to appreciate the dimension of the problem in terms of numbers of ruined lives and livelihoods, when we speak of a national unemployment rate of 5.2 percent.

These numbers represent hundreds of thousands of individual personal tragedies—something the present administration has never seemed to understand. The hard facts are that these numbers represent human tragedies, and that words, such as "inflation" and "recession" are not merely the playthings of economists spouting competing theories, but rather represent, literally, the bread and butter and other necessities which bear directly upon the human condition of all Americans.

The spiraling inflation we have been experiencing has created all kinds of hardships for most Americans. But it has been particularly disastrous for the millions of Americans and their families who just cannot find work.

Just last week, the Department of Labor announced that living costs have gone up 10 percent over the past 12 months, the highest annual rise since 1948. The cost of living sped ahead another 1.3 percent last month while the purchasing power of an average hour's labor—for those fortunate enough to have jobs—continued to decline. This February rise was the second largest in any one month since 1951—with the largest occurring last August. Food prices alone have risen 22.2 percent in the last year.

For those Americans who are unemployed, these increases are absolutely devastating.

Mr. Chairman, Americans want and need jobs, not welfare. They want and need jobs, not unemployment compensation. And there are literally millions of important public service jobs which need doing in thousands of localities throughout the Nation.

In my State of California, we are facing an unemployment rate of 7.2 percent. The number of jobless persons soared by 42,400 in January over the previous month, bringing the February total up to 744,000. In February, I was privileged to chair a most enlightening day-long hearing in Los Angeles on the serious unemployment situation in California, and the job impact of the energy crisis. This hearing was a joint effort of the Senate Labor and Public Welfare Committee's Special Subcommittee on Human Resources, which I chair, and the Subcommittee on Employment, Poverty, and Migratory Labor.

We received valuable insights and expertise from important public officials—including the mayor of Los Angeles, Tom Bradley, the chairman of the Los Angeles County Board of Supervisors, Ken Hahn, and former Secretary of Labor, James Hodgson—as well as representatives of labor, industry, and community-based groups, and some outstanding economists. There was a very strong support for a large infusion of public service dollars right away.

Mr. Chairman, whether or not we are still in the midst of an energy "crisis," or whether or not our crisis is but a mere "problem" now, is not the question at this time. Nearly every witness at the February 14 hearing testified to the past success and the very substantial current, as well as future, need for an adequate public service employment program. Mayor Tom Bradley specifically recommended increased funding for public service employment, and public service employment specialist Professor Walter Fogel of the U.C.L.A. Graduate School of Management urged a substantial increase in the size of the public employment program.

I believe the subcommittee is familiar with the evaluations of the E.E.A. program. Even those initially skeptical about public service employment, especially the administration, have come to sing a different, sweeter tune. There seems to be universal agreement that the E.E.A. program—so incredibly relegated to the junk heap in the President's initial F.Y. 1974 budget—has been a successful, productive job creation effort.

I want to make two often overlooked points about public service employment, Mr. Chairman. First, we can fund the 200,000 new jobs we are seeking within our present overall budget level; and second, for each public service job we create, we generate over the next 18 to 24 months another job in the economy, generally in the private sector.

The facts are these in terms of total costs and job generation in connection with public service employment: Expenditures for public service employment will result in savings in welfare payments and unemployment insurance, and increased tax revenues, of 40 cents for every dollar spent. In addition, based upon Bureau of Labor statistics data, it has been estimated that for every 10 public service jobs created, 4 private sector jobs will be created immediately and that another 6 will be generated over the next 18 to 24 months from the gross national product increase resulting from those initial 14 jobs.

Last March, I introduced legislation, the

Public Service Employment Act of 1973 (S. 793), which would provide for a continuing program of public service employment producing 1.15 million public service jobs, and would operate in much the same way as the highly successful programs of the Emergency Employment Act of 1971, but without an unemployment rate trigger. I strongly believe in the need for an ongoing P.S.E. program.

In the interim, however, we propose to use the transition provisions—section 3(a) specifically—of the newly enacted Comprehensive Employment and Training Act of 1973 to provide immediate relief to the millions of Americans currently out of work. Under our proposal, some 197,000 new public service jobs would be created, although we propose in this supplemental only to pay the three-months down payment on the annual salaries for these jobs. When added to the administration's request for funding 35,700 public service jobs in the second supplemental, this would get us started with a total of 232,700 federally-financed local jobs—140,000 nationwide and 92,700 in communities of very high unemployment.

These additional jobs would be especially helpful to chronically unemployed or underemployed persons and those first thrown out of work during the energy "thing", such as blacks and browns and young Vietnam era veterans. The unemployment rate for veterans under twenty-five which has consistently run higher than the over-all national unemployment rate, has jumped again, this time by an explosive 2½ points—from 7.5 percent last December to 10 percent in February.

The amendment we are proposing today would mean many more job opportunities for the 288,000 unemployed Vietnam veterans as a result of a provision we wrote into the new law which requires not only that we give veterans special consideration in filling public service jobs, but that special emphasis be placed on the development of jobs which utilize the special skills these veterans acquired in the service.

Mr. Chairman, March 29, this Friday, has been designated "Vietnam Veterans Day" by a Joint Resolution of Congress. But honoring these veterans with speeches and parades is simply too little and too late. These men and women need adequate GI bill benefits, and more importantly, they need jobs now.

It would be especially fitting, if as we approach the first Vietnam Veterans Day, we could make a promise to these veterans which—unlike far too many of their expectations—would come true, a promise of many more job opportunities available to young veterans through the funding of a large number of new public service jobs right away.

For their sake Mr. Chairman—and for the millions of Americans who are facing unbearable hardships because they, or one or more members of their families, are out of work—I believe we must act quickly to increase the number of available jobs. It is a national disgrace for such great numbers of Americans to be jobless. We can and must begin now to put Americans back to work again—in productive, meaningful ways.

STATEMENT BY SENATOR ALAN CRANSTON AT A HEARING OF THE VETERANS' AFFAIRS SUBCOMMITTEE ON READJUSTMENT, EDUCATION, AND EMPLOYMENT, APRIL 30, 1974

Mr. Kolberg, I have had a brief opportunity to review your prepared statement although I was unable to be here when you read it this morning since I was chairing another hearing. Somehow you and I don't read the unemployment data the same way; nor do we evaluate the labor department's performance on behalf of veterans the same way.

As to the data, I can find no reassurance in a seasonally adjusted unemployment rate of 9.9 per cent for 20–24 year-old veterans for the first three months of this year, up from 7.7 per cent for the last quarter of 1973, with a total of 291,000 Vietnam-era veterans now unemployed. As the department's own bureau of labor statistics points out, in contrast to your optimistic words based on the first quarter of 1974. We are "back up to a year-ago levels" of veterans' unemployment. This is especially true for black, brown, and other minority group veterans, whose unemployment rate for 20–24 year olds nationwide is at an astronomical 18.9 per cent, more than 30 per cent higher than for minority group non-veterans of the same age.

Your data for the west coast show even greater and even more disparate, and even more tragic, data in terms of how much tougher it is for all veterans, and especially minority group veterans, to get jobs. For the west coast, the B.L.S. first quarter report shows an unemployment rate of 16 per cent for young Vietnam-era veterans, fully sixty per cent higher than for all west coast non-veterans 20 to 24 years old. And for all Vietnam-era veterans the west coast rate for minority veterans is 13.2 per cent, fully 42 per cent higher than the 9.3 per cent rate for non-veteran westerners 20–34 years old.

The rates themselves are high enough, but it is absolutely intolerable for veterans, and especially those from disadvantaged backgrounds, to be having so much worse problems getting work than those who did not serve their country.

If that's your idea of "progress," in which we should "take pride", I'd hate to see what you'd characterize as a poor record. I consider the unemployment situation confronting Vietnam-era veterans a national disgrace!

This situation was certainly avoidable had the department chosen merely to, first, obey the law, and, second, to carry out the mandates of the law with some imagination, foresight, and conviction. I'm talking about title five of the 1972 GI bill amendments, entitled the "Veterans' Employment and Readjustment Act of 1972," which I authored with Chairman Hartke. In fact, I first proposed and the Senate adopted that legislation in 1970.

For you to come up here today, fully 19 months after that law was enacted and 16 months after its effective date and with apparent aplomb tell us you've now "filled" all 68 new assistant veterans employment representative positions mandated by the law, is just preposterous.

How can the President boast of having a positive program for veterans if that kind of lethargy is tolerated? Or was it even encouraged—aided and abetted—by the President's fiscal arm, the Office of Management and Budget?

Surely, if these new A.V.E.R.'s had been doing the job Congress intended, we could have avoided this early 1974 reversal for veterans' job opportunities, or at least done a lot better.

Second, as to the Labor Department's record of noncompliance with the 1972 law, the annual report required under the law was three months late and three pages long, and it was incomplete. That's about one-sixth of a page for each of the 19 months since the law was enacted, and what we get raises more questions than it answers.

Third, the Labor Department's totally lethargic, uninterested, implementation—or, more accurately, non-implementation—of the 1972 law is further evidenced by your failure to do anything to require Federal contractors and subcontractors to take any steps at all, beside listing job openings with the local employment service offices, to provide the "special emphasis" which the law requires that these Federal contractors give to the employment of Vietnam-era and service-connected disabled veterans. Absolutely nothing!

I discussed this with you a year ago both at your confirmation hearings and in my office personally and there has been zero performance to do more than require job listing, which you were doing before the law was enacted anyway.

Now, Mr. Secretary, your prepared statement makes some vague allusion to reexamining steps you are taking under the law in light of the enactment of the Comprehensive Employment and Training Act of 1973. That law was enacted more than 4 months ago. Since I authored all the veterans' provisions in C.E.T.A. which you cited, I am particularly interested in the fact that you've finally gotten around to reading them—and the Senate committee report and the conference report which my staff on two separate occasions sent to your office—urging that you do more to carry out the special emphasis program.

SUMMER JOBS

Mr. CRANSTON. Mr. President, I am also encouraged by the committee's recommendation for funding summer youth employment programs. In addition to the House allowance of $208,584,000, together with $91,416,000 in carryover funds, for summer jobs for young people, the committee's inclusion of $173 million to meet new minimum wage requirements and provide for a summer youth recreation and transportation program will do much to improve the opportunities for our Nation's youth this summer. This is a sound response to the bipartisan recommendations submitted by 25 Senators led by Senator JAVITS, in which I joined.

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

Mr. President, title IX, community service employment, under the Older Americans Act, is designed to provide community service jobs for low-income older Americans 55 years of age and older in the fields of education, social services, recreation services, conservation, environmental restoration, economic development, and the like.

During the June 4 San Francisco and August 14 San Diego hearings I chaired last summer on alternatives to institutionalization of the elderly, significant testimony was given on the importance of providing job opportunities for those senior citizens who want and are able to work. Senior citizens are particularly qualified to perform public service jobs that aid their own peer group, whose special problems and experiences are often less well understood and appreciated by younger persons. Many of the jobs that would be created under title IX are designed to offer this very opportunity. Furthermore, jobs provide the purchasing power senior citizens need to live independent lives—a particularly difficult achievement with food prices skyrocketing and cost-of-living increases averaging 14.5 percent for the first quarter of 1974 alone, on an annual basis.

Mr. President, in the first supplemental appropriations bill the Congress appropriated $10 million out of the $100 million authorized to be appropriated for fiscal year 1974 so that this vital program—which has the potential to create as many as 40,000 to 60,000 jobs—could be initiated. The $10 million additional which the committee has recommended to be appropriated in the second sup-

plemental appropriations bill under our consideration today would bring that level up to $20 million. I urge the Senate to support the committee recommendation so that senior citizens—who have especially suffered under the high unemployment rate of recent months—can begin to enjoy the same dignity and respect that more employable groups in our country take for granted.

LEGAL SERVICES PROGRAMS

Mr. President, I am very pleased to note the committee's continuing commitment to legal services programs, and particularly, its recognition of the need for funding to permit the smooth transition of legal services programs presently funded through the Office of Economic Opportunity. The Congress is presently considering, in conference committee, legislation which would establish a separate Legal Services Corporation.

Mr. President, the legal services program has provided our Nation's poor with the same access to the courts and other tribunals as those able to hire attorneys. This vital program has enabled many poor people to pursue their claims and vindicate their rights through the judicial process—in other words to participate fully in our society. Most importantly, the legal services program has helped to restore the faith of one segment of our population in the fairness and viability of our system of law and order.

I welcome the committee's foresight in recognizing the importance of continuity in the provision of legal services to the poor until such time—hopefully in the very near future—that a Legal Services Corporation is created. I thank the Senator from Washington (Mr. MAGNUSON) and the Senator from New Jersey (Mr. CASE) for their continued championship of the program in the Appropriations Committee.

VETERANS' ADMINISTRATION—CHAPTER V
VETERAN'S MEDICAL CARE

The appropriation of $39,535,000 for medical care for veterans included in the second supplemental appropriations bill, 1974, is a direct result of the Senate committee's action in the first supplemental of urging the administration to carefully estimate its needs in carrying out the new authorities mandated by Public Law 93-82, the Veterans' Health Care Expansion Act of 1973, which I authored in the Senate. This direction to the VA in the first supplemental bill Senate committee report was the result of a specific recommendation which I made to the committee with the chairman of the Committee on Veterans' Affairs (Mr. HARTKE). The administration, I believe, has made a careful estimate, and I am pleased that both the House and the Senate have accepted the administration figure. I applaud the work of the distinguished subcommittee chairman for VA appropriations (Mr. PROXMIRE) for his work on this matter.

Mr. KENNEDY. Mr. President, I want to take this opportunity to commend the Senate Appropriations Committee for its actions on approving the second supplemental appropriations bill for fiscal year 1974. I particularly want to recognize the leadership shown by the chairman of the Labor-HEW Appropriations Subcommittee, Senator MAGNUSON.

Responding to the economic situation in the Nation, the committee accepted the basic provisions of an amendment that I cosponsored along with 12 other Senators to substantially increase the funding for public service employment programs.

Some $325 million in additional appropriations over the House-approved $500 million. This will return the appropriations level for fiscal year 1974 to permit some 117,000 additional jobs to be made available across the Nation.

The additional funds place well on the road to returning the level of public service employment to the level achieved during the earlier years of the Emergency Employment Act. From testimony to the committee and from the administration's own evaluation contained within the annual report of the Secretary of Labor, it is evident that this program not only was a marked success but it was applauded by cities, States, by labor unions, and by the workers themselves.

I am hopeful that in the fiscal year 1975 appropriations we can maintain and increase still further the Federal commitment to assisting men and women obtain jobs that offer critical community services.

In addition, the Appropriations Committee accepted an amendment I introduced to add $10 million to the funding of the community service employment program for older Americans.

This increase in the appropriations for fiscal year 1974 for title IX of the Older Americans Comprehensive Services Amendments of 1973 is a forceful reminder to the Department of Labor that the congressional intent was to establish a separate, categorical, and distinct program to provide part-time community service jobs to workers 55 and older and that special revenue sharing was not deemed to be an acceptable answer to their needs.

I ask unanimous consent to place my letter to Senator MAGNUSON on this matter in the RECORD.

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

(See exhibit 1.)

Mr. KENNEDY. Mr. President, in that regard, I am hopeful that the regulations issued by the Department of Labor to shift the direction of the title IX programs to the revenue-sharing model with States and localities replacing national contract agencies as prime sponsors will be reversed.

This is the second appropriations bill which specifically reiterates the intent of Congress, which was spelled out during the legislative history of the authorization measure.

I am enclosing a letter signed by myself, as chief sponsor of the authorizing provisions, and Senator EAGLETON, chairman of the authorizing subcommittee, which underlines our view. The acceptance by the committee of our amendment and our view of the intent of this legislation should make it obvious to the Department of Labor that its regulations will have to be revised to maintain, not only for a single year, but throughout the term of title IX, a separate program in which national contract agencies play a major role.

They were the agencies which produced the successful model programs and they have demonstrated a capability for low-cost administration of these programs that we want to see continued.

I am hopeful now that the additional funds approved in this measure will permit the expansion of the existing title IX programs in other States by many of the same organizations which have currently been operating these pilot programs.

EXHIBIT 1

APRIL 9, 1974.

Hon. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: We are writing to urge that the Senate Appropriations Committee amend the budget request of the President in the area of manpower affairs affecting older workers in the following way. First, we would urge that the language suggested by the Administration which would underline its intent to administer Title IX of the Older Americans Comprehensive Services Amendments of 1973—the Older Workers Community Service Employment Program—through CETA be struck. Second, in its place, we would urge that an additional separate authorization of $10 million for Title IX, to be operated as an independent program as intended by the Congress, and to be used initially for expansion of the national contract programs, be incorporated. This would permit the expansion of the operation mainstream programs in other states and at a level of operation that is both more consistent with the level of authorization and the record of some eight applicants for every available jobslot. Third, we believe that additional language should be incorporated to insist that a substantial portion of the $10 million appropriated by this Committee for Title IX in the previous supplemental appropriations bill be spent through the national contract programs.

As the chief sponsor of the original authorizing bill and the chairman of the authorizing subcommittee, we believe the Labor Department's proposal conflicts with the Congressional intent. What we attempted to do in the Title IX legislation, as this Subcommittee knows all too well, was to capitalize on the experience, the record of low administrative operating costs, the widespread community support, and the generally positive testimony of the elderly participants and the elderly community, regarding the Operation Mainstream program. That program had been operated as a pilot program. We attempted to make it permanent, separate, and nationwide.

It had been operated as a national contract program by various organizations which had demonstrated an ability—far better than the Labor Department's general record in the manpower field or the record of state or local governments in their use of either EEA funds or general revenue sharing funds—in serving low income unemployed workers over 55. And we hoped, as the Senate Committee Report states, that a substantial portion of the funding under Title IX would go to expand these national contract programs. We did not desire to exclude state and local governments but we in no way intended for them to replace the national contract programs as the Labor Department now informs us it intends to do.

Nor do we object to their proposed absorption of the Title IX monies under the same prime sponsorship system as called for in CETA merely because of unsubstantiated fears. We have had a disturbing experience now with general revenue sharing. Its results, as reported in a letter from the General Accounting Office, were that less than one-half of one percent of the funds actually ever found their way to older persons.

In the states and communities, older persons apparently have not been able to obtain their fair share of revenue-sharing funds. Nor does the past experience of the Labor Department in the manpower field justify any better expectation for the CETA program. The average percentage of first-time enrollees under the EEA program in 1972 of persons 55 and over was approximately 5.4 percent. For all manpower programs, it was 1.7 percent. Yet older Americans traditionally represent 20 percent of the unemployed and nearly 25 percent of the poor.

All of these factors seem to justify a reversal of the Labor Department's administrative decision to totally alter the character of the Title IX program as originally passed by the Congress. The legislative paragraph they relied upon was inserted to insure coordination with the CETA program. However, the entire bill and its legislative history substantiates the fact that we were not satisfied with utilizing a special revenue sharing program administered by the states to serve the needs of the elderly. Therefore, we sought to make permanent the Operation Mainstream program as a separate, identifiable, categorical and, to a substantial degree, national contract administered program. It was in this way that we felt it possible to target assistance to meet the needs of older workers. We would hope that the Committee would share our concerns. We believe this proposal is supported by the National Council of Senior Citizens, AARP/NRTA, the National Farmers Union and the National Council on Aging.

We appreciate your consideration on this matter.

Sincerely,

EDWARD M. KENNEDY,
Chairman, Federal State Community Services Subcommittee of Senate Committee on Aging.

THOMAS F. EAGLETON,
Chairman, Senate Subcommittee on Aging.

Mr. McCLELLAN. Mr. President, I yield back all time on the bill.

Mr. YOUNG. Mr. President, I yield back all time.

The PRESIDING OFFICER. All time on the bill has now been yielded back.

The bill having been read the third time, the question is, Shall it pass? 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 Alabama (Mr. ALLEN), the Senator from Missouri (Mr. EAGLETON), the Senator from North Carolina (Mr. ERVIN), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Iowa (Mr. HUGHES), the Senator from Wyoming (Mr. McGEE), the Senator from Ohio (Mr. METZENBAUM), the Senator from Minnesota (Mr. MONDALE), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Florida (Mr. CHILES), is absent on official business.

I further announce that, if present and voting, the Senator from Ohio (Mr. METZENBAUM) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Ohio (Mr. TAFT) is necessarily absent.

I further announce that, if present and voting, the Senator from Ohio (Mr. TAFT) would vote "yea."

The result was announced—yeas 85, nays 1, as follows:

[No. 182 Leg.]

YEAS—85

Abourezk	Fong	Moss
Aiken	Goldwater	Muskie
Baker	Griffin	Nelson
Bartlett	Gurney	Nunn
Bayh	Hansen	Packwood
Beall	Hart	Pastore
Belimon	Haskell	Pearson
Bennett	Hatfield	Pell
Bentsen	Hathaway	Percy
Bible	Helms	Proxmire
Biden	Hollings	Randolph
Brock	Hruska	Ribicoff
Brooke	Huddleston	Roth
Buckley	Humphrey	Schweiker
Burdick	Inouye	Scott, Hugh
Byrd, Robert C.	Jackson	Scott, William L.
Cannon	Javits	Stafford
Case	Johnston	Stennis
Church	Kennedy	Stevens
Clark	Long	Stevenson
Cook	Magnuson	Symington
Cotton	Mansfield	Thurmond
Cranston	Mathias	Tower
Curtis	McClellan	Tunney
Dole	McClure	Weicker
Domenici	McGovern	Williams
Dominick	McIntyre	Young
Eastland	Metcalf	
Fannin	Montoya	

NAYS—1

Byrd, Harry F., Jr.

NOT VOTING—14

Allen	Gravel	Mondale
Chiles	Hartke	Sparkman
Eagleton	Hughes	Taft
Ervin	McGee	Talmadge
Fulbright	Metzenbaum	

So the bill (H.R. 14013) was passed.

Mr. McCLELLAN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. YOUNG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLELLAN. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make any necessary technical and clerical corrections in the engrossment of the Senate amendments.

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

Mr. McCLELLAN. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives on the disagreeing votes thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed the following Senators conferees on the part of the Senate: Messrs. McCLELLAN, MAGNUSON, STENNIS, PASTORE, BIBLE, ROBERT C. BYRD, McGEE, MANSFIELD, PROXMIRE, MONTOYA, INOUYE, HOLLINGS, BAYH, YOUNG, HRUSKA, COTTON, CASE, FONG, BROOKE, HATFIELD, STEVENS, MATHIAS, SCHWEIKER, and BELLMON.

PERSONAL STATEMENT—VOTE ON SUPPLEMENTAL APPROPRIATION BILL

Mr. HARRY F. BYRD, JR. Mr. President, I cast the only vote against the supplemental appropriation bill just passed by the Senate.

I did this to express my deep concern for the Government's financial situation.

I really believe that it is the No. 1 problem facing our Nation—the need to get Federal spending under control, the need to get back to a balanced budget.

We are not going to get the cost of living under control until we get Government spending under control.

There are parts of the supplemental appropriation bill that I favor. I regret the need to vote in opposition to it. But some way or another we must call a halt to the Government's accelerated spending and deficits.

I recognize that the Appropriations Committee reduced the amount requested by the administration, but I feel so keenly about the problem of Government deficits and runaway spending that I concluded to cast my vote in the negative.

I might say that when the budget for the current fiscal year 1974—when that budget was submitted by the President in January 1973, the budget request was for $288 billion in obligational authority. With the passage of the supplemental today, it brings the fiscal 1974 figure some $18 to $19 billion greater than the proposal submitted January a year ago.

With that in mind, I voted in the negative.

One final word: For the 6-year period ending June 30, 1975, the accumulated Federal funds deficit will be $133 billion. Thus, 25 percent of the total national debt will have been incurred during that brief period of time. The annual interest cost of the debt is $30 billion.

COVERAGE AND PROTECTION FOR EMPLOYEES OF NONPROFIT HOSPITALS

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 3203, which the clerk will state by title.

The assistant legislative clerk read the bill by title, as follows:

A bill (S. 3203) to amend the National Labor Relations Act to extend its coverage and protection to employees of nonprofit hospitals, and for other purposes.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. The pending question is on the amendment of the Senator from Colorado (Mr. DOMINICK) relating to the Occupational Health and Safety Act.

Mr. DOMINICK. Mr. President, I do not believe that is the pending question. That was the one that I was going to have brought up, but I would like to bring up at this time—I do not believe

there is any objection—amendment No. 1214.

The PRESIDING OFFICER. Without objection, the clerk will state the amendment.

The assistant legislative clerk proceeded to read the amendment.

Amendment No. 1214 is as follows:

At the end of the bill, add the following new section:

SEC. 2. Section 8(a)(3) of the National Labor Relations Act is amended by inserting before the semicolon at the end thereof a comma and the following: "or (C) if he has reasonable grounds for believing (1) that such employee has been issued a certificate by the National Labor Relations Board either that he is a member of a religious sect or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support any labor organization, or that, even though he is not a member of such a religious sect or division thereof, he holds conscientious objections to membership in any labor organization based upon his religious training and beliefs in relation to a Supreme Being involving duties superior to those arising from any human relation, and (ii) either that such employee has timely paid, in lieu of periodic dues and initiation fees, sums equal to such dues and initiation fees to a nonreligious charitable fund which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, and which is designated by the labor organization and the employee or by such labor organization or employee alone if the other fails upon request to participate in the designation of a fund or, in any case in which different funds are designated by the labor organization and the employee, selected by lot from the funds so designated, or that the labor organization waives such payment, or (iii) that such employee has complied with alternative arrangements mutually agreed upon by such employee and such labor organization".

Mr. DOMINICK. Mr. President, for the benefit of my colleagues who are here, I will explain this amendment very quickly, and I do not really think that anybody on the committee would object to it. I say that because this amendment was adopted by the committee prior to this time, on another bill 2 years ago. The proposal originates from a group of people who have religious scruples against joining a union. Their whole religious training is against that, and in many cases where there are union shops in existence, they are, as we all know, required to join such a union after they have been employed a certain time, as opposed to the old closed shop system, where one had to be a member of the union before he was employed, which we outlawed.

This amendment says that if a person is a member of a religious sect or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support any labor organization, or that, even though he is not a member of such a religious sect or division thereof, he holds conscientious objections to membership in any labor organization, when such an employee has timely paid the equivalent to his dues to a charity which is, under the approved terms of the IRS, in an amount which is equal to what he would otherwise be required to pay, then he can go ahead and work in that employment or that organization.

One of the groups which is very strong in this belief is the Seventh-day Adventists. They do not believe one should be required to join a union if their religious teachings tell them they should not. They agreed, a few years ago, even though it did not become the general law, that this idea, which is a compromise from their original position, will be sufficient as far as they are concerned. They could give to their local hospital or to their own religious sect, or whatever it might be, an amount equivalent to the amount of dues which they would otherwise have to pay, and by so doing could accept employment in a union shop operation, whereas they would not, under their religious training, be allowed to join that particular company.

So I would ask my friend from New Jersey if he has any objection to this kind of amendment.

Mr. WILLIAMS. Mr. President, certainly the principle involved here is a principle that all Senators can accept—the fact that a man's religion is a matter of personal conviction, and matters of that nature, should be understood.

However, there are several practical reasons why I am advised, I hope this amendment would not be added to the bill at this time. The Senator from Ohio, who is most concerned with this measure, of which he is a coauthor, thinks it ought not to be burdened with some of the amendments that might be offered here, because it might affect the ultimate passage.

I am opposed to this amendment, first, on the ground that it is unnecessary and redundant. Union policy and practice already fully recognize the religious convictions of individuals.

The AFL–CIO Executive Council officially declared, nearly 10 years ago:

That unions should accommodate themselves to genuine individual scruples.

The AFL–CIO strongly urged all of its national and international affiliates to:

1. Immediately adopt procedures for respecting sincere personal religious convictions as to union membership or activities; and

2. Undertake to insure that this policy is fully and sympathetically implemented by all local unions.

Mr. President, throughout the Nation, unions have negotiated such provisions in their contracts with employers. I want to emphasize that among these employers are nonprofit hospitals—both religiously affiliated and nonsectarian.

The clauses which unions have negotiated to protect employees with religious scruples are both strong and effective. I ask unanimous consent to place examples of these clauses in the RECORD.

First. The clause in a contract with a Portland, Oreg., hospital reads:

In order to safeguard the rights of nonassociation of employees, based on bonafide religious tenets or teaching of a church or religious body of which an employee is a member, the employee may exercise the choice of joining the union or to pay an amount of money equivalent to regular union dues, initiation fees and assessments, if any, to a non-religious charity mutually agreed upon by the employee and the representatives of the union.

Payments are to be paid on a regular monthly basis or in advance and receipts sent to the secretary-treasurer of the union.

Second. A contract with an Aberdeen, Wash., nursing home:

No employee shall be required to join the union if such joining would be, in good conscience, a violation of his or her religious beliefs and neither the employer, other employees or the union shall in any way discriminate against the said employee for his or her refusal to join the union, provided that any employee refusing to join the union on the basis of religious beliefs shall, as a condition of continued employment, make a monthly contribution in an amount equal to the monthly union dues paid by her fellow employees to a recognized charitable organization located in Grays Harbor Country, for which contribution she shall receive and retain monthly receipts delivering same to the union upon demand.

Third. A collective bargaining agreement with a health acre institution in Tacoma, Wash.

Objections to joining the union which are based on bona fide religious tenets or teaching of a church or religious body of which such employee is a member will be observed. Any such employee shall pay an amount of money equivalent to regular union dues and initiation fee to a non-religious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representatives to which such employee would otherwise pay the dues and initiation fee. The employee shall furnish written proof to the union that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the Department of Labor and industries shall designate the charitable roganization.

Mr. President, I want to point out that in each of the contracts that I have quoted, a union shop agreement had been negotiated. Indeed, it should be clear that free collective bargaining is the most effective vehicle for reconciling union security and individual rights.

I oppose this amendment not only because it is unnecessary in light of union practice, but also because it is grossly impractical.

It is the very essence of labor relations policy that collectively bargained contracts are much more easily enforced than are contracts whose terms have been imposed by a third party.

This amendment flies in the face of good sense and practical administration. It creates a cumbersome process whereby the NLRB must certify that every employee seeking exemption from joining a union is either:

First, a member of a religious sect where traditional tenets or teachings oppose the joining or financing of a union; or

Two, if not a member, holds conscientious objections based on "religious training and beliefs in relation to a Supreme Being involving duties superior to those arising from any human relation."

This procedure would require the board to make an initial factfinding determination as to whether the employee is a bonafide religious objector. Making such a determination would not only be

time-consuming, but it would also involve esoteric and highly sensitive interpretations.

The proposed amendment creates a further problem of burden of proof. The question is left unresolved as to which party would have the burden of establishing that an employee does or does not possess the requisite religious convictions.

As if the first factfinding determination were not cumbersome enough, this amendment would further require still another factfinding determination if the employee files an unfair labor practice charge.

In addition to delegating to the NLRB the task of certifying employees with religious convictions this amendment would burden the board with an additional policing function by providing for a procedure of charitable payments in lieu of periodic dues and initiation fees.

The cumbersome determination and enforcement procedure, which the amendment seeks to impose on unions and the board would be counterproductive. The treatment of employees with religious convictions is better left to the parties through the free collective bargaining process.

So, while the principle is acceptable, I believe there are reservations to including it in this way on this bill.

Mr. DOMINICK. Well, I can understand the Senator from Ohio's feeling that the bill ought to go through without an amendment. Frankly, it has been amended once already by an amendment which he accepted, and I think it would be kind of tough for any of us to vote against religious freedom of this kind.

I am happy to see that the Senator from New Jersey agrees with the principle, but, as he knows, what I am saying is that there ought to be something in the law which makes this type of employment available for people who hold these religious beliefs. I, myself, do not happen to be a member of that sect, but I will say that I have found them to be very, very fine people in all the time I have known them.

Although I had this bill up before in the committee, I think for something like 6 years—and I may be just a little wrong on that—I have never had an opportunity to present it on the floor. I have never had an opportunity to present it in committee except once, when it was adopted.

All I can say is that, with all due deference to the Senator from Ohio—and I think it is unfortunate that he is not here—I do not foresee any opportunity to present this type of amendment in the rest of this session. So I have to take such opportunity as I have, and this is the only bill coming out of the Labor Subcommittee dealing with the NLRA, and it certainly is most germane to the provisions of the National Labor Relations Act.

I would say that if the Senator from New Jersey, despite his feeling about the principle of the bill being right, believes he must be opposed to it, I, in turn, must press for it and will ask for a vote on it.

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

Mr. DOMINICK. I yield.

Mr. WILLIAMS. Mr. President, might I ask the Senator a question or two?

Mr. DOMINICK. Surely.

Mr. WILLIAMS. Mr. President, as I have just pointed out the AFL–CIO, throughout its member unions, recognizes that there are religious groups that have convictions that are antithetical to the membership of the union; and in recognizing that, they in no way permit any discrimination in the employment of someone whose religious convictions keeps that person from becoming a member of the union.

Does the Senator have any examples to the contrary where people have been denied employment because of their religious convictions?

Mr. DOMINICK. Mr. President, I do not have any examples right at the tip of my tongue. However, I would say that members of the Seventh Day Adventists have come to me and said on a number of occasions that they could not get employment, because they are religiously and traditionally against a union. The difficulty, of course, is not that the AFL–CIO may not, policywise, from the top be in favor of this lack of discrimination. The difficulty is that we get a business manager or someone like that who has worked hard in a particular area, is looking for a promotion in his job, and does not want to take in a group of people who will not support his union.

I presume that that is the type of case, or at least is what the Seventh Day Adventists have come to me about.

Mr. CURTIS. Mr. President, will the distinguished Senator yield to me on that point?

Mr. DOMINICK. Mr. President, I am glad to yield to the Senator from Nebraska.

Mr. CURTIS. Mr. President, Nebraska happens to be a State where the union shop is not permitted. Consequently, I cannot report that anyone has been denied employment, because of his religious conviction that he could not join a labor union. However, I have had workers come to me and advise me that they were victims of harassment, because of their feelings that they did not want to join the union. Things were made disagreeable for them in their place of employment.

I would not for a minute imply that all of their fellow workers engage in that type of activity. However, in any organization, there are enthusiasts who feel that everybody should go along and join. As a result, there are barbed insinuations, and sometimes there is actual interference with a man's performance of duty. That makes a disagreeable situation that no honest individual who intends to do an honest day's work should have to put up with.

Mr. DOMINICK. Mr. President, the Senator from Nebraska is, in my opinion, totally right. The Seventh-day Adventists, to whom I have referred quite a few times in this discussion, run a hospital of their own in my State. They have one in Denver which is called the Porter Memorial Hospital. It is a church-run hospital. Under this bill we would be subjecting them to a labor organization. It is true that all the people working in that hospital are not Seventh-day Adventists, although I would presume that the majority of them are. What we are really saying to the people who are there is: "Sure. Go ahead and do your collective bargaining. Bargain with the people who are at the top of the hospital." But the people at the top of the hospital do not, religiously, believe in the union at all.

That makes for a very difficult situation. I can see how that hospital could receive a very severe economic impact in trying to run a good hospital unless we have this kind of provision in the bill.

So I would sincerely hope that the Senator from New Jersey and my friend the Senator from New York will agree to accept this amendment.

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

Mr. WILLIAMS. Mr. President, I yield to the Senator from New York.

Mr. JAVITS. Mr. President, I am troubled by this amendment for a reason quite different from the merits, which I shall discuss in a minute. I am troubled by it, because it seeks to deal with the National Labor Relations Act, and we have resisted such amendments to this bill, which deals only with the question of access of hospital workers to the National Labor Relations Board.

For example, Mr. President, the idea of religious discrimination or discrimination on religious grounds is something to which we are all very sympathetic, of course. However, are we not also very deeply sympathetic to provisions barring all racial discrimination? Yet I have moved to table such an amendment. I will not yield to anyone in my devotion to opposition to racial discrimination, which has been characteristic of my whole public and private life.

I moved to table such an amendment myself, and it was tabled. The reason why I did so was not the merits or demerits of that issue. The essential fact is that if we open the door by any amendment, no matter how plausible or how pleasing, to the National Labor Relations Act, other Senators can say, "OK. If you are going to start going into the National Labor Relations Act, why not go into the whole thing from end to end."

The Senator from Colorado says that he does not know when we will get another labor bill on the floor of the Senate. Well, how do we ever get a labor bill on the floor? There are so many of them that are introduced.

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

Mr. JAVITS. I yield.

Mr. CURTIS. Mr. President, what is the objection to having the Senate consider amendments to the National Labor Relations Act? Why must we close the door or close our minds to them?

Mr. JAVITS. Mr. President, I do not consider it as closing the door or closing our minds. Any Senator, of course, can introduce a bill and offer an amendment, as the Senator from Colorado (Mr. DOMINICK) has done. The Senate will then work its will and control. I make no pretense that I have the right to close any-

thing. As the ranking member of the committee with respect to this bill, so far as this side is concerned, I feel that I may express my view, so that if the bill has in it provisions relating to a generalized revision of the National Labor Relations Act, it has much less chance of either being passed here or, what is more important, ever becoming law, if it gets through the conference.

Let us remember that we are dealing with a Senate bill. It has to go to the House. There are many amendments which Senators can feel justified in trying to have accepted. Once we make these as traditional Christmas tree measures—and we have done that to many other measures—in my judgment, that will doom the measure.

But there is no closed door or closed mind about it at all. The fact is that any Member can introduce a bill or any Member can introduce an amendment. The Senator from Colorado is a very senior member of our committee. He can contend in the committee, as many of us have in the past, for an opportunity to review the whole National Labor Relations Act and amend it.

We did not contemplate, at least I did not and I do not think the committee did, that this bill would be made such a vehicle. One of the dangers of bringing any bill to the floor regarding unionization—and we may have one regarding agriculture, too, which will come along in due course—is that it may be made the vehicle for another complete review of the labor-management statutes, something which would have this measure carry a weight which it cannot support.

Mr. CURTIS. If the Senator will yield further, there are many of us who, not just in the last weeks but over the past several years, have introduced bills and urged the Senate to consider them. On one occasion, I was successful in getting the subcommittee to hold some hearings on amendments to the Occupational Safety and Health Act. Witnesses came in here, traveling some distance at their own expense, and made an excellent case. All they got out of it was a compliment for having made a fine appearance.

I cannot understand the resistance of the committee to opening up the idea that our national labor relations law, in general, should not be subject to amendment. That is what it amounts to, when amendments are tabled and not considered on their merits. I believe that the committee is the agent of the Senate, and I would hope that on this amendment and the others to be offered today we will have an opportunity to vote on them on their merits.

Mr. JAVITS. Mr. President, in the first place, the hearing to which the Senator from Nebraska refers related to the Occupational Health and Safety Act. I believe that the hearing was very productive for the Senator and the constituents who appeared, and there were material changes in the rules and regulations and practices of OSHA which resulted. That was entirely satisfactory as far as I was concerned; indeed, I participated and cooperated in respect of the hearing and the changes.

Nor is there any closed door or lack of consideration for these amendments. The Senate will quite conscientiously vote up or down any motion to table because, in its own judgment, it will decide whether it does or does not wish to have this bill the vehicle for those particular amendments.

The same is true in the committee. The Senator from Colorado, on any day this session, can call up any of the bills which have been introduced, including a new one, and ask for a committee vote, which I would certainly fully facilitate, and I am sure our chairman would agree, which would say, "We want to set a series of hearings on amending the National Labor Relations Act." So I would not say that the door is shut or anyone's mind is shut.

This particular amendment has been debated before. As a matter of fact, it was debated with regard to the repeal of section 14(b), which deals with the question of the union shop and State control of that situation. Senator DOMINICK says, and I accept his word for it, that it was accepted at that time. That was certainly directly germane to that issue. But it is not germane to this issue, in my judgment and that of others who have dealt with this measure, including the Senator from Ohio, who had so much to do with bringing it to the point at which it exists now.

So it is a point which the Senate will pass on in due course.

One other thing I would like to point out is this: I have read the amendment very carefully. I notice a little dichotomy in it, which is understandable.

In the first place, it is significant that there is no proof before us that this matter has worked in a discriminatory way to deprive anyone of any rights or to violate anyone's conscience.

The Senator from Colorado states, and I accept it, that representatives of a given church have approached him and said there is such a situation. But we have no cases. We have had no hearings, nor any cases. I think that is an important point where you are going to strain to put it on a bill which has such a highly specialized purpose.

The other thing I noticed, and I hope the Senator from Colorado will answer this, is that in lines 7, 8, and 9, the reference is to financial support:

> A requirement that a member of such sect or division join or financially support any labor organization.

Then, when you look on the next page, lines 1, 2, and 3, there is the statement:

> He holds conscientious objections to membership in any labor organization based upon his religious training.

What that leads me to ask the Senator, just so that the record may be clear, is whether it is a conscientious objection to membership or a conscientious objection to payment, because the cases are very clear, and this is borne out by the very section Senator DOMINICK wishes to amend, section 8, paragraph (a)(3), that you cannot make anyone join a labor union. They do not have to join a labor union so long as they pay their part of the cost. Indeed, there is a case just decided within the week by the U.S. Court of Appeals for the Second Circuit involving a prominent columnist, Bill Buckley, which deals with that very issue.

So no one is going to make anyone join a union, nor can they make anyone join a union. The question then becomes one of financial support, and the question as to financial support, obviously, is whether that is a problem of conscience, a proper one, and second, whether the scheme by which it is avoided in the amendment, to wit, the payment to some charitable organization, et cetera, really means anything to the union in question which has to bear the cost. The union has an interest in avoiding "free riders." I hope that the Senator will, for the purpose of clarifying this RECORD, address himself to that.

But my basic objection is that we have fought off amendments which relate to the general provisions of the NLRB law, and I deeply believe that is our best policy for getting this situation dealt with involving hospital workers and, therefore, we ought to do the same with this one.

Mr. DOMINICK. Mr. President, I am happy to reply to my distinguished leader in the committee. First, I would say to him that the problem with being in a union is that you have, in many cases, not only voluntary contributions that are asked for, but involuntary ones, if you want to remain a member of the union. If you do not make those payments, you are thrown out. This is standard, I think, in almost any organization; if you do not pay your dues at the country club, you get thrown out of that eventually, too, or someone brings suit against you.

The people who came to see me and talked with me about this some years ago pointed out that their religious tenets are not only against being a member of a union, but supporting one, because they do not believe in unions religiously. Consequently, if you contribute to it, you are in effect supporting it, and this they do not believe in. So the net effect is that if they will not support the union or join it, they cannot, then, become a member of the union, and it means that management opportunities, in any case where you have union shops, are simply knocked out. They cannot be hired.

So we have that problem.

The second thing I want to say to my distinguished friend is that I cannot think of any more germane amendment than this one would be to the hospital bill, because the Seventh Day Adventists in fact run hospitals, and unless we put this in, those people who are not members of that sect will be part of a collective bargaining unit within it. The Seventh Day Adventists will not, and then we will have terrible problems with the hospital and the management of it. From the very beginning, we will have real problems. It is not the fact that this affects employers other than hospitals. Yes, it does. There is no question about

it. But it is specifically germane to this issue with the Seventh Day Adventists running hospitals.

I do not happen to have on the tip of my tongue the names of other religious sects who agree with the philosophy of the Seventh Day Adventists. There are two or three of them, I believe. The Plymouth Brethren is one sect that go this way. I have frankly forgotten the names of the others.

All I can say is that this is not a unique situation where I am bringing up something which has flared from spot to spot around the country before. What I am bringing up is an amendment which will permit these people to run their hospitals in the way they want to and which will permit them to have employment in areas where there is a union shop even though they may be considered being "freeloaders" which was, I think, the phrase used by the Senator from New York. They are not really that, because they are required to give an equivalent amount to a charitable organization. So they are not freeloaders, but they may be "freeloaders" from the point of view of the union. But they are contributing exactly the same amount as they would be if they did not have their religious beliefs.

So, for the life of me, I cannot understand why this would be considered nongermane, nor can I conceive why we should not add this on when it deals with hospitals as well as other forms of employment.

I know that the Senator from New York is going to move to table and I would like to get a vote on that tabling motion. We do have a Policy Committee meeting going on now so I should like to propound a unanimous-consent request and ask unanimous consent that on any tabling motion, the vote on it be taken no sooner than 5 minutes after 2 today.

The PRESIDING OFFICER (Mr. STEVENSON). Is there objection to the request of the Senator from Colorado?

Mr. JAVITS. Mr. President, reserving the right to object, a parliamentary inquiry—if the Senator will yield to me for that purpose——

Mr. DOMINICK. I yield.

Mr. JAVITS. Assuming the motion is not made at this time but is made later in debate, is it possible, by unanimous consent to fix the time for a vote on that motion and to ask for the yeas and nays at that time? The difficulty is that the yeas and nays have not been ordered and cannot be ordered without sufficient Senators being in the Chamber, of course. If we have a quorum call in order to ask for the yeas and nays, we might as well break up the lunch.

So what we should do, as I have no desire to have this vote any sooner, is to provide for a quorum call before the vote so that I can get the yeas and nays and then provide for a vote thereafter.

So, Mr. President, if the Senator will allow me, I should like to suggest an amendment to his unanimous-consent request that without prejudice to my right to move to table the amendment, there may be a call for a quorum at 5 minutes to 2. I have explained that to the Senator—we have a conference at 2 o'clock on a major bill—and that the vote occur upon termination of that quorum call and that I have the opportunity to ask for the yeas and nays.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. JAVITS. Mr. President, I shall make the motion to table in due course, but if the Senator will yield to me further——

Mr. DOMINICK. I yield.

Mr. JAVITS. I should like to argue the merits here. I have heard what the Senator said about endeavoring to make this amendment so directly relevant. It is not a question of germaneness as it is a question of being directly involved with the issue of the hospitals, because the Seventh Day Adventists run these hospitals, or some of them run these hospitals. That may very well be true, but we have already turned down the idea of exempting such religiously run hospitals. We turned that down decisively in an amendment proposed by the distinguished Senator from North Carolina (Mr. ERVIN). This is not an issue of management of hospitals. It is an issue of employees of hospitals. Those employees are not given a union by this statute. They are only given it if, after a vote via NLRB procedures, a majority of the employees indicate they want a union pursuant to the National Labor Relations Act.

The employees of a Seventh-Day Adventist hospital need not be Seventh Day Adventists. If they are, they do not have to vote for a union. They can turn it down. So, automatically, the thing corrects itself.

I hardly see that as an argument for adding this broad-scale amendment, which relates to a broad issue under the National Labor Relations Board, in this bill, just because it has a particular relevance to the bill.

If it is desirable to get on with this business, I was going to suggest to my colleague from Colorado and my colleague from New Jersey that I could make my motion to table, if we are through with debate on this amendment, and the matter could be temporarily laid aside by unanimous consent and the distinguished Senator from Colorado might—and I only suggest this—choose to go on with the debate on his OSHA amendment.

Mr. TAFT. Mr. President, the Senator from Colorado's amendment, as I understand it, would permit an employee by way of certification from the National Labor Relations Board to be exempt from joining or contributing money to a labor organization due to membership in a religious organization that has established teaching tenets against such membership or financial contribution. An individual could also qualify for such a certification, if he holds conscientious objection to membership in any labor organization based upon his religious training and beliefs in relation to a Supreme Being. An employee qualifying under either approach could in lieu of paying periodic dues and initiation fees, pay an equal sum of money to a nonreligious charitable fund exempt from taxation under section 501(c)(3) of the Internal Revenue Code or comply with alternative arrangements mutually agreed upon by the employee and the labor organization.

While I believe the intentions and objections of the Senator from Colorado are quite good with respect to the amendment, I feel constrained to oppose it on procedural grounds. This amendment was not offered during the committee's deliberations on this legislation and while germane to the National Labor Relations Act, it is not germane to S. 3203. No member of the committee is aware of its precise ramifications and practical effect on labor relations in this country. For example, what criteria would the Board use in determining whether a particular religion did or did not qualify for certification? Assuming the religious organization qualified, to what extent would the member have to take part in the religious teachings and observances of the sect? What criteria will the Board apply in the conscientious objection area? Would not the National Labor Relations Board be forced into some of the difficult and troublesome legal and practical questions that have faced the Selective Service Commission on this point? For example, the Supreme Court in *Welsh v. U.S.*, 398 U.S. 333 (1970) held that an individual could qualify as a conscientious objector if opposition to war stemmed not only from religious teachings, but also from deep-seated nonreligious teachings against war.

Would not the same analogy apply with respect to the standards in this proposed amendment?

It has been suggested during debate on this bill that the Board is already overburdened. What would the practical effect of this proposal be? How many potential cases are we talking about here?

Further, I believe it is important to point out that an individual with religious convictions against joining a labor organization can refuse membership in such an organization. To begin with, for all employees in States who have availed themselves of section 14(B) of the act, there is no need for the amendment as these employees do not have to join a labor organization. The question in States not applying 14(B) is the potential for conflict between first amendment religious freedom and the right of the State to regulate an individual's activities in society. The Supreme Court has repeatedly held that the first amendment's protections of religious conscience are not absolute when a religious belief is translated into an act or refusal to act. For example, in *Jacobson v. Mass.*, 197 U.S. 11 (1905), the Court upheld compulsory vaccination requirements even when they offended religious conscience. Other examples are the Court decision in *Braunfeld v. Brown*, 366 U.S. 599 (1961), upholding Sunday closing laws despite claims by sabbatarians that such laws interfered with the free exercise of their religion and, the decision of the Court in *Reynolds v. U.S.*, 98 U.S. 145 (1878), forbidding polygamy by Mormons even

though it was consistent with their religion.

In essence, the Senator's amendment makes a finding that individuals with certain religious convictions can be totally excluded from any financial contribution whatsoever to the collective bargaining process and would, in effect, overrule the following U.S. Circuit Court cases in which the Supreme Court has refused "cert": *Gray v. Gulf, Mobile & Ohio R.R. Co.*, 429 F. 2d 1064 (5th Cir. 2970), cert. denied 400 U.S. 1001 (1970); *Linscotl v. Millers Falls Co.*, 440 F. 2d 14 (1st Cir., 1971), cert. denied 404 U.S. 872 (1971); *Hamond v. United Papermakers & Paperworkers, AFL–CIO, et al.*, 462 F. 2d 174 (6th Cir., 1972), cert. denied 409 U.S. 1028 (1972).

The practice of many labor organizations, as I understand it, is to permit a number of options for payment of dues and initiation fees. As an example, I would cite the AFL–CIO executive counsel statement of union membership and religious objectors found or page 546 of the hearings.

I have reviewed the testimony in the hearings on this point from the Seventh Day Adventist Church, the religious group that I understand the Senator's amendment is primarily directed to, and I certainly am sympathetic with this viewpoint. I am not convinced that it is needed from the testimony, however.

It may very well be that the Senator's amendment will be a desirable part of comprehensive reforms of the act in the future, on which I would seriously consider supporting. As a rider on this bill, however, I do not feel it is appropriate.

Due to its nongermaneness, I will respectfully vote to table the amendment.

Mr. WILLIAMS. Mr. President, there are one or two points here that should be made if we are to leave this and go to the next amendment.

It is certainly true that some of the hospitals that will be the subject matter of this legislation are owned and managed by religious groups that have this conviction against union membership. There is a germaneness here, I am sure. But it seems to me that while this subject matter is germane at this point, it is certainly an unnecessary provision. All experience tells us that this question has been worked out in agreement with the parties. For example, in one place where the Seventh Day Adventists have a nursing home, no one has to join a union if they are a member of that religious group, which conviction says they cannot join a union.

In fact, I should like to bring to your attention that the collective bargaining agreement between the nursing home in Aberdeen, Wash., and the Service Employer International Union which I have just cited is owned and operated by the Seventh-day Adventist Church.

Here is the point, it has been worked out practically in every case by the parties involved. It seems to me most unwise to bring this subject matter to the Federal Government, which will mean a new division in the National Labor Relations Board. I can see it now. Another wing with offices, with those sitting in judgment on whether the people are bona fide members of religious organizations.

Where is the burden of proof here? Who has it under the Senator's amendment?

Mr. DOMINICK. Is that a question directed to me?

Mr. WILLIAMS. That is a question, yes.

Mr. DOMINICK. Oh, yes. A person asserting it certainly has it.

Mr. WILLIAMS. Therefore, we would have the National Labor Relations Board with extra administrative law judges, and I should imagine there would be an appellate division within it. It seems that where it has all been worked out without any problems by the parties, why do we bring this religious question to the National Labor Relations Board?

Mr. DOMINICK. Mr. President, I always enjoy the arguments of my good friend from New Jersey. Obviously, the problems have not been worked out or I would not be introducing this amendment. I have here a resolution dated as far back as 1968 from the General Conference of the Seventh-day Adventists institution, paragraph 5 of which says:

> 5. That responsible boards and administrators of the institutions of the church conduct the affairs of these institutions in harmony with the principles herein outlined. Therefore Seventh-day Adventist institutions cannot either conscientiously or consistently as employing agencies favor or agree to the unionization of the employees in our church-operated institutions.

So I think we have a resolution right on the point. It has not been solved. It is still there.

I do not have one from the Plymouth Brethren—and I want to thank Gene Mittleman for giving me that name—nor do I have it from some of the others who have written in on this matter.

Where we are dealing with what the committee at least thought was equity within the hospitals, why should we not give equity both within the hospitals and elsewhere for religious freedom?

For the life of me, I cannot see why this type of amendment, which is totally germane and which deals with the subject matter we are talking about—namely, hospitals—should be tabled. It does not make any sense to me at all.

Mr. President, I do not have any more requests for time, and I do not have a great deal more to say. If the Senator from New York or the Senator from New Jersey are happy this way, I would suggest that the Senate stand in recess until 5 minutes to 2.

Mr. JAVITS. Mr. President, I have a word or two to say.

It should be pointed out that the resolution read was a 1968 resolution, and that is hardly consistent with saying that it is up to date. But I am willing to assume that that is the position of the Seventh-day Adventists, because they actually testified on this bill. So we have something more current. But even in their testimony, I am advised—and the testimony is before us all—they did not actually cite cases.

The only other point I should like to make is the constitutional point, and that is that you cannot compel a person to belong to a union, although you can make him pay a part of the tab of maintaining a collective-bargaining agency which, pursuant to this act, which is a union.

One of the classic cases to be cited is *Railway Employees Department, AFL, v. Hansel*, decided in 1956, 351 U.S. 225, from which it would be interesting to read one sentence that the Court said:

> We hold that the requirement for financial support of the collective bargaining agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause and does not violate either the First or the Fifth Amendments.

So, Mr. President, I feel that there is no constitutional issue raised by this amendment. It is simply a matter of judgment and policy.

Mr. President, I ask the chairman of the committee and the manager of the bill what he thinks about the procedure now. I am ready to move to table.

Mr. WILLIAMS. If we are going to set this matter aside and go to the next amendment, I would think that would probably improve the time more than a recess would at this point.

Mr. DOMINICK. If I may, I should like to reply to a couple of statements made by the distinguished Senator from New York.

First, I ask unanimous consent to have printed in the RECORD this resolution, captioned "Seventh-day Adventist Institutions and Labor Unions," dated October 8, 1968.

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

SEVENTH-DAY ADVENTIST INSTITUTIONS AND LABOR UNIONS

Whereas, the Scriptures and the writing of Ellen G. White counsel our people to avoid confederacies that might prevent fulfilling their obligations to God or hinder the church in its mission and spiritual ministry, and

Whereas, there is need for more clearly defining the viewpoint and procedure whereby we seek to uphold and implement these positions, it is

Resolved 1. That the church recognizes its responsibility as an employer to deal with all its employees in equity, justice, fairness and a spirit of Christian concern, and in harmony with the laws of the countries where it serves. It maintains that its dealings as an employer should be so fair and just as to negate the need or desire of its employees to seek for third party representation.

2. That the church is opposed to the use of coercion and duress from any and all sources as tools for the accomplishment of economic objectives. The church resists compulsion which might prejudice the accomplishment of its spiritual objectives and lessen the effectiveness of its ministry or which might tend to vest control over its policy-making responsibilities in any third party agency.

3. That because of these principles the church must assert and protect under all circumstances:

a. Its complete freedom to uphold and maintain the basic religious tenets of the church such as Sabbath observance, etc., in its institutional operations:

b. Its complete freedom to establish operating policies in harmony with its stated objectives and within the laws of the land;

c. Its complete freedom to select adminis-

trative, instructional, employed staff and all other personnel whose character qualifications are compatible with the objectives of the church.

4. That it counsel its members as employers and/or employees to refrain from violence, coercion or any methods incompatible with Christian ideals, as instruments in the attainment of social and economic goals. The church espouses the principle of being in the world, but not of the world.

5. That responsible boards and administrators of the institutions of the church conduct the affairs of these institutions in harmony with the principles herein outlined. Therefore Seventh-day Adventist institutions cannot either conscientiously or consistently as employing agencies favor or agree to the unionization of the employees in our church-operated institutions.

(General Conference Officers and Union Conference Presidents Meeting, October 8, 1968.)

Mr. DOMINICK. Mr. President, if the Senator from New York thinks that 1968 is out of date, I hate to think of what 1956 is in the Supreme Court. It is thoroughly out of date.

It is not really a question of the constitutionality as to whether or not one has to be a member of the union or need not be. If there is a union shop agreement and you refuse to join the union for any ground whatsoever, the union can make it so unpleasant that you cannot keep the job. A person can go to the employer and say, "We have this agreement with you, and you are hiring persons who say that under their religious beliefs, they cannot join the union. We do not like that kind of stuff, because they are freeloading on the union." Or, the union can take steps during the process of the working day to make it so unpleasant for the person who has not joined the union that he leaves. Let us not be naive about the fact that the person who has these beliefs is going to have enough money to carry all these cases to the Supreme Court and prove that he is some kind of Horatio Alger in the process.

All I can say is that if we put this amendment in, we will not have that trouble. If we do not put it in, we will continue to have the trouble.

Mr. President, I move that the Senate stand in recess until 10 minutes to 2.

Mr. JAVITS. Mr. President, is that motion debatable?

The PRESIDING OFFICER. The motion is not debatable.

Mr. DOMINICK. Then I withdraw it.

Mr. WILLIAMS. Mr. President, I suggest the absence of a quorum.

Mr. JAVITS. If the Senator will withhold that request, I should like to reply.

Even if we adopt the Senator's amendment, there is no reason why a union cannot try to harass an employer with respect to those employees who are paying into some charity and not dues. The thing is just as broad as it is long.

Second, in my citing cases, I must say it is rather amusing to hear classic cases referred to as out of date. They still are the law. I also mentioned a decision announced last week of the U.S. Court of Appeals for the Second Circuit, in a case involving Bill Buckley, in which the same doctrine was upheld.

I ask unanimous consent that the decision of the Second Circuit Court of Appeals to which I have referred be printed in the RECORD

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

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

William F. Buckley, Jr., National Review, Inc., and M. Stanton Evans, *Plaintiffs-Appellees*, v. American Federation of Television and Radio Artists, *Defendant-Appellant*,

National Labor Relations Board, American Civil Liberties Union, *Amici Curiae*

Before: Waterman, Friendly and Timbers, *Circuit Judges*

Appellant labor union appeals from judgment order below, United States District Court for the Southern District of New York, Brieant, J. The district court held that appellees' rights under the first amendment to the U.S. Constitution were infringed by appellant labor union, a union having "union shop" agreements with media upon which appellees appeared. Upon appeal by the union, it is held not to be an infringement of appellees' first amendment rights to require them to pay dues to the union, and that as to other claims of infringement which are arguable unfair labor practices the National Labor Relations Board has primary jurisdiction.

Reversed and remainded.

C. Dickerman Williams, Baker, Nelson & Williams, New York City; John L. Kilcullen, Edith Hakola, (District of Columbia Bar), for Appellees.

Alexander M. Bickel, Mortimer Becker, Edward Schlesinger, Robert M. Jaffe, New York City, for *Appellant*.

Glen M. Bendixsen, Chief, Spec. Litigation; Stephen C. Yohay, Attorney; Peter G. Nash, General Counsel; John S. Irving, Deputy General Counsel; Patrick Hardin, Assoc. General Counsel; Elliot Moore, Asst. Gen. Counsel, *for National Labor Relations Board*.

Melvin L. Wulf, New York City for *American Civil Liberties Union*.

Waterman, *Circuit Judge:*

This is an appeal by the labor organization, American Federation of Television and Radio Artists (AFTRA) from an order entered in the United States District Court for the Southern District of New York, declaring, in part on constitutional grounds, that any provision of any collective bargaining agreement "requiring, or purporting to require, that [appellees William F. Buckley, Jr. and M. Stanton Evans] continue to be members of [appellant union, American Federation of Television and Radio Artists] pay dues to [appellant union] and/or comply with [appellant union's] orders and regulations, as a condition of" appearing on radio or television in their roles as paid commentators on public affairs is "void and of no effect." Insofar as the appellees' responsibility to tender periodic dues to the union is nullified by the judgment below, we reverse on the merits. Moreover, inasmuch as we hold that the district court was without jurisdiction to adjudicate the other issues raised by the appellees' complaints, which pertained to compulsory union membership and to compulsory compliance with union orders and regulations, we also reverse the remaining portions of the district court's judgment.

With great care the district court accurately set forth the specific facts and circumstances from which this litigation arose. See 354 F. Supp. at 826–836. No useful purpose would be served by a detailed repetition of the presentation so articulately and comprehensively set forth in the opinion below. Moreover, the relative narrowness of the decision we reach today renders immaterial for our purposes much of the factual background developed by the district court. We shall therefore confine our discussion of the facts to those which are within the ambit of the limited role we think a federal court can play in this dispute at the present time.

Both appellees are well-known articulate exponents of a "conservative" political philosophy. They are engaged in a plethora of activities, amongst which are regular appearances on radio and television. Mr. Buckley is the host of his own television program, "Firing Line," in which he usually engages in spirited argument guest spokesmen of "liberal" persuasion. Mr. Evans appears as a participant on the CBS radio series "Spectrum," a program in which on a regular basis a number of spokesmen for differing political and social philosophies express their opinions on topics of their own choosing.

The employing parties with whom Buckley and Evans negotiated their contracts of employment have collective bargaining agreements with AFTRA. These latter agreements, by incorporation of the union's "Code of Fair Practices," obligate the employers to employ only members of AFTRA or persons who became members of AFTRA within thirty days after the commencement of the employment relationship. This "union shop" provision is authorized, but not required, by Section 8(a)(3) of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 158(a)(3), which reads:

(a) It shall be an unfair labor practice for an employer—

In order to establish jurisdiction to reach the merits of this first amendment claim, it might at first blush appear we must resolve the "government action" issue. But this is not necessarily so.

The line between a jurisdictional issue unrelated to the merits of an action and one which depends upon adjudication of the ultimate merits of a case is sometimes a fine line. In fact, many jurisdictional problems cannot be unqualifiedly inserted into one category or the other. It often is difficult to resolve jurisdictional issues without, in effect, reaching determinations on the merits. See, e.g., Comment, 47 N.Y.U.L.Rev. 349, 354 (1972). In *Bell* v. *Hood*, 327 U.S. 678 (1946), the Supreme Court sought to alleviate some of these conceptual incongruities by developing a practical approach. This approach allows a federal court to assume jurisdiction over an action alleging violation of the U.S. Constitution if satisfied by an initial cursory examination that there is, on the merits, a justiciable issue. In *Bell* the plaintiffs sought money damages from the defendants, Federal Bureau of Investigation agents, who were alleged to have improperly searched the plaintiff's premises and to have falsely imprisoned the plaintiffs in derogation of their fourth and fifth amendment rights. The defendants argued that the fourth and fifth amendments represent proscriptions "against the federal government as a government" and could not support a damage suit against particular government employees for allegedly violating those proscriptions. The Court approached the issue of whether such a suit, bottomed upon alleged violations of constitutional limitations, was maintainable—an issue somewhat analogous to the issue of whether a suit alleging violation of the first amendment can be maintained against the private party, AFTRA, here. In *Bell* the Court held that, in the circumstances there alleged, federal jurisdiction to adjudicate the plaintiffs' claims on the merits could *only* be defeated by a showing that an alleged violation of the Constitution is really immaterial to the practical resolution of the litigation and was raised solely for the purpose of achieving jurisdiction, or by a showing that the claim is wholly insubstantial and frivolous. *Id.* at 682–683.

So here, when we apply the practical test of *Bell*, we conclude, without having to decide the issue of whether AFTRA's dues requirement is "government action," that the district court had jurisdiction to adjudicate the

appellee's claims that AFTRA's dues requirement impinges upon appellees' first amendment rights. First of all, the constitutional claim is neither "immaterial" nor presented "solely for the purpose of obtaining jurisdiction." More importantly, although the government action aspect of the claim may be a close question, the claim is not an insubstantial or frivolous one. Indeed, the contrary is true. For instance, an examination of the contrasting views expressed in the majority and concurring opinions in *Linscott* v. *Millers Falls Co., supra,* convinces us that the claim appellees here assert under the Constitution is not made insubstantial and frivolous because of its "government action" aspect.

Having established that we have jurisdiction to decide whether AFTRA's requirement that appellees pay its prescribed dues violates appellees' first amendment rights, we hold there is no violation. In so deciding, we do not need to reach the issue of whether government action is involved. We conclude that even if it were, which we do not intimate, the dues requirement is not constitutionally infirm.

Acts of speech and of expression, although protected by the first amendment, are not so exalted that they can never be, even indirectly, obstructed. *Cox* v. *New Hampshire,* 312 U.S. 569 (1941). Indeed, even with reference to freedom of the press, the Supreme Court has recently reaffirmed what has long been understood to be the law: "[O]therwise valid laws serving substantial public interests may be enforced against the press as against others, despite the possible burden that may be imposed." *Branzburg* v. *Hayes,* 408 U.S. 665, 682–683 (1972). More specifically, where there is a proper governmental purpose for imposing a restraint and where the restraint is imposed so as not to "unwarrantedly abridge" acts normally comprehended within the first amendment, there is no abridgment of first amendment rights. *Cox* v. *New Hampshire, supra* at 574. Nor is there any abridgment of first amendment rights arising from the congressional authorization granting a union the power to collect dues from employees in a "union shop." The congressional purpose in authorizing mandatory union dues is surely a permissible one, for Congress was understandably concerned with minimizing industrial strife and thereby insuring the unimpeded flow of commerce. It was the legislative judgement that these goals are most easily realized if a suitable collective bargaining apparatus exists, see, e.g., *International Association of Machinists v. Street,* 367 U.S. 740, 760 (1961), and so the national labor laws provide for an exclusive bargaining agent to represent each discrete employee NLRA, 29 U.S.C. § 159(a). To enable these agents to fulfill their statutory responsibility to represent all the employees while collectively bargaining with the employer, the statutes permit the levying of mandatory dues on all employees who will reap the benefits of the union's representation of them in the contract negotiations with the employer.

A required tolerance of "free riders," i.e., those who enjoy the benefits of the union's negotiating efforts without assuming a corresponding portion of the union's financial burden, would result not only in flagrant inequity, see, e.g., *NLRB* v. *General Motors Corp.,* 373 U.S. 734, 740–743 (1963); *Radio Officers' Union* v. *NLRB,* 347 U.S. 17, 41 (1954), but might also eventually seriously undermine the union's ability to perform its bargaining function. It is thus manifest that the statutory treatment of mandatory union dues serves a "substantial public interest."

Moreover, we find that the means adopted to achieve this proper purpose of reducing industrial strife are reasonable, and do not "unwarrantedly abridge" free speech. The dues here are not flat fees imposed directly on the exercise of a federal right. See *Murdock* v. *Pennsylvania,* 319 U.S. 105, 113–114 (1943). To the contrary, assuming *arguendo* that government action is involved here, the dues more logically would constitute the employee's share of the expenses of operating a valid labor regulatory system which serves a substantial public purpose. If there is any burden on appellees' free speech it would appear to be no more objectionable than a "nondiscriminatory [form] of general taxation" which can be constitutionally imposed on the communication media. *Branzburg* v. *Hayes,* 408 U.S. 665, 683 (1972); *Grosjean* v. *American Press Co.,* 297 U.S. 233, 250 (1936).

Appellees also contend that they did not seek, and do not desire, to be represented by the union and that as they have not derived any substantial benefit from the union's AFTRA members within thirty days of the inception of the employment relationship. Article XVIII of the AFTRA Constitution, quoted *supra,* gives the union the power to expel from membership any member who "shall fail to observe" any union rule or regulation. At first glance, the union would seem to have attempted to reserve to itself the power to force an employer to discharge an employee by the simple expedient of expelling the employee from union membership for any real or imagined infraction of its rules or regulations. On the other hand, §§ 8 (a)(2) and 8(b)(2)'s substantial limitation on the ability of the union to so affect the employment relationship appears to receive implicit recognition in § 84 itself, which provides for automatic amendment of the section if the NLRA should be "repealed or amended so as to permit a stricter union security clause (emphasis added)." Evans' case is distinguishable from Buckley's case in that Evans's case relies principally on these broad union-drafted documents rather than on the highly specific warnings Buckley received.

However, in any event, it is the function of the NLRB to ascertain whether Evans' controversy is sufficiently developed to enable it to declare the rights of the parties, and, if the controversy has so evolved, whether the union commits or would commit unfair labor practices by indulging in the conduct about which Evans is apprehensive.

Reversed and remanded.

Friendly, *Circuit Judge,* concurring:

I concur in the result and in the majority's holding that § 8(a)(3) is constitutional insofar as it permits a union to require employees in a union shop to pay ordinary dues and fees even if the employees are radio and television commentators. However, I disagree that the issues of compulsory membership and compliance with union regulations, as presented on this appeal, fall within the exclusive jurisdiction of the National Labor Relations Board. The appellees sought a declaratory judgment after AFTRA's union security agreement, authorized by § 8(a)(3) of the Act, violated their constitutional rights, in part because it would expose them to union discipline and require them to become union members. Federal courts must give way to the National Labor Relations Board when the claim is that the conduct in question violates the unfair labor practice provisions of the NLRB. And to the extent that the appellees contend that the union would be committing an unfair labor practice by imposing fines or otherwise disciplining them, I agree that their claim is preempted. However, the real thrust of appellees' argument seems rather to be that the Act authorizes the union to discipline them and is therefore unconstitutional. Since the preemption doctrine does not extend to constitutional attacks on the National Labor Relations Act, see *Seay* v. *McDonnell Douglas Corp.,* 427 F.2d 1002–04 (9 Cir. 1970); *Lewis* v. *AFTRA,* 71 Misc. 2d 253, 336 N.Y.S.2d 56 (Sup. Ct. 1972), *aff'd,* 41 App. Div. 2d 707, 341 N.Y.S.2d 625 (1st Dep't 1973), the district court's jurisdiction over the constitutional claims in this case was not preempted. However, as the court points out in footnote 5, and as the union concedes, an employee under the union shop provision of the Act need not accept "full-fledged" membership in the union, and thus can avoid the disciplinary sanctions to which "full-fledged" members may be subjected. Under this construction, I see no constitutional infirmity in § 8(a)(3) even as applied to persons whose First Amendment protection is of peculiar importance.

Be that as it may, Mr. President, I intend shortly to move to table the amendment, but in the meantime I suggest the absence of a quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

Mr. DOMINICK. I yield.

Mr. JAVITS. Mr. President, I move to table the pending amendment.

RECESS UNTIL 1:50 P.M.

Mr. DOMINICK. Mr. President, I move that the Senate stand in recess until 1:50 p.m. today.

The motion was agreed to; and at 1:19 p.m. the Senate took a recess until 1:50 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. McINTYRE).

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had passed a bill (H.R. 7188) to modify the boundary of the Cibola National Forest, and for other purposes, in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills:

S. 1125. An act to extend through fiscal year 1974 certain expiring appropriations authorizations in the Public Health Service Act, the Community Mental Health Centers Act, and the Developmental Disabilities Services and Facilities Construction Act, and for other purposes;

S. 2509. An act to name structure S-5A of the Central and Southern Florida Flood Control District, located in Palm Beach County, Fla., as the "W. Turner Wallis Pumping Station" in memory of the late W. Turner Wallis, the first secretary-treasurer and chief engineer for the Central and Southern Florida Flood Control District;

H.R. 5759. An act for the relief of Morena Stolsmark;

H.R. 6116. An act for the relief of Gloria Go; and

H.R. 11793. An act to reorganize and consolidate certain functions of the Federal Government in a new Federal Energy Administration in order to promote more efficient management of such functions.

The ACTING PRESIDENT pro tempore (Mr. HASKELL) subsequently signed the enrolled bills.

HOUSE BILL REFERRED

The bill (H.R. 7188) to modify the boundary of the Cibola National Forest, and for other purposes, was read twice by its title and referred to the Committee on Interior and Insular Affairs.

COVERAGE AND PROTECTION FOR EMPLOYEES OF NONPROFIT HOSPITALS

The Senate continued with the consideration of the bill, S. 3203, to amend the National Labor Relations Act to extend its coverage and protection to employees of nonprofit hospitals, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, I demand the yeas and nays on the motion to lay on the table.

The yeas and nays were ordered.

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

Mr. ROBERT C. BYRD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ROBERT C. BYRD. Are we about to vote?

The PRESIDING OFFICER. The Senate is about to vote on the motion by the Senator from New York (Mr. JAVITS) to lay on the table the amendment of the Senator from Colorado (Mr. DOMINICK).

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

The PRESIDING OFFICER. The clerk will call the roll.

The 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 (Mr. MCINTYRE). Without objection, it is so ordered.

The question is on agreeing to the motion to lay on the table the amendment of the Senator from Colorado (Mr. DOMINICK). 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 Alabama (Mr. ALLEN), the Senator from Missouri (Mr. EAGLETON), the Senator from North Carolina (Mr. ERVIN), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Montana (Mr. MANSFIELD), the Senator from Ohio (Mr. METZENBAUM), the Senator from Rhode Island (Mr. PELL), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that the Senator from Florida (Mr. CHILES) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), the Senator from Ohio (Mr. METZENBAUM), and the Senator from Rhode Island (Mr. PELL) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Vermont (Mr. STAFFORD) is necessarily absent.

The result was announced—yeas 50, nays 37, as follows:

[No. 183 Leg.]

YEAS—50

Abourezk	Hathaway	Nunn
Aiken	Hollings	Pastore
Bayh	Huddleston	Pearson
Bentsen	Inouye	Percy
Bible	Jackson	Proxmire
Biden	Javits	Ribicoff
Brooke	Johnston	Schweiker
Burdick	Kennedy	Scott, Hugh
Cannon	Long	Stevens
Case	Magnuson	Stevenson
Church	McGee	Symington
Clark	McGovern	Taft
Cook	McIntyre	Talmadge
Cranston	Mondale	Tunney
Hart	Montoya	Weicker
Hartke	Moss	Williams
Haskell	Muskie	

NAYS—37

Baker	Domenici	McClellan
Bartlett	Dominick	McClure
Beall	Eastland	Metcalf
Bellmon	Fannin	Nelson
Bennett	Fong	Packwood
Brock	Goldwater	Randolph
Buckley	Griffin	Roth
Byrd Harry F., Jr.	Gurney	Scott, William L.
Byrd, Robert C.	Hansen	Stennis
Cotton	Hatfield	Thurmond
Curtis	Helms	Tower
Dole	Hruska	Young
	Mathias	

NOT VOTING—13

Allen	Gravel	Pell
Chiles	Hughes	Sparkman
Eagleton	Humphrey	Stafford
Ervin	Mansfield	
Fulbright	Metzenbaum	

So the motion to lay on the table was agreed to.

Mr. WILLIAMS. Mr. President, I move that the vote by which the motion to table was agreed to be reconsidered.

Mr. JAVITS and Mr. ROBERT C. BYRD moved to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1215

Mr. DOMINICK. Mr. President, on behalf of myself, Senator BENNETT of Utah, Senator BROCK of Tennessee, Senator BUCKLEY of New York, Senator DOLE of Kansas, Senator DOMENICI of New Mexico, Senator EASTLAND of Mississippi, Senator FANNIN of Arizona, Senator GOLDWATER of Arizona, Senator GURNEY of Florida, Senator HANSEN of Wyoming, Senator HATFIELD of Oregon, Senator HELMS of North Carolina, Senator MCCLURE of Idaho, Senator MCINTYRE of New Hampshire, Senator NUNN of Georgia, Senator WILLIAM L. SCOTT of Virginia, Senator THURMOND of South Carolina, Senator TOWER of Texas, Senator BARTLETT of Oklahoma, Senator BAKER of Tennessee, Senator COTTON of New Hampshire, and Senator CURTIS of Nebraska, I call up my amendment No. 1215.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. DOMINICK. 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 is as follows:

On page 1, between lines 2 and 3, insert the following:

"TITLE I—EXTENDING COVERAGE TO EMPLOYEES OF NONPROFIT HOSPITALS".

On page 1, line 3, strike out "That" and insert in lieu thereof: "SEC. 101.".

At the end of the bill add the following new title:

"TITLE II—AMENDMENTS TO THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970".

SEC. 201. That this title may be cited as the "Occupational Safety and Health Act Amendments of 1973".

SEC. 202. Section 6(b)(2) of the Occupational Safety and Health Act of 1970 is amended by inserting at the end of the first sentence the following: "Such proposed rule shall be accompanied by a statement summarizing its economic impact on affected employers, including an estimate of the total costs which will be incurred by employers in each affected industry in complying with such rule.".

SEC. 203. (a)(1) Subsections (b) and (c) of section 9 of the Occupational Safety and Health Act of 1970 are redesignated as subsections (c) and (d), respectively.

(2) Section 9 is further amended by inserting after subsection (a) a new subsection (b) as follows:

"(b) Any employer who is issued a citation and who believes that he maintains work conditions which would meet the criteria for a variance under section 6(d), may apply to the Secretary for such a variance within the time designated in section 10(a) for giving notice of intent to contest a citation. Except where the Secretary finds it frivolous and submitted for the purpose of delay, such application shall result in the suspension of all further proceedings with respect to such citation pending final action by the Secretary on such application. If a variance is granted, the Secretary shall enter an order vacating such citation."

(b) Section 9(c) of such Act (as redesignated by this section) is amended by adding at the end thereof the following: "Such posting shall not be required after (1) such violation has been abated, or (2) a proceeding contesting such citation has been concluded by an order under sections 9(b), 10(c), or 11 vacating or modifying such citation, whichever comes first: *Provided*, That where such order modifies such citation, the citation as modified shall not be required to be posted after the violation has been abated."

SEC. 204(a). Section 17(b) of the Occupational Safety and Health Act of 1970 is amended (1) by striking the word, "shall", and inserting in lieu thereof the word, "may"; and (2) by inserting at the end

thereof the following new sentence: "In determining whether a penalty shall be assessed under this subsection, due consideration shall be given to the gravity of the violation, the good faith of the employer, and the history of previous violations.".

(b) Section 17 of such Act is further amended by striking subsection (c), and redesignating subsections (d), (e), (f), (g), (h), (i), (j), (k), and (l), and all references thereto, as subsections (c), (d), (e), (f), (g), (h), (i), (j), and (k), respectively.

SEC. 5. (a) Section 21 of the Occupational Safety and Health Act of 1970 is amended by changing the heading to read as follows:

"TRAINING, EDUCATION, AND TECHNICAL ASSISTANCE"

(b) Section 21 of such Act is further amended by inserting at the end thereof the following new subsection:

"(d)(1) In order to further carry out his responsibilities under this section, the Secretary shall visit the workplaces of employers having one hundred or fewer employees for the purpose of affording consultation and advice to such employers. Such visits (A) may be conducted only upon a valid request by an employer for consultation and advice at the workplace on the interpretation or applicability of standards or on possible alternative ways of complying with applicable standards, and (B) shall be limited to the matters specified in the request affecting conditions, structures, machines, apparatuses, devices, equipment, or materials in the workplace. Where, after evaluating a request by an employer pursuant to this subsection, the Secretary determines that an alternative means of affording consultation and advice is more appropriate and equally effective, he may provide for such alternative means rather than onsite consultation.

"(2) The Secretary shall make recommendations regarding the elimination of any hazards disclosed within the scope of the onsite consultation. No visit authorized by this subsection shall be regarded as an inspection or investigation under section 8 of the Act and no notices or citations shall be issued nor shall any civil penalties be proposed by the Secretary upon such visit, except that nothing in this subsection shall affect in any manner any provision of this Act the purpose of which is to eliminate imminent dangers.

"(3) Nothing in this subsection shall be deemed to require the Secretary to conduct an inspection under section 8 of the Act of any workplace which has been visited for consultative purposes. The failure of the Secretary to give consultation and advice regarding any specific matter during a consultation visit shall not preclude the issuance of appropriate citations and proposed penalties with respect to that matter.

"(4) In prescribing rules and regulations pursuant to this subsection, the Secretary shall provide for the appropriate separation of functions between officers, employees, or agents who conduct visits pursuant to this subsection and officers, employees, or agents who conduct inspections or investigations under this Act.".

SEC. 205. This title shall take effect sixty days after the date of enactment of this Act.

Mr. DOMINICK. Mr. President, this is known as the OSHA amendment.

The PRESIDING OFFICER. The Chair wishes to announce prior to the debate that time for debate on this amendment shall be limited to 3 hours, with 2 hours for the Senator from Colorado (Mr. DOMINICK) and 1 hour for the Senator from New Jersey (Mr. WILLIAMS), and that the vote on final passage of this bill is to occur no later than 6 p.m.

Who yields time?

Mr. DOMINICK. I yield myself 10 minutes.

Mr. President, I ask for the yeas and nays on this amendment.

The yeas and nays were ordered.

Mr. DOMINICK. Mr. President, in October of 1970 when OSHA legislation was first reported by the Senate Labor Committee, I filed minority views and was joined then by Senator Smith of Illinois. At that time, I suggested that an act to achieve occupational safety and health had to place emphasis on cooperation between employers, employees, and the regulatory agency, and a focus on motivation through "the stick" rather than through "the carrot" was wrong. Well, the bill which eventually became law has, I believe, shown us the wisdom of using "the stick" as a motivating factor. The verdict has been that it is a folly.

In 1972, the President's report on occupational safety and health indicated that only 25 percent of employers inspected were found to be in compliance with the act. Mr. President, the cause of this has not been that employers are seeking to avoid safety and health responsibilities. Rather, I think it is clear that it is the failure of the act to aid in and provide for assistance to employers—especially small ones—which has caused such a protest against OSHA.

I want to make it clear that I am not opposed to the objectives of OSHA, which are to provide a healthful and safe environment in which to work. I am however, opposed to legislation which results in punishing unsuspecting employers while failing to promote and encourage in a constructive manner safety and health improvements in our country's businesses. It was this opposition which led me to introduce S. 1147, a bill to make what I felt were necessary improvements in OSHA. That bill has now been cosponsored by 29 other Senators, all of whom I now wish to thank for their support.

Since that time, the bill has been endorsed by groups ranging from automobile dealers to retail druggists. I have taken a quick check on my correspondence in the office and note that mail from at least 26 different States has come in the last 9 months on OSHA and this bill.

I would hope that my colleagues would review and consider my comments closely as I proceed.

It has now been almost 14 months since I introduced that bill. In the absence of any activity in the interim on the Senate side to move forward on this bill and/or other measures on OSHA, I decided to introduce this bill as an amendment No. 1215 to S. 3203, a Labor Committee bill, dealing with the National Labor Relations Act.

I expect to hear that my amendment should not be passed without hearings to acquire further information. I must respond that in my opinion this bill does not alter the basic thrust of the act, but it would change emphasis from punishment to assistance of employers. My point is that I am now bringing to the floor an amendment which will change the punitive aspects of OSHA, and will in the end, I believe, result in better compliance through assistance and advice.

Mr. President, my amendment has six major provisions. First, advice and technical assistance would be made available to employers having less than 100 employees. Such advice would be provided through onsite consultation when requested by employers and would be limited to matters specified by the employer. OSHA would also be able to provide such assistance through means other than onsite consultations, where more appropriate and equally effective.

I would like to make one or two points clear about this provision of the amendment. In the first place, this amendment would not exempt any employer from coverage, but it does offer a means whereby small employers can get advice. Second, OSHA would not be required to unilaterally provide such assistance to all small employers. Rather, only when a small employer requests such assistance would OSHA provide it. In no way does this prevent OSHA from continuing its activities regarding inspections.

I also understand that it has been suggested by some of the opponents of this measure that there are not enough inspectors now, and we should not, therefore, give added duties to OSHA. I would merely respond to them that there will never be enough inspectors to coerce the employers of this country into Federal compliance, and the solution must be to provide an atmosphere of cooperation.

One of the obvious analogies to my bill is the way in which IRS operates. I do not think that anyone in this room would seriously contend that we would ever be able to provide enough IRS agents to enforce the Internal Revenue Code. Yet, IRS also offers aid to every taxpayer in complying with the law.

Second, the amendment would remove OSHA's discretionary power to assess penalties for nonserious violations on the first inspection. Under the act as presently written, an employer can be fined up to $1,000 for a nonserious violation discovered on the first inspection of his premises. This change would not affect the provisions of the act imposing penalties for willful or repeated violations, or for failure to correct violations within the abatement period prescribed by OSHA. Thus, an employer who received a citation for a nonserious violation could receive a penalty for failure to correct that violation within a reasonable time; and he could be fined up to $10,000 for a subsequent nonserious violation.

As evidence that this is not necessarily a radical idea, let me quote from a recent decision by the Occupational Safety and Health Review Commission, vacating a penalty assessed for a nonserious violation. The employer, who is in the custom steel fabrication business, received a citation and $30 fine for violating a "housekeeping" standard, which requires that "All places of employment, passageways, storerooms, and service rooms shall be kept clean and orderly and in a sanitary condition." The OSHA inspector had found certain electrical cords and

welding cables lying across passageways. The hearing examiner's opinion stated:

In any event the inquiry here, and in like and similar cases, should be as to any useful purpose or function to be derived by the assessment of a $30 penalty for a nonserious violation. Is the penalty to act as a deterrent? Is it to vindicate the breach of a standard? Is it assessed just to sting the respondent? If punishment is the end in view, how does a $30 assessment under all the facts and circumstances here relate to that end? Isn't the end in view to assure so far as possible every workman safe and healthful working conditions? If the answer to the latter question is yes, is there any relevance to a $30 penalty?

He went on to say:

To the employer the connotation is that the omnipotent federal government has moved into his private domain and exacted a fine to punish him for an act of commission or omission of which in the majority of cases he is unaware. He can and does understand, "thou shall not kill," but he is oblivious to, "thou shall not run cords and leads haphazardly in aisleways," when this condition had never, in any prior experience, deprived a workman of a safe place to work.

The PRESIDING OFFICER. The Senator's 10 minutes have expired.

Mr. DOMINICK. Mr. President, I yield myself an additional 5 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. DOMINICK. Third, the bill would change the penalty for serious violations from mandatory to permissive. In determining whether a fine should be assessed, OSHA would be required to take into account the gravity of the violation, the good faith of the employer; that is, whether he had tried to comply, and the history of previous violations. Again, whether or not a penalty is assessed for the first serious violation, the employer would be subject to stringent penalties for failure to abate the violation, and for any subsequent violation. While the amount of a fine for a violation classified by OSHA as "serious" is discretionary under the act—up to $1,000—a fine in some amount is mandatory. I have generally been opposed to mandatory sentences for criminal offenders on the ground that the trial judge should have the discretion to consider all of the circumstances surrounding the crime. I think employers ought to be entitled to at least equal treatment, particularly since this is not supposed to be a criminal statute. It should also be kept in mind that, unlike a criminal defendant, an employer accused of violating an OSHA regulation is not entitled to a trial by a jury of his peers.

I think it is only fair to point out at this juncture that I received a telephone call in my office one day from probably the leading ski boot manufacturer in my State, the Lange Co., which is well known. They said, "We do not know what to do." I said, "What happened?" He said, "We employ 400 people making ski boots, which we have been doing for a great many years. OSHA has just come in and closed down our plant by saying that unless we stopped using a material with which we make our primary affixing agent for the boots, unless we stop using by Thursday of this week," and this was on a Tuesday, "we are not only going to be heavily fined, but they are going to come in and impound all the materials and take care of us in that way."

I said, "And you have never heard of any of this before?"

"No," he said. "This guy has just walked in and said that is an illegal agent we are using in the manufacture of the ski boots and he said, 'You are out of business.'"

It took me quite a while to get the matter straightened out, and to see what other sources of material could be used. The material they were using came from Du Pont and it had been manufactured at Du Pont for, I think 21 years without any adverse effects whatever. All of a sudden the OSHA people decided they had a new wrinkle on this. Maybe another form is now being used, but I do not know what it is.

In any event, our people almost lost their business plus the employment of 400 people.

Mr. AIKEN. Mr. President, will the Senate yield?

Mr. DOMINICK. I yield to the Senator from Vermont.

Mr. AIKEN. Mr. President, on page 4 of the Senator's amendment it is stated on line 4:

In order to further carry out his responsibilities under this section, the Secretary shall visit the work places of employers having 100 or fewer employees for the purpose of affording consultation and advice to such employers.

I would like to know whether the phrase "workplaces of employers" is confined to industrial plants only or does the definition also apply to orchards and other agricultural enterprises?

Mr. DOMINICK. It includes everything.

Mr. AIKEN. Recreational?

Mr. DOMINICK. Recreational, industrial, manufacturing plants, commercial credit plans.

Mr. AIKEN. I know the Senator is aware of the difficulty we have with respect to orchards.

Mr. DOMINICK. I do, and we have the same problem as the Senator from Vermont.

Mr. AIKEN. Also we have recreational businesses.

Mr. DOMINICK. Yes, I know.

Mr. AIKEN. I thank the Senator.

Mr. DOMINICK. Mr. President, fourth, it would establish a procedure under which an employer who has received a citation could apply for a variance from the OSHA standard violated on the ground that work procedures in operation at the time of the citation are equally effective in protecting his employees.

There was a highly entertaining incident which I might cite here. An inspector went to a small marina in California and he pointed to a man in a rowboat who was scraping barnacles off a small boat. The inspector said, "You are in violation of OSHA standards." The man at the marina asked, "Why?" The inspector said, "Because that man out there ought to have a life preserver on. If he were to upset he would be in terrible trouble."

The fellow said, "I do not think he would be. He won a 2-mile swimming race the other day and the water is only 3 feet deep where he is working."

This is the kind of thing it took him 18 months as an employer to overcome in the initial inspection. It seems to me to be totally ridiculous. In that case the water was only 3 feet deep so why in the world would he need any kind of life preserver for that kind of work?

The act now permits an employer to apply for such a variance in advance of an inspection or citation. Under this change, an employer could apply for a variance after receiving a citation, and no penalty, could be assessed, pending review of the application. If a variance were granted, the citation would be withdrawn. OSHA would not be required to suspend enforcement proceedings where the application for a variance was determined to be frivolous or filed for the purpose of delay. This provision would add needed flexibility without reducing the incentive for employers to comply, and without reducing protection to workers.

While this amendment does not include such a provision, I think Congress should consider removing the flat prohibition in the act against advance notice of inspections, and should consider even requiring that employers be given reasonable advance notice except where OSHA finds that to do so would interfere with the inspection or otherwise defeat the purposes of the act. This change would give employers an opportunity to make sure that their safety personnel and/or attorneys are present during the inspection. This would help alleviate the situation where an employer who has decided to contest a citation finds himself at a tremendous disadvantage before the review commission's hearing examiner, because of OSHA's expert witness—the inspector—was present during the inspection, and his was not. To the suggestion that advance notice would give employers the opportunity to correct violations thus avoiding penalties, my response is this: The Occupational Safety and Health Act is not a criminal statute; its objective is to improve working conditions, not to fine employers. That being true, the only rationale for prohibiting advance notice is that such notice would reduce employers' incentives to comply voluntarily with the act. I do not think that argument is valid. Since advance notice would not be required in every case, employers would have no less incentive to make every effort to comply with OSHA regulations as quickly as possible. Moreover, only relatively minor violations could be corrected during the short time between an employer's receipt of notice and arrival of the inspector.

But, I repeat, that is not in this amendment. It would come up in the course of further discussion.

I yield myself 3 more minutes.

Fifth, the amendment would provide that citations for violations need not be posted by employers after such violations have been abated. The act as presently written requires that citations be posted near the site of the violation.

There is not anything wrong with that.

OSHA regulations under the act frequently require posting long after the violation has been corrected. This clearly serves no useful purpose other than to further punish employers, and to damage the morale of their employers.

Sixth, the amendment would require OSHA to consider the economic impact of proposed new standards on affected employers, and to publish in the Federal Register along with such standards a statement summarizing their expected economic impact, including an estimate of the total costs which will be incurred by employers in each affected industry in complying. I think this provision would result in a healthy awareness on the part of OSHA regarding the costs of proposed new standards, and would better enable all interested members of the public to measure the benefits against expected costs, which are, of course, ultimately passed on to consumers.

Let me just say, because I know the argument is coming up that we ought to have hearings on this proposal and bring it up that way. I have written the distinguished chairman, the manager of the bill, on three different occasions and have talked with him innumerable times on the floor, and we still have not got any date for hearings. I have the letters here, which I shall not put into the RECORD, but the dates are March 1973, August 3, 1973, and October 2, 1973. At the minimum, 6 months ago I wrote the last letter. It is over a year ago since I wrote the first. We have not had any hearings. Perhaps 1 day before the bill was put in we had 1 day's hearings, but that was it. There has been nothing since that bill has been put in.

So I say once again, I have done my best to bring this matter to the attention of the committee to try to get hearings. I am not getting hearings, so I am putting it on this bill if I can do so.

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

Mr. DOMINICK. I yield 5 minutes to the Senator from Arizona.

Mr. FANNIN. Mr. President, I strongly support Senator DOMINICK's amendment No. 1215, which is identical with S. 1147, a bill providing for some six changes in the Occupational Safety and Health Act of 1970.

S. 1147 was introduced on March 8, 1973, and I joined with Senator DOMINICK in its introduction. Although 28 other Senators joined as cosponsors, over a year has passed without hearings by the Labor Committee. Under such circumstances it is wholly proper to bring S. 1147 up for Senate consideration while another labor-related bill is being considered.

My own Arizona mail, almost without exception, favors repeal of this law rather than amendment. Most of it comes from small employers. A member of my staff receives all bulletins, regulations, rulings, explanations, and other materials from OSHA. Last year, my staff member informs me, such constituted a stack almost 3 feet high. How in the world can a small employer keep himself informed as to his rights and duties if he has to study such voluminous material and still run his business? OSHA is typical of the many Federal bureaucratic agencies. Big business can live with their regulations by simply adding a couple more lawyers to their staff to keep them informed. Small business cannot do this.

Mr. President, we considered exempting small employers. We met with the argument that preventable accidents are frequent in small business. Therefore, none of the changes proposed in our amendment would exempt any employers from coverage. None of the changes proposed would result in lessened protection for employees.

Soon after passage of OSHA in 1970, my own State of Arizona adopted a State plan. Enforcement was given to the Industrial Commission of Arizona. I personally followed closely the actions of our commission. It hired 26 full-time qualified inspectors. During the period from August 14, 1972 to December 31, 1972, the Arizona Commission made 540 inspections in 128 target industries. It wrote 344 citations and found 1,919 violations. In my opinion, the Arizona Commission in a short time demonstrated its ability to be as effective, if not more effective, than the Federal law. Its activities had the full support of the business community, and I was informed that it had the support of organized labor in the State. I mentioned 344 citations, but the commission's reinspection found compliance in 255 of those citations. This is the kind of administration that achieves results. I am convinced that a law must have the support of a large majority of the businesses it attempts to regulate if it is to be successful.

What happened to the Arizona plan? It was submitted to OSHA on March 7, 1973, and was disapproved. The plan was disapproved because it did not provide for "first instance sanctions." The Arizona Legislature is unwilling to change its law to permit inspectors to come into businesses unannounced and conduct searches for violations. They do not want inspectors rated according to the number of citations issued.

Senator DOMINICK's amendment would remove OSHA's discretionary power to assess penalties for nonserious violations on the first inspection. Under the act as presently written, an employer can be fined up to $1,000 for a nonserious violation discovered on the first inspection of his premises, often a violation of a standard of which the employer was totally ignorant. The amendment would not affect the provisions of the act imposing penalties for willful or repeated violations, or the failure to correct violations within the abatement period prescribed by OSHA.

The amendment would change the penalty for serious violations from mandatory to permissive. In determining whether a fine should be assessed, OSHA would be required to take into account the gravity of the violation and the good faith of the employer. Had he tried to comply? Had there been previous violations?

Another provision of the amendment would require OSHA to provide advice and technical assistance to employers having fewer than 100 employees. Such advice and assistance would be provided only upon request of the employer and would be conducted onsite at the premises. Such consultations would be limited to matters specified by the employer, and no citations could be issued during the consultative visit. At the present time, OSHA cannot provide technical assistance through onsite consultations. If an OSHA inspector observes a violation during a visit to the worksite, he must issue a citation and propose penalties. Thus, many employers are reluctant to seek advice from OSHA.

The amendment also establishes a procedure under which an employer who has received a citation could apply for a variance from the OSHA standard violated on the ground that work procedures in operation at the time of the citation are equally effective in protecting his employees. Under present law, the employer can only apply for a variance in advance of an inspection or citation.

Mr. President, I believe that the Senator from Colorado would agree with me that his amendment would not correct all of the evils of present OSHA enforcement. The amendment merely seeks to correct the most glaring, ill-advised practices. I also want to point out that I am not condemning OSHA. Congress must share the blame, for all of Senator DOMINICK's amendments should have been in the original law. The corrections his amendment makes possible are for the most part corrections which OSHA could not make under present law.

I thank the distinguished Senator from Colorado. I certainly support his amendment.

Mr. DOMINICK. Mr. President, I yield myself 1 minute. I know that the Senator has been very vitally concerned about this amendment.

Mr. President, I yield 10 minutes to the distinguished Senator from Nebraska.

Mr. CURTIS. Mr. President, I am grateful to the senior Senator from Colorado (Mr. DOMINICK) for bringing his amendments to the Occupational Safety and Health Act before this body today.

I am grateful to him for the excellent work he has done in evaluating the legislative wrongs which Congress committed through its enactment of the occupational safety and health law of 1970, and in tailoring an effective reform measure that will retain the safety features while eliminating the oppression.

I am grateful to him for ripping away the chains of bondage that have held every OSHA reform measure prisoner within the Labor and Public Welfare Committee for the past 2 years.

I am grateful to him for having the courage to bring this matter before the full Senate for an accounting to the people who are dependent on this body to exercise a sense of fairness and equity in the legislation it passes.

I am grateful to him, and the people should be grateful to him.

The Occupational Safety and Health

Act of 1970 delegates unconstitutional powers to the Department of Labor to put men and women in jail without a jury trial. It delegates to the Department of Labor the authority to levy fines in the tens of thousands of dollars against individual American citizens without a jury trial.

It completely bypasses the Federal district court level in our court system by arbitrarily defining jail sentences and steep fines meted out by administrative boards as "civil penalties," when in fact they have all the punitive earmarkings of criminal penalties.

It contains the seeds of destruction not only for individual liberty in this country but for the free enterprise system itself.

Both the Labor Department and the Justice Department are aware of the pitfalls of going to trial on the constitutional issues. They have successfully headed off appeal after appeal by compromising at the administrative level, reducing fines, and waiving or foregoing jail sentences, to avoid confrontations at the court of appeals level where OSHA grants the citizen entry to the court system for the first time under this law's peculiar scheme of things.

Both the Labor Department and the Justice Department are trying to avoid a confrontation for the same reasons that Congress enacted OSHA in the first place.

The driving force behind the enactment of the Occupational Safety and Health Act was not a burning desire to reduce industrial accidents or to eliminate hazards to work safety.

The driving force behind the enactment of OSHA was labor union bosses who drafted language and tailored provisions and lobbied for the passage of a bill designed to serve as a union organizing and bargaining tool.

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

Mr. CURTIS. I am happy to yield.

Mr. WILLIAMS. I thought I heard the Senator say that the driving force was not to bring standards for safer working conditions before the people of the country, but something about labor union imposition on us.

Mr. CURTIS. That is correct.

Mr. WILLIAMS. I take offense at that—not personal, but legislative offense. I think the Senator from Colorado will, too. The bill he introduced in 1970 contained most of the provisions that were finally enacted. I am certain that the Senator from Colorado would be the last one to feel that he was pushed by the union leaders into the introduction of that bill.

I am aware that there have been some problems with OSHA, and I know there are probably others. We are dealing with them appropriately, but certainly the motivation here I do question when it is expressed as only a big labor union imposition on us.

I introduced the bill and fought for it. I know what I was fighting for. It was for safer working conditions for the working people of this country.

Mr. CURTIS. I respect the distinguished Senator from New Jersey, and I am sure that my language, when examined, will reflect my true motives. My language was: "The driving force behind the enactment of OSHA." I stand by that.

I have in my files, Mr. President, a case involving a construction company in Nebraska that was inspected and fined on four separate occasions within a period of a few months during which the company was engaged in union negotiations.

A construction contractor from another State wrote to me that the Occupational Safety and Health Act gives union bosses "the very club they need to beat down any contractor who they want to break." This same contractor noted that workmen desiring to harrass their employer could, under the provisions of this law, deliberately create a safety hazard and then bring about an inspection resulting in fines and corrective costs for the employer. He reported that labor newspapers were advertising the law and asking their members to call an advertised telephone number to request inspections.

Fines totaling $36,717 were levied against a Nebraska contractor by the area director of the Occupational Safety and Health Administration following two inspections. The amount was later reduced to a small percentage of the total by an administrative review board after the case was publicized, and the contractor made a fight indicating he would take it to the highest court if necessary.

Within the last 6 weeks I received a letter from a small manufacturing company in Nebraska that I would like to share with the Senate. This company is located in a small manufacturing and agricultural community. An OSHA inspector came to town and conducted inspections of all of the small manufacturers, those having from 5 to 50 employees. The inspector cited numerous violations at each company.

The company that wrote to me reported that a very rough preliminary survey of all of the companies indicated that they will have to make expenditures in the neighborhood of $500,000 or more to correct the causes of the alleged violations.

Let me quote directly from the letter I received from one of these companies. It reads as follows:

> In our case we are a very small company consisting of four full-time employees and three or four part-time employees, and in our particular circumstance it will necessitate a capital outlay of approximately $200,000 for new plant and equipment. The inspector has given us a time limit of September 1 to be out of our present facilities. Although this will be the largest capital outlay that our company has ever had to invest, at the present time it appears that due to our strong credit standing we will be able to carry this type of a loan.

The inspector indicated to this small company that it was possible for companies its size to obtain Small Business Administration loans, at lower than regular commercial loan interest rates, in order to make changes necessary to comply with the Occupational Safety and Health Act. However, in talking with a representative of the Small Business Administration about the possibility, this small company learned the SBA has had "very little success in getting approval for construction plans from OSHA." The company in reporting on its contact with the SBA official gave this explanation:

> He (the SBA official) stated that in trying to get these low-interest loans, the plans and specifications for the company would be submitted and that OSHA would sit on them for six months and then return them stating that they are unacceptable for one reason or another and they would have to be then resubmitted.

The SBA official recommended that the company not pursue this channel of financing as the redtape involved in it made it practically impossible.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CURTIS. Mr. President, may I have 5 more minutes?

Mr. DOMINICK. I yield 5 minutes to the distinguished Senator from Nebraska.

Mr. CURTIS. Mr. President, I am citing these specific instances and quoting from this particular company's experience in order to point out, Mr. President, that the Occupational Safety and Health Act lends itself to many abuses in the use of governmental powers. It is shot through with provisions and procedures that enable autocrats or, better said, bullies to invade the constitutional rights of others. It is heavily oriented to favor the use of governmental power by labor union bosses to force their will and their terms on management. It must be changed, in the interests of fairness and equity in both the labor-management arena and in the area of government regulation of business.

The Dominick bill which is being considered in the form of an amendment today is not the total answer. However, it would make substantial improvements in the act. It would, for example, take away the punitive aspect of violations discovered in the first routine inspection of a place of business and employment. It would provide assistance to employers in meeting the requirements of OSHA, in the interests of maintaining jobs and employment rather than destroying them. I agree with Senator DOMINICK that no one disagrees with the objective sought to be accomplished by OSHA—to provide a safe and healthful environment in which to work for all Americans.

The question is whether Congress is going to continue to allow Federal administrators to enforce excessive safety requirements by bludgeoning the providers of jobs, putting them out of business or forcing them to lay off employees or change to other types of operations such as contracting on an individual basis with each employee so the employees become private entrepreneurs responsible for owning and operating their own equipment.

I have tried to get the Labor Committee to take up these matters and take

corrective action. The committee has been a burial place for all corrective legislation that has been introduced up to the present time. It has been a burial place for a 28-page briefing paper which I hold in my hand, which I prepared from my file of complaints 2 years ago and presented to the committee with a request for action. The committee held hearings to which a number of Nebraskans came and testified on the excesses and abuses that need to be corrected in this law, and still took no action on pending legislation to make the corrections. I appeal to the fairness and commonsense of the Senate to make the necessary changes in the law by adopting the Dominick amendment today.

Mr. President, we are a government of law. We should not have to depend upon regulation. I believe that a test of our fair intentions here will be on whether or not we can have a vote on the merits of the pending amendment.

I yield to the Senator from Colorado.

Mr. DOMINICK. Mr. President, I just want to congratulate the Senator from Nebraska. I know how hard he has worked on this. I have been working with him to the best of my ability all the way through.

I hope we can adopt this amendment. As the Senator has very properly said, we are not trying to gut the law, nor to do anything except as a matter of making remedial law. I think the contribution of the Senator from Nebraska to this debate has been extremely helpful.

Mr. CURTIS. I thank the Senator.

Mr. DOMINICK. I yield 10 minutes to the Senator from Virginia (Mr. WILLIAM L. SCOTT).

Mr. WILLIAM L. SCOTT. Mr. President, I appreciate the Senator's yielding to me, and want to commend him for this amendment.

I am happy to be among those who have cosponsored the amendment. Frankly, I do not think it goes far enough—certainly not as far as I would like it to go. It would seem preferable to take the small businessman out of the act. But this is a step in the right direction, and it should help.

Every Member of this body favors healthy and safe working conditions for employees. I do not believe that this is a matter subject to differences of opinion or subject to debate. Yet my mail and the contact I have with businessmen throughout Virginia indicates that they are being harassed by this act. They do not know, oftentimes, what they can do and what they cannot do under the act.

Big business, the large corporation, can employ people to study regulations, to study the Federal Register, to determine just what the enforcement agency has said the businessman can do and what they cannot do, but it is difficult for the small businessman to learn what the regulations are.

It might even be argued that these regulations constitute a denial of due process of law. We know that due process can be denied in many ways, including the way the law is written or the way it is enforced. Everyone is entitled to notice and an opportunity to be heard.

Oftentimes the small businessman would like to know whether or not the way he is operating his business conflicts with the law or with regulations, but he is afraid to have the inspector come by, inspect his operation, and determine whether or not he is in compliance with the law, because he is afraid of being charged with violations. This is one of the things that, as I understand the amendment by the distinguished Senator from Colorado, is intended to do: help the small businessman learn when he is in violation and when he is not in violation of this act.

This amendment would require OSHA to provide advice and technical assistance to the small businessmen, those having 100 employees or less. Nonserious violations on first inspection would not be penalized under the amendment. It would require OSHA to issue an economic impact statement on the possible effect on small business and employment of new OSHA standards.

I believe experience has shown that the large corporations are able to adapt to new regulations in due time but it is more difficult for the small concern. I recall one small businessman in Virginia, in the construction business, who says that under this act his men are supposed to wear hardhats. He cannot get them to wear hardhats. I think a matter like this is something that he should be able to talk over with the enforcement agency. There are all sorts of small, minute regulations that are difficult, even impossible, for the small businessman to know and enforce.

It just seems to me that in our country, with our emphasis on the free enterprise system, where we feel that the competition in business brings about a higher standard of living for all of us, we should encourage free enterprise, and certainly Government should not harass the free enterprise system as it sometimes does.

The volume of concern of the people throughout my State indicates that this act is not working properly. I believe we can tell whether we have a good law or not by the response of the people of our various States and in our various communities.

Mr. President, let me say that I hope very much that the Senate will see fit to adopt the Dominick amendment. It does not go as far as I would like to see it go. It does require OSHA to provide advice and technical assistance to employers having 100 or fewer employees. It does remove OSHA's discretionary power to assess penalties for nonserious violations on the first inspection. It does change the penalty for serious violation from mandatory to permissive. It does establish a procedure under which the employer who has received a citation could apply for a hearing on the ground of work procedures in operation at the time. Finally, and equally effective in protecting the employer, it does provide that citations for violation need not be posted by the employer after such violations have been abated.

Finally, Mr. President, it provides and requires OSHA to consider the economic impact of proposing new standards on affected employees as published in the Federal Register, along with such standards as statements summarizing the expected economic impact, and including an estimate of the total cost which will be incurred by each affected industry in compliance.

To me, this is an amendment that has long been needed. I was the cosponsor of a bill that was introduced sometime ago by the Senator from Colorado that would accomplish the same purpose No hearings have been had. It might be argued that this is not the best way for us to legislate. But when a committee refuses to take up and consider a bill, to me, the procedure being followed by the Senator from Colorado becomes necessary.

I commend the Senator once again, and hope that the vast majority of the membership of this body will see fit to vote in favor of his amendment.

Mr. DOMINICK. Mr. President, I want to thank the distinguished Senator from Virginia (Mr. WILLIAM L. SCOTT) for his extremely helpful comments. I would like to see us have some kind of agreement on hearings, but I have not been able to get them for over a year now. I thought we had better go this way.

Mr. President, I now yield to the Senator from Texas (Mr. TOWER) for 5 minutes.

The PRESIDING OFFICER (Mr. MCCLURE). The Senator from Texas is recognized for 5 minutes.

Mr. TOWER. Mr. President, as a cosponsor of the amendment offered by the distinguished Senator from Colorado, Mr. DOMINICK, I strongly urge its adoption.

The essential feature of this amendment is that it will not in any way restrict the effectiveness of the Federal objective of providing a safe and healthy environment for Americans to work. Soon after OSHA was passed by the Congress in 1970, it became apparent that in many respects the law was unworkable.

The pending amendment would only remove the punitive aspects of the law. It would for instance provide onsite consultation for employers with 100 or fewer employees, remove the Department of Labor's discretionary authority to assess penalties for nonserious violations on the first inspection, establish procedures to allow an employer to seek a variance from an existing safety standard to allow him to show that the safety methods he is using are equally effective, allow for the removal of citations from the employer's place of business after the violation has been abated and to require OSHA to publish economic impact statements prior to the promulgation of new standards.

Mr. President, if I thought that the changes contained in the Dominick amendment would seriously erode the cause of Federal job safety and health, I would not support the amendment. However, the sole aim of this amendment is

to remove the punitive aspects of the bill and to give the small businessmen of this Nation a fair chance to comply with the law. In many respects, OSHA now resembles a criminal law without the usual due process safeguards provided to potential violators. The pending amendment addresses this problem and, would, if enacted, provide the necessary balance in the law to insure a more successful program.

Mr. President, opponents of this amendment have again raised the argument that this is the wrong time and the wrong bill to raise these issues. If this is the case, then I would like to know when is the right time. Every Senator has heard OSHA horror stories from their constituents since the inception of this law. We have heard stories of surprise inspections, demands for the private records of employees, excessive penalties that generally could fall into the category of unreasonable search and seizures. How can we expect the objectives of OSHA to be met when small businessmen operate in fear of their government. They are reluctant to ask questions about the law out of fear they will be assessed with heavy fines.

Consequently, Senator DOMINICK is to be commended for raising this matter as an amendment to S. 3203, Unfortunately, it seems that the small business community does not have the clout of either big business or big labor to get the authorizing committees in Congress to hold legislative hearings to amend the Occupational Health and Safety Act.

Yesterday, I received a letter from my distinguished friend, the chairman of the Labor and Public Welfare Committee. In this letter Senator WILLIAMS gave notice that he would move to table the amendment and stated that his committee has been moving toward consideration of amendments to the act. However, to the best of my knowledge the committee has not ever held hearings on any amendments to OSHA; small businessmen continue to be harrassed by the occupational safety and health administration and continue to be unable to practically be in compliance with the act due to the voluminous requirements they must meet and the failure of the act to provide them with the necessary technical assistance and afford to them adequate and fair procedures.

Quite frankly, the small businessman should not be subject to further delays in their receiving adequate protestions from unfair and counterproductive intrusions on their business. The pending amendment is not radical. All it does is guarantee the kinds of protections which our governmental system would naturally afford to any American.

Mr. President, again I commend my distinguished friend from Colorado for offering this amendment. If a tabling motion is made, I hope that it will be rejected and that we can vote on this amendment on its merits.

Mr. DOMINICK. Mr. President, I thank the Senator from Texas. I think he has brought out his points very clearly. People are being affected by this act every day. I have not rushed at it. I put in a bill in early March of 1973. I have tried three times by letter to get the hearings scheduled. The chairman, in the process of debate on the Curtis amendment in 1972, said that he was going to hold hearings. Here it is now, May of 1974, and we still have not had any hearings. So far as I know, we have not had any hearings. At least I have never been notified of any hearings, anyhow. We had hearings before Senator CURTIS had introduced his amendment or we may have had 1 day of hearings right after his amendment was voted down. But we have not had any in the past year and a half. Meanwhile, the employers and employees of this country are being affected by this on a day-to-day basis.

There was one plant in the capital city of Denver, Colo., where the inspectors came in and required so many changes that the owner looked at them—he had been operating ever since 1880—and he said:

> You are out of your minds, if you think I am going to do that.

That plant had never had any problems with safety from the point of view of any deaths being caused, although there were some slight injuries. But the owner closed down his plant, which he had been operating since 1880, which threw 80 people out of work, because he was not going to go along with that kind of arbitrary treatment. I am not criticizing him at all. Thus, 80 people, because of lack of action by Congress, were thrown out of work when their jobs might have been saved.

Mr. President, how much time does our side have left?

The PRESIDING OFFICER. The Senator has 61 minutes remaining.

Mr. DOMINICK. Mr. President, I reserve the remainder of my time.

Mr. WILLIAMS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 5 minutes.

Mr. WILLIAMS. Mr. President, I strongly oppose the amendment now offered by the Senator from Colorado, and, at the appropriate time I shall move to table it. The amendment, I would point out, has nothing to do with the business at hand—it relates neither to the National Labor Relations Act generally, nor to the substance of S. 3203, which would extend that act's coverage to employment in private, nonprofit hospitals.

The amendment of the Senator from Colorado would extensively alter an entirely unrelated piece of legislation—the Occupational Safety and Health Act of 1970.

I recognize, of course, that ever since that legislation went into effect, its administration and implementation has been the source of continuing complaint to Members of Congress. Employers have objected to what they consider to be unreasonable standards, and the unavailability of adequate information concerning the requirements imposed by the standards.

On the part of many employees and their representatives, there has been great concern that OSHA has failed to mount a truly effective effort against toxic substances and other serious hazards to health and safety which exist in many workplaces, and that it has given undue emphasis to turning much of the program back to the individual States.

During the last Congress, the Labor and Public Welfare committee held a series of hearings regarding these complaints.

The critical attention focused on OSHA during that period, and since, has, I believe, led to a number of significant improvements. For example, a number of the standards issued by OSHA which were most objected to have since been revoked or modified.

Of particular importance is the fact that OSHA has made extensive efforts to improve the comprehensibility and accessibility of its standards, and to broaden and intensify its informational programs. These are matters which have very clearly been at the heart of many of the problems and complaints concerning the OSHA program.

In addition to the hearings held during the last Congress I realized that it would be most important for our committee and the Congress to have the benefit of objective factfinding and analysis to assist in the ongoing process of oversight and the consideration of amending legislation. I, therefore, requested the Comptroller General, in June 1972, to make an extensive series of reviews of various aspects of the implementation of the Occupational Safety and Health Act.

Subsequently, the Comptroller General agreed to make available a substantial number of General Accounting Office investigators—at times as many as 15—for the purposes of this effort.

Several reports from the GAO studies have already been issued and have been sent to Members of Congress.

These include studies of the development of occupational health criteria by the National Institute of Occupational Safety and Health, the administration of the small business loan program under the Occupational Safety and Health Act, the implementation of the occupational safety and health program for Federal employees, and the dissemination of OSHA standards to covered employees.

In addition, GAO will be reporting to our committee very shortly on most of the remaining areas of its present studies—including an in-depth review of the entire OSHA compliance program, its development of new standards, and its training of inspectors.

Mr. President, the point I am making now goes right to the heart of my reason for announcing that I will move to table.

I mention these GAO studies because I want to emphasize my concern that when we review the performance of OSHA's administration, or consider amendments to the existing legislation, we have the benefit of solid and objective

information and analysis concerning the existing program.

Mr. President, not only do I think that this should be important to our foundation in getting ready for hearings, but also, all Members of the Senate have become authorities on aspects of the OSHA administration, also, and each day we get more information.

Yesterday, I had the pleasure of a visit with 40 or so Methodist ministers from New Jersey. One of the ministers from the southern part of our State, in Cape May, described to me an OSHA inspection of some of the construction at the church. He had a complaint that I regret is one we used to hear of a similar nature—that the inspector came to the church under construction with a certain arrogance. This man of the cloth was not inappropriately complaining; he was just stating some facts.

He then said:

> You know, we didn't know what the standards of construction were. It seemed to me that it might be very helpful if at the time we got our building permit, we got a copy of the construction standards.

This is the sort of reasonable approach that I think might well be part of the hearings we will have, getting ready for necessary amendments, if we find there are necessary amendments, after we get the GAO report.

While we may conclude that amendments to the act are desirable—and I can certainly see some ways in which the act might be strengthened—I do not believe there is anything in the amendment offered by the Senator from Colorado that requires adoption at this particular time. On the contrary, on the basis of presently available information, I do not believe the provisions of this amendment would deal in any meaningful way with whatever real problems may exist in the OSHA program.

For example, the first provision of the Dominick amendment would require that each new standard "be accompanied by a statement summarizing its economic impact on affected employers, including an estimate of the total costs which will be incurred by employers in each affected industry in complying with such rule."

I would point out that in issuing new standards under the act, the Department of Labor has already been considering economic impact. Indeed, a number of standards which have been recommended by the Department of Health, Education, and Welfare for the protection of employee health, including a new standard for noise exposure, have obviously been held up by the Department of Labor because of just such considerations. Moreover, the Court of Appeals for the District of Columbia, in its decision last month dealing with OSHA's asbestos standard, concluded that the Department of Labor may have been overly solicitous of possible economic impact insofar as some of the affected industries were concerned.

If the amendment of the Senator from Colorado is intended to go beyond what the secretary has already done in taking economic considerations into account, then I believe it would be imposing a requirement that would paralyze the standard-making process. The fact is that most OSHA standards have application to a variety of industry groups and to require the Secretary to estimate the total costs for each would be a virtually impossible task. By thus delaying consideration of new standards for the elimination of safety and health hazards the lives and well-being of untold numbers of workers may be put in jeopardy.

This proposal to require OSHA to develop estimates of the cost of complying with new standards in each affected industry is somewhat ironical in view of the fact that 2 years ago, the Labor Department sought to include on its annual accident survey a question as to the costs incurred by surveyed employers in complying with the existing standards. There was a great outcry from employers that they could not develop such information, and as a result, the Business Advisory Council of the Office of Management and Budget compelled the Labor Department to eliminate this question.

Now if those who are spending the money are unable to say, after the event, how much compliance has cost them, I think it is quite unrealistic for OSHA to have to provide this information before the event.

Another provision of Senator DOMINICK's amendment would enable employers to apply for variances from the act's requirements after a citation has been issued. Such an application under the proposed amendment, unless frivolous, would stay all further enforcement proceedings until final action on the application.

I would point out that the intent of the act is to eliminate workplace hazards before they can cause death or injury. However, this proposal now being made would provide an incentive for employers to postpone taking necessary corrective action.

Presently an employer is entitled to apply for a permanent variance for workplaces that are not in technical compliance with OSHA regulations, based on his establishing that his own work practices provide equal protections to workers as those specified in an OSHA standard. Such variance applications, however, do not operate as a stay of enforcement proceedings. If this principle were turned around, and the filing of a variance could operate to postpone enforcement there would be less reason for employers to actively and voluntarily assess their compliance status prior to an OSHA inspection.

The likelihood is that the Secretary would be flooded with post-citation variance applications by employers who would see it as a way to put off the imposition of enforcement sanctions. This provision would thus be a disincentive to voluntary compliance, and would place at a competitive disadvantage those employers who conscientiously attend to safety and health matters prior to any OSHA inspection.

The proposed amendment would also revise the existing posting requirements so as to provide that a citation would not have to be posted after a violation has been abated or after the review commission has modified or abated the citation. The requirement under current regulations is that a citation be posted for 3 days even if abatement occurs within that time.

This 3-day posting requirement is designed to let employees know that a violation has been found, and fully accords with one of the important objectives of this legislation, which was to assure that employees are fully informed of the compliance status of their workplaces and the result of any inspections.

If posting is eliminated after abatement as proposed, the worker will essentially be deprived of the opportunity to evaluate the workplace in terms of health and safety standards.

The proposed amendment as drafted also eliminates a posing requirement after a review proceeding has ordered a modification or vacating of the citation. The provision is completely unnecessary as there presently is no such requirement.

The proposal in Senator DOMINICK's amendment to make penalties for serious violations discretionary instead of mandatory cuts to the very heart of the OSHA enforcement concept—the threat of instant penalties so employers will have an economic incentive, if not a moral obligation, to eliminate serious hazards before inspection is made. Existing law, moreover, already requires consideration of such factors as gravity of the violation, employer good faith, and previous history of compliance in the determination of the amount of the penalty.

In addition, by eliminating any penalty for nonserious violations, the amendment would remove any incentive for employers to correct such hazards prior to inspection.

I would point out that when this legislation was considered in 1970, both the bill that Senator DOMINICK introduced and supported and the bill that was passed, contained virtually identical provisions requiring that a penalty of some amount be assessed when a serious violation is found, and that a penalty may be assessed when a nonserious violation is found. I know of nothing that has happened since to demonstrate that judgment was unsound. Indeed, during our hearings in the last Congress, the National Safety Council stressed the importance of retaining the present penalty provisions of the act, and pointed out:

> Such provisions will encourage compliance with the OSHA standards at a date sooner than would be the case if there were no "first-instance" sanction. The mere fact that there is such a provision, encourages and motivates employers to allocate resources soon for whatever changes are deemed necessary for compliance before any OSHA inspection. To eliminate the first-instance penalty provision may encourage some employers to

procrastinate, since no civil penalty would be applicable unless the employer failed to abate an alleged violation found in the course of an OSHA inspection.

A further provision of the Dominick amendment would require OSHA to provide on-site consultative visits and advice to employers having one hundred or fewer employees.

The question of whether OSHA should make available such a service, is one that has a considerable amount of appeal. However, such a program presents considerable practical problems.

It is clear that if such a service were available, every employer would naturally tend to feel that he should be provided with such consultation prior to any enforcement inspection. Bearing in mind that an estimated five million establishments are covered by the act—and that over 97 percent of them have 100 or fewer employees—compliance would be severely jeopardized if employers were to develop unrealistic expectations about being given a consultative visit before any enforcement activity.

It will take an enormous staff to provide such a service, and it is highly doubtful that such staff would ever be funded.

It should also be stated that continuing efforts have been made by OSHA to improve the comprehensibility of its standards, and to improve its informational programs which will certainly help to reduce any need that employers might feel for any on-site consultation.

Currently within the OSHA is an education and training arm, which is now providing a steady flow of information and technical advice to many employers throughout the country.

In fact, there are now more than 100 field offices set up to provide off-site consultative services and other information services geared especially to the needs of small businesses. OSHA has also recently awarded a $3 million contract to the National Safety Council for the purpose of providing employers and employees with assistance in complying with the act.

I would also point out that the National Institute of Occupational Safety and Health, through its technical services division, currently provides employers with hazard evaluations in the workplace, and provides consultation in engineering, industrial hygiene, and medical aspects of occupational safety and health.

In addition, the small business administration already has authority, under section 8(b) of the small business act, to provide assistance to small business on safety matters.

When S. 3331, an amendment to the Small Business Act, was considered in the Senate last Thursday, this fact was discussed by Senator CRANSTON, the manager of that bill, and other Members, and it was agreed that the Small Business Administration would be requested to survey the actual need for on-site consultation and to report back to Congress with its recommendations.

Those companies which provide workmen's compensation coverage are, in connection with their loss control programs, offering employers consultative assistance in dealing with workplace hazards. Such companies now employ a total of some 9,000 safety engineers—compared to the several hundred compliance officers employed by OSHA—and thereby possess an enormous capability for furnishing this kind of assistance to employers.

As an example of still another existing source of private assistance to employers I would point to the American Society of Safety Engineers, whose consultant division has registered and approved a number of safety engineers qualified to provide on-site consultations with respect to OSHA requirements.

In view of these various forms of assistance now available to employers. I do not believe there is any compelling need to adopt an amendment requiring the labor department to provide a consultation service which will only draw upon the Department's already scarce compliance resources.

In closing, I would point out that many of the calls for amendments to the Occupational Safety and Health Act result from the predictable cries of the pain of change, as employers are forced to give new attention to the condition of their workplaces and the well-being of their employees.

We are, nevertheless, concerned that the act is being administered fairly, and in a manner designed to achieve the high objectives we set for it when this legislation was enacted. With the aid of the studies now being completed, I believe our committee will shortly be in a position to hold further hearings and to give full consideration to these questions.

I will say that the Senator from Colorado has been conscientious all the way through, not only in the development of this act but also in its oversight function, which is our responsibility, too. I applaud him. However, I believe that it is untimely now—and I am not going to get into the merits of the various parts of his amendment—to deal with it in this way. When I have the opportunity, I will move to table.

I see that the Senator from New Hampshire, who is also concerned and conscientious on this subject, has arrived in the Chamber to speak. I think his time probably should be yielded by the offerer of the amendment. Am I correct?

Mr. McINTYRE. That is correct.

Mr. DOMINICK. Mr. President, I yield myself 1 minute, first.

I say to the distinguished chairman, for whom I have great affection, that nothing in this amendment, if it is adopted, would stop the necessity of hearings on the GAO study which is now going on. They are dealing with things which are wholly different from my amendment. Some of them involve standards; some of them involve notice, and so on.

All I am trying to do is get away from the tentative aspects, awaiting word from GAO and further hearings, so that we can get into the merits of some of the other problems we have in this matter.

I yield 10 minutes to the Senator from New Hampshire.

THE NEED TO PROTECT SMALL BUSINESS UNDER OSHA

Mr. McINTYRE. Mr. President, I wish to express my support for the amendment now being offered by the distinguished Senator from Colorado. For some time, I have been aware of the need to amend the original Occupational Safety and Health Act of 1970 in order to attempt to correct some of the problems which Small Businessmen face in trying to comply with this law. In February of last year, I have introduced legislation, cosponsored by Senators BIBLE, BURDICK, HUMPHREY, NELSON, and SPARKMAN, which attempts to do just that. Several provisions of my legislation are embodied in the amendment we have before us.

I feel very strongly that small businessmen should be allowed one employer-requested citation-free onsite inspection. This would not effect the Secretary's right to seek injunctions for hazardous conditions representing "imminent dangers." However, this would allow some help to our small business concerns. This segment of our business community can not afford the time and money to "plow through" the volumes of OSHA regulations nor be satisfied that these regulations have been implemented properly without expert consultation.

I believe that the OSHA regulations at the present time consist of three huge volumes, at least 3 or 4 inches in thickness. If you are a small businessman, with 20 employees, and you are trying to meet your payroll, do your purchasing, get your sales going, and keep your employees, it is an awful mess to be confronted with these gigantic OSHA regulations.

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

Mr. McINTYRE. I am happy to yield.

Mr. DOMINICK. I believe it was Senator FANNIN who indicated that his staff has been collecting the rules and regulations as they have come out, and it is now a file 3 feet high. How in the world can a small businessman ever attempt to assimilate that?

Mr. McINTYRE. I received a report from a small businessman who was told that he would have to put up safety guidelines near his machinery. They asked him what color the lines were. He said they were painted white. They said that will not do; the lines will have to be painted red.

Some of the Labor Department's regulations are absolutely ridiculous. I might add, I will have some good to say about them before I am through.

Suggestions have been made to have businesses hire OSHA consultants or confer with the Small Business Administration regarding implementation of OSHA. The place for a small businessman to receive advice on compliance with regulations is with the Agency which established the standard.

The development of an economic impact statement for each new or modified standard provides the Secretary of Labor with additional tools to determine the appropriateness of his action. This provision does not prevent the Secretary from issuing standards with unreasonable cost-benefit ratios but does, at least, allow for consideration of "economic impact."

Senator Dominick's amendment would allow the Secretary greater discretion in assessing penalties for first-instance nonserious violation and first-instance serious violations as well as in the granting of variances where the employment condition is as safe as that which would prevail under the standard.

When Congress originally passed this legislation it was the intent of this Senator to assure so far as possible every working man and woman in the Nation safe and healthful working conditions. This is still my primary desire when dealing with the Occupational Safety and Health Act.

At the same time, we must also realize that a viable, healthy small business community is absolutely necessary for the economic welfare of this Nation. Safe and healthful workplaces and economic success are not only compatible, but in many ways prerequisites for one another.

In the past several years, I have held a number of hearings in the Select Committee on Small Business and in the Small Business Subcommittee of the Senate Banking, Housing, and Urban Affairs Committee regarding the effect that various pieces of legislation have on the competitive position of the small business segment of our economy.

It occasionally happens that in passing well-intentioned legislation to remedy a specific problem area, small businessmen are unintentionally injured and put at a competitive disadvantage. Certainly, in passing OSHA, there was no thought by Congress to injure small business.

Mr. President, 14,000 deaths a year and over 2 million serious injuries to workers in this country make not only a strong, but absolute case that occupational health and safety regulations are essential. That is why I voted for the Occupational Safety and Health Act.

However, it is now May of 1974 and there have not been many amendments coming out of Congress to help small business people.

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

Mr. McINTYRE. Mr. President, I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. McINTYRE. Mr. President, problems have developed with the administration of this law. Congress has experienced this problem many times before.

Well-meaning legislation embodying essential public interest goals often causes reactions which are totally unintended.

The enforcement of OSHA regulations has created in some cases insurmountable problems in this critical area of our business community—the small business sector.

I was pleased last week to hear Senators CLARK and CRANSTON speak on the needs of reforming this legislation, legislation that is so necessary to our working community.

I agree with Senator CLARK that a blanket prohibition of on-site consultations is counter-productive.

I do hope these Senators and all Senators will turn words into actions and join with me in support of Senator DOMINICK's amendment.

Mr. President, before I complete my remarks, I wish to state that I received a letter from the distinguished chairman of the committee and the ranking minority member, the Senator from New York (Mr. JAVITS) dated May 6. I am very happy to see this letter and some of the directions and actions that have been undertaken, and particularly that GAO is working on it. This is all for the good but in my opinion it is long delayed. Certainly, small businesses all over the country are taking an awful beating from this law. I am very happy that the Senator from Colorado has brought this amendment up and I hope we have a chance to vote on it up or down.

Mr. DOMINICK. Mr. President, I thank the Senator from New Hampshire. I think he has added materially to the debate we have had on this matter. As I said to the Senator from New Jersey, my distinguished chairman, there is no reason why we should not have hearings on whatever the GAO or the others bring back because I am sure that report will suggest additional changes. What they are working on is not the problem I am working on in this amendment. We could adopt this amendment without interfering with that study.

Again I thank the Senator from New Hampshire.

The PRESIDING OFFICER. Who yields time?

Mr. TAFT. Mr. President, will the Senator yield to me for 3 minutes?

Mr. WILLIAMS. I yield to the Senator from Ohio.

Mr. TAFT. Mr. President, while I am very sympathetic with the objectives of the Senator from Colorado in offering his amendment pertaining to changes in the Occupational Safety and Health Act, I will join in tabling the amendment, as it is not germane to S. 3203 and may very well jeopardize enactment of this legislation.

As a cosponsor of S. 1147, I share some of the Senator's concerns with regard to the need to explore constructive changes in the act, particularly with respect to consultation for small employers. My primary reason for cosponsoring S. 1147 was to permit onsite consultation and greater efficiency for compliance by business. I am vitally concerned that the most efficient and fair procedures be implemented by the Department of Labor with regard to enforcement of the act. I believe significant improvements have been made by the Department of Labor in this area, especially with regard to offsite consultation. OSHA fields offices have been expanded to 100. In a vast majority of cases employers may resolve their concerns through a description of the problem coupled with photographs, diagrams, blueprints and other geographic aids. Training and education programs have also been initiated by the Department. Granted, some of these steps are only a beginning, but I believe they are a step in the right direction. Further, I noted with interest the discussion on the floor on May 2 in relation to the authority of the Small Business Administration. As was pointed out during this consideration of S. 3331, section 8(b) of the Small Business Act currently permits assistance to small businesses with regard to accident control, including a loan program to correct occupational safety and health deficiencies. These loans are available at low interest rates for up to 30 years and permit a small businessman to add to or alter equipment to be in compliance with OSHA standards.

The question of onsite consultations of course is still one that must be addressed and I can understand the Senator's concern on this point. As I stated this is one of the principal reasons I cosponsored S. 1147. As Senator CRANSTON noted last week on the floor, the SBA could establish a procedure to provide onsite consultations through independent contracts with consulting firms specializing in industrial safety.

In some ways that would seem to me to be preferable to going the route of consultation and enforcement both in the Department of Labor.

While I have no particular problems with the SBA conducting a survey to determine the desire of small businessmen for this type of consultation, I believe the Labor and Public Welfare Committee should take a great deal of responsibility in analyzing procedures such as this to supplement the act. I am extremely reluctant, however, to wait 6 months as was suggested during the discussion of S. 3331, for action on this matter and am delighted that the Chairman of the committee, Senator WILLIAMS, will shortly be holding hearings on OSHA.

As I stated previously this matter is not one that should come up on this legislation. Therefore, at the termination of the time on this amendment, I do expect to support a motion to table.

Mr. JAVITS. Mr. President, I wish to associate myself with the argument of the Senator from Ohio (Mr. TAFT) respecting the appropriateness of putting this matter on this bill. Again, we have a trade-off. Do we want the bill respecting the coverage of hospital workers or do we want to load it down with another major amendment on which there will be a considerable difference with the House, on which there is a very considerable problem with organized labor and that always makes for delay. So I shall vote to table when the Senator from New Jersey (Mr. WILLIAMS) makes the motion. But, Mr. President, I believe there are some very substantive objections to this particular amendment, too.

The thing that bothers me very deeply is this idea that after a violation is discovered, and that is what the amendment states, the person violating may come in for a variance. That is hardly the way to run a railroad or to administer a law. In addition there is a stay of the order of enforcement which is automatically built into the amendment unless the Secretary rejects the application as frivolous. But the word "frivolous" is a very strong word and I can hardly think of an objection made in good faith which could be rejected as frivolous. I think the Secretary would find himself in deep trouble with the courts if we passed this, if he tried that. That is one imperfection. Another imperfection is the matter of penalties.

One of the big compromises in this act was the idea of serious and nonserious violations, one calling for mandatory penalty and the other calling for discretionary penalty. The amendment simply makes serious violations subject to discretionary penalty, and eliminates altogether the question of penalty for nonserious violations—simply strikes the section.

It seems to me that would get us into a hassle that could delay the bill for months if we ever took this amendment.

One thing that the Senator from Colorado (Mr. DOMINICK) is absolutely right about, and which the Senator from Ohio (Mr. TAFT) has mentioned, and in which I myself have been deeply concerned, is the very active pursuit of the question of onsite consultation, which is especially critical for small business. There, I would like to say to the Senator, no matter what happens on this amendment, I am going to join very strongly—and indeed, I may say to the Senator from Colorado, I am going to try to get our whole minority together—because I think the Secretary of Labor has the power and he has the machinery to set that up. We in the minority, since this is our administration, ought to press for that. In addition, the idea of contracting out to independent contractors so the Government inspector is doing not less than his duty as an onsite inspector is a very good idea. I am convinced the Secretary of Labor has the authority under existing law generally to provide onsite consultation either with his own employees or on a contracted-out basis.

I want to assure the Senator from Colorado (Mr. DOMINICK) that, with the spark we have had in this debate, and with his great support—I think he has done a remarkable job in marshalling support for his position, and I will do my utmost to marshal the minority in our committee—I think we can together see that we get action on that particular subject.

Also, on the matter of hearing, I do not think we have to wait an inordinate period of time. We got a prompt hearing for the Senator from Nebraska (Mr. CURTIS). I think we can get a prompt hearing so this point may be aired.

Finally, I think the point made by the Senator from New Hampshire (Mr. MCINTYRE) about burdens on small business is very important, but I think we should recognize that this is not only true in OSHA but in taxes, and every small businessman pays taxes. It is also true in what SBA can do in meeting regulations with respect to loans, assistance, et cetera.

I want to mention the point about simplification because we would like to encourage it. The department has put out a considerable number of brouchures simplified as to language and concept, so that normal civilians can read them and not have to be expert engineers or lawyers to do so. Thirty-nine are being put out this summer. In addition, they are developing a subscription service which keeps people up to date without undue expense. The number of pamphlets put out—and I have them here—runs into the millions.

In fairness to the agency, I ask unanimous consent that there may be included in the RECORD, a summary of OSHA's efforts to disseminate information, a project report on the effort to index OSHA standards, and an appendix showing the titles and estimated numbers in print of OSHA publications designed for this purpose.

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

OSHA'S EFFORTS TO DISSEMINATE INFORMATION

1. Development of subscription service, in cooperation with Government Printing Office. For $50 a year, one can receive a 5-volume loose-leaf service with up-to-date changes. General Industry Standards will cost $21; construction $8; rules and regulations $5.50; compliance manual $8.

2. A series of 39 indexes will be completed this summer. Will tell what standards are applicable to various industries, occupations, or trades.

3. $3 million contract awarded to National Safety Council which has brought in many of its local safety councils to provide free seminars on OSHA and its requirements.

4. Chicago Training Center provides free one-week courses available to employers and employees.

5. OSHA now has over 100 area offices where employers can get information and can discuss particular problems in their plants.

SUGGESTED TITLES FOR INDEX TO OSHA STANDARDS PROJECT

Basic Occupational Safety and Health Index for ALL Employers.

Basic Occupational Safety and Health Index for ALL Construction Work.

Roofing and Sheet Metal.

Manufacture of Mobile Homes and Recreation Trailers and Bodies.

Excavating; Trenching; Concrete Work; and Steel Erection.

Food and Kindred Products Production (Including Heat and Meat Products (Does not include production of alcoholic beverages).

Materials Handling and Storage (Including Warehousing).

Manufacturing Wood Furniture and Fixtures.

Lumber Milling and Millworking (Does not include mobile home manufacturing).

Logging and Logging Camp Operation.

Wrecking and Demolition.

Masonry and Stonework; Tilesetting; Plastering.

Manufacturing Metal Furniture and Fixtures.

Manufacturing Stone, Clay, Glass and Concrete Products.

Manufacturing Parts; Precision Equipment; General Hardware and Electronic Devices.

Printing and Allied Operations.

Paper and Paperboard Converting.

Pulp, Paper, and Kraft Milling.

Tobacco Manufacturing.

Textile Milling.

Electrical Work and Equipment Installation.

Laundering.

Equipment Repair Services.

Road Vehicle Servicing, Maintenance and Repair.

Health Services.

Cutting and Sewing Fabrics and Hides (Needle Trades).

Processing of Hides (For synthetics, see chemicals production).

Refuse and Garbage Disposal.

Production of Primary Metals; and Heavy Fabrication of Metals Including Machinery and Transportation Equipment (Including Metal Moving).

Petroleum Refining and Chemicals Production (Includes Rubber and Plastics).

Oil and Gas Drilling and Extraction (Does not include pipeline operation, or transportation of bulk).

Commercial Food Product Baking.

Painting and Decorating.

Carpentering; Flooring; Glazing.

Construction of Bridges; Tunnels; Elevated Highways; Service Mains; Pipe, Power and Communication Lines.

Forestry (Does not include fishing, hunting, and trapping).

Number of OSHA publications in print (Estimate)

OSHA Act	400,000
OSHA Act in Spanish	85,000
All about OSHA	1,500,000
Safety and health protection on the job	8,000,000
Recordkeeping requirements under the Williams-Steiger Occupational Safety and Health Act of 1970	6,000,000
Handy reference guide	750,000
Fact sheet for small business	300,000
Target health hazard	150,000
Principles and techniques in mechanical guarding	200,000
Safe practices for excavation and trenching operations	150,000
Contractors planning for job safety and health in excavation, trenching and backfilling	150,000
15 questions	150,000
Employer-employee safe practices for excavation and trenching operations	150,000

INDEX TO OSHA STANDARDS, PROJECT REPORT

HISTORY OF KEY GUIDES PROJECT

Background

The publication of selected standards suitable to a given industry was suggested by a Congressional subcommittee (Select Committee on Small Business—Subcommittee on Environmental Impact on Small Business) following hearings investigating OSHA impact on small business. A program was planned and initiated to accomplish the need identified by the committee.

Initial efforts

The original program was a two pronged effort to select those portions of the OSHA standards that affected particular industries.

The industries to be covered were selected from a comparison of those areas where a large number of citations had resulted from OSHA inspections and where a large segment of the employers were small business. No attempt was made to incorporate the skewed weighting effects that resulted from the relatively few Industrial Hygienists that OSHA had in the field. A total of 58 industries were selected.

The initial effort was headed by an appointee working for OSHA under the White House exchange program with a background in aerospace industries and an interest in safety.

A task force group started work on a "cut and paste" operation to assemble parts of the standards that covered each selected industry. This task group was drawn from OSHA field forces. Shortly after, a contract was awarded to accomplish the same task for part of the total list.

The initial output from the task group effort was reviewed in-house and the consensus opinion was that too much extraneous material remained in the selected standards. Much could be done and should be done to eliminate a great deal of the extraneous information and make it more useful and less confusing to the small businessman. An effort to accomplish this was initiated within the Office of Standards.

The contractor had continued his efforts of examining the standards in detail and selecting standards provisions that applied to each industry. It became obvious to the contractor that a consolidation could be accomplished by selecting the provisions that applied to all industry and placing them in a separate volume and by combining certain industries. Further, the "all industry" provisions would cover a sizeable number of individual industries (more than 1200 nonmanufacturing industries alone) without the necessity of any other specialized booklets. The obvious advantage to the employer who needed several key guides to cover his operations is very attractive. No longer would he be burdened with having to read the same material repeatedly in each book.

At this point, around August 14, 1973, internal changes in the Office of Standards resulted in relocation of these efforts from the Division of Special Industries to the Division of Technical Information.

NEW APPROACHES

Initial efforts were made to perform the following:

Two general booklets for general industry and construction were planned.

The 58 industries were consolidated by combining related industries that could be covered by single booklets.

Efforts were made to reduce the material from the OSHA standards of concern to the manufacturer of equipment but which is of no value to the average employer (except to know of its existence) by replacing quantities of standards with short annotations.

The overall direction was shifted from total reliance on industries and SIC codes to include occupations, trades, crafts, and functions where this can more effectively provide coverage.

At this point, around December 1, 1973, a top management decision was made to stop work on the contract and to change and reexamine the entire concept of a digest of the standards versus a key guide index. To test out the appearances of this, several draft layouts were prepared by cut-and-paste operation using the index from the OSHA Subscription Service and a presentation made to A/Secretary Stender on December 20, 1973.

In order to accomplish this and other changes it was necessary to modify the work statement and terms of our contract with Federated Analysis, Consulting and Technical Services. A revised work statement was delivered to OASA in late December, 1973. A proposed revision was sent to the contractor in early January. The contractor responded well within the thirty day period that OASA allowed and, as of February 15, 1974, no action has been taken by OASA.

A meeting with the contractor on February 14, 1974, resulted in a finalized list (Appendix A) and in an agreement in the technical aspects of the revised work statement and schedule.

Attempts to contact the Contracting Officer OASA have been singularly unsuccessful.

The delivery schedule proposed by the contractor is predicted on successful use of a computer program by the Applied Physics Laboratory of Johns Hopkins University. The program was developed on government funding. The computer is a government-leased facility. Only normal direct labor, overhead, and General and Administrative would be applied as cost to the contract. However, the Department must approve use of non-Department computational facilities; this must be accomplished. Failure to do so will materially slow down the production of the indexes.

If the list-forming program is unable to produce the desired lists and other products (Key Guide Index), this would mean the job must be accomplished manually. This is slower, of course, and will require additional time to complete all of the guides. We have been assured, however, that is an unlikely event.

MANPOWER REQUIREMENTS

No additional contractor manning requirements are included. Increasing the manning of the many facets would result in difficulties of work interference and inconsistencies.

For the cover preparation, the continued effort of Robert Schmitt is required. He was involved in the work done on the covers to date and is familiar with the various processes.

The early review of front matter, text, rework, and functions in final preparation of copy will require the work of Mr. Schmitt and Mr. Moore who can provide the needed expertise.

The review steps within OSHA will require the services of various staff members outside standards; this will take them away from other duties. No details are provided in the plan as their performance in the review is less a problem in the amount of time, but will be critical in providing a timely response.

You will note our plan calls for field review as well. Review with the private sector is also recommended. This review may, however, be coordinated by others in OSHA (voluntary compliance or Office of Information, or Lou Cox).

SCHEDULING

The steps for producing reproducible draft copy are shown in Figure 1. The critical path is not shown, but, in general, the indexing and the selection processes appear critical.

The schedule of significant milestones is shown in Figure 2; of note is that over the short performance period it is not appropriate to attempt to use PERT or similar management control techniques. There is not time to correct slippage. What is needed is constant vigilance over the two critical operations to assure that no slippage occurs. Figures 3 and 4 show milestones for the entire project.

ACTION ITEMS

1. Obtain approval for outside computer application.

2. Finalize the modified contract (GO AHEAD!)

3. Initiate review of foreword, direction for use of the guides and disclaimers.

4. Setup coordination points with the Office of Standards, other OSHA offices, and with Solicitor of Labor for review sequencing of material.

5. Submit weekly reports to AASN.

Mr. JAVITS. Mr. President, OSHA was a great reform. All of us who have had anything to do with it—the Senator from Colorado (Mr. DOMINICK), like myself, the Senator from New Jersey (Mr. WILLIAMS), the Senator from Ohio (Mr. TAFT), who have had a great deal to do with it—are extremely proud of that fact.

It would be a cliche belaboring the obvious to say human life and the maiming of human beings is about the most important thing we have to deal with in a civilized society. As the Senator from New Hampshire (Mr. MCINTYRE) said, when we realize the number of casualties of a couple of million a year, with 14,000 or 15,000 killed in industrial accidents, it can be seen why we passed this law and why we have to encourage it.

So my conclusions would be as follows:

No. 1, we cannot really weigh this bill down. We have had a number of votes on it already rejecting extraneous amendments.

No. 2, there are some things which are sought here which are not sound, other things are sound, and I pledge myself to join with my colleague from Colorado (Mr. DOMINICK) in getting action on those.

Finally, I deeply believe the proper course for this is hearings, and I will do my utmost—perhaps I have a little influence left with the chairman of our committee—to get to this at the earliest moment; if we have to in a specialized way, to deal with the committee's calendar. For example, if we do not get anywhere with the Secretary of Labor on the on-site inspection question, conceivably we could have a hearing on that particular subject which would get us action on that subject, just as the agency itself has broken up the lines of businesses in different brochures. We may get more action in proceeding that way.

So I think, with all respect to the Senator from Colorado (Mr. DOMINICK) and what he is trying to do, we will make good progress, we will probably make the best progress, by the routes I have described. I therefore feel that I shall have to support the motion to table.

Mr. DOMINICK. Mr. President, I yield myself 1 minute just to comment lightly to the Senator from New York that I am getting awfully tired of everybody agreeing with the substance of my amendment and finally getting it tabled. It gets a little tiring to hear everybody saying, "I agree with you, but I am going to knock you down." It is my hope they will not succeed on that.

On the subject of the variance, it should be observed that the variance, must be at least as effective as the standard.

It would seem to me that the Senator from New Hampshire (Mr. MCINTYRE) gave a good example when he illustrated the instance of someone painting a white line and then someone coming in

and saying, "You have to paint a red line." Maybe a white line is the kind they paint in New Hampshire, and a red line is the kind they paint in New York. What difference does it make whether it is a red line or a white line? It is still paint and it still is designed to show what the problem is. The obvious question on that particular subject is, which shows up more clearly? Which indicates a danger? Suppose they had a white line with a red plaque on it? One could go on forever and ever on that kind of thing. All I can say is that I now yield 10 minutes to the Senator from Idaho.

The PRESIDING OFFICER (Mr. COTTON). The Senator from Idaho is recognized for 10 minutes.

Mr. McCLURE. Mr. President, I first want to commend the senior Senator from Colorado for the leadership which he has shown in bringing this matter to the floor in this manner. It is the kind of leadership we have been accustomed to his taking in matters of this kind, and the fact that this has attracted such a large number is a tribute to that leadership and also an indication of the grim necessity of it.

It has been pointed out that various representations have been made since the act was passed for hearings and amendments, and still nothing has been done, and still today we hear the statement being made, this is not the way, this is not the time; let us hold hearings first.

Those of us who have been around here more than a year or two recognize when we are being put off and that really no action may follow, and I am afraid that may be so here even after the GAO report. But, as the Senator from Colorado has so correctly pointed out, even with the adoption of these relatively minor changes in the act, there is much in the act to which we can direct our attention following the GAO report, and indeed, if that report indicates that what we do hear is ill-advised, we can change what we do here today; and so I hope we adopt the amendment here today as a first step, not as final action, in the revision of the OSHA act.

Every Member of the Senate and the House of Representatives has had dozens and dozens of bad cases recited to him. I do not suppose it does a great deal of good to cite them again because they have been recited for the record and the CONGRESSIONAL RECORD over the last several years as instances of ridiculous enforcement, unmerited enforcement punitive fines, the kind of things which lead people to refer to OSHA inspectors as Gestapo agents, the kind of inspection which happily has not characterized it so much in the last year as it did in the first year. So the enforcement is better than it was. However, it certainly is not what we as free Americans have a right to expect from our Government.

There have been many bad cases, not only the one cited by the Senator from New Hampshire. A contractor in Boise, Idaho, was erecting a scafford to the second story of a building. The regulations required that toe boards as well as rails be put around the scaffold. The carpenter was putting the toe board around one end of the scaffold, and the inspector was at the other end of the board writing a citation because they were not on yet. That is the kind of enforcement which I think every one of us has the right to feel offended by.

I think that beyond the extremely bad enforcement of what was intended to be a good act, we should look at other things, things which this amendment will not solve. I think we need to look at the growing need for criminal penalties instead of a civil statute in order to circumvent the constitutional right of due process before someone is found guilty and fined. OSHA is just another manifestation of that very serious infringement upon the right of free people to remain free from the oppression of government.

We have in this act gone a long way down the road to saying that a person has no right to a presumption of innocence; that he has no right to counsel at all stages of the proceedings, with counsel to be paid, if necessary, by the taxpayers.

We have gone a long way down the road toward depriving individual citizens of the individual rights guaranteed by the Constitution, and have done so under the guise of a civil penalty. We must get into that field, and get their soon.

I would suggest, too, that appeals have been taken from penalties, as cited by the Senator from Nebraska, as evidence not only of a pattern of indecision or fear on the part of the administrator that they might lose in court, but also as a technique used too often by a large entity dealing with a much smaller entity; and that is to wear them down and to use the oppressive tactics of government to destroy them simply because they cannot contend for their rights. So they charge them with a high fine and require them to go through the appellate procedure. They then reduce the penalty so that they cannot afford to get civil justice, and will pay the fines.

Is that justice? It is being done. That is why I say that we should look at some other aspects of the law, not just this one, and say that whenever a citizen of our country is called up to defend himself against the Government or to assert his rights against the Government and the Government is found to be wrong, the Government should be called upon to pay all reasonable costs of that proceeding, and all expenses including attorneys fees.

We did that a long time ago with respect to insurance companies in every State of the Union because the economic might of the insurance companies was too powerful simply because their power was great enough to deprive individual citizens of their rights. The insurance companies had house counsel and could destroy the rights of an individual or individuals who could no longer assert their rights or afford to pay counsel. If the weight of insurance companies was so great that the Government found it necessary to protect its citizens against them, how much greater is the pressure exerted by a bureaucracy upon some small individual in our society?

We have been promised hearings. I remember 2 years ago, when I was in the House of Representatives, and Representative FINDLAY, of Illinois, and I sponsored a resolution which we attached to an appropriation measure which said that none of the funds could be used to enforce the measure against small businessmen who were unable to protect themselves.

We were promised hearings. They have gotten around to a hearing this year. They have not gotten around as yet, however, to the promise of 2 years ago that we should be given a hearing.

I commend the Senator from Colorado for doing what I think is obviously very necessary, namely to get this matter before the Senate where, I am satisfied, we will, indeed, be given the opportunity to make these very modest changes.

A revolt is taking place in the countryside. America is revolting against oppressive government. It is a revolt that says to me, "Amend the law and make it reasonable or we will throw the whole thing out, and, if necessary, we will throw all of you out in the process."

This is the kind of arbitrary government, oppressive government, that is bringing the people to their senses. It is oppressive government, a government that does too much to them and too little for them, instead of assisting them in bringing about safe conditions for the men and women of the country.

A great many individual suggestions might be made about the amendment that would improve the administration of OSHA. I would hope that the Senator from New Jersey, the Senator from New York, and other Senators will be successful in their pledge to have hearings. I hope that when those hearings are held, Senators who have been concerned, and have expressed their concrn at various times in the past, will be able to attend them.

I further hope that several days will be set aside for those hearings and that testimony will be taken from Senators and Members of the House who will want to speak in behalf of their constituents. In those hearings we can address ourselves to a number of changes that might be made in the act in addition to the changes suggested here.

It is time the OSHAcrats were forced to add something to their guidelines and their compliance regulations and those other manifestations of arbitrary authority which, if unchecked, grow like cancer. That something is commonsense.

Commonsense does not dictate the use of an elevator guardrail which prevents loading an elevator, but OSHA has. Commonsense tells that if disgruntled employees can infringe rules and call for surprise inspections, you will see unfair fines. But that has happened under OSHA.

Commonsense tells everyone that if you impose a safety regulation on a device—thereby completely precluding its future use—you have been of no assistance to anyone, but this notion is

apparently too complicated for OSHA-crats.

It is time for someone to tell the OSHA people that their primary business is not the harassment of citizens, not the collection of funds for the Federal Treasury, and not the swelling of welfare rolls with unemployed workers who lost their "unsafe jobs."

All of us get hundreds of letters each month about the administering of this program. Virtually every letterwriter opposes it, of course. But the most troubling ones are the letters from small businessmen who have suffered under OSHA. I quote from one of these communications, which arrived only a few days back, because it is typical of them all. The writer is a shop manager for a small metal fabricating plant. He says:

> We were recently cited by OSHA for not having a guard on our shear and press brake. We installed a guard on the shear which makes it more difficult to see the work piece, therefore making it less safe. In fifteen years of operation we have never had an accident with the shear. It is impossible to install a guard on a press brake and still use the machine. OSHA then came up with the idea of using push buttons instead of the standard foot treadle to actuate the press brake clutch. This stupid idea as it is, only serves as a distraction to the people holding the work piece. We were arbitrarily fined $550.00 for these so called serious violations. In my opinion, this is not due process of law.
>
> There are only two examples of the stupid and arbitrary citations issued by OSHA. A friend of mine was cited for the two same things previously mentioned. His inspector was obviously well qualified since he had a degree in biology.

This sort of thing does more to destroy the credibility of the Federal Government than 1,000 Watergates. It is time that we took the necessary steps to stop it.

Mr. President, again I wish to commend the Senator from Colorado (Mr. DOMINICK) for his leadership and for doing what is necessary when the legislative process does not yield itself to the very real demand of the people of the country that something be done about a law that is being misused and that has become oppressive to the working men and women of the country.

Mr. DOMINICK. Mr. President, I yield myself 2 minutes.

I thank the Senator from Idaho very much for his extremely lucid and helpful contributions.

I was reminded toward the end of his talk about a colloquy I had with the distinguished Senator from Vermont (Mr. AIKEN), who said that OSHA suddenly came along and said, "If you spray your orchard, then you can't go into it for a certain amount of time, depending upon the humidity, wind, and so forth." They set a standard that said, "You have to let your crop rot on the ground before you can do anything with it."

Otherwise there would be a violation of OSHA. So they were caught both ways. There have been many such protests on the part of Senators. We were able to change that. That is the unreasonable type of thing that we get into in a situation of this kind.

Mr. HRUSKA. Mr. President, it is with much interest and appreciation that I listened to the remarks of my distinguished colleagues from Nebraska (Mr. CURTIS) and Colorado (Mr. DOMINICK) concerning the Occupational Safety and Health Act.

It is with deep concern that I note the failure of the Congress so far to reform the Occupational Safety and Health Act of 1970. My office has received a steady stream of complaints from Nebraska businessmen, both large and small, who express grave dismay for the unfair application of this law. These are sincere and hardworking businessmen who recognize the need for safe standards of working conditions, but who also seek relief from the chaotic and inequitable provisions of this law.

Several bills, of which I am a cosponsor, are presently before the Senate which seek to amend OSHA. These bills provide a focal point for debate on this law and could serve as an excellent vehicle for positive reform in this area. It is indeed unfortunate that little action has been taken on these bills, particularly in view of the widespread and serious interest in this subject.

We all recognize that the goal of insuring safe and healthful working conditions is commendable and should be the objective for both employer and employee. OSHA was enacted by a Congress which intended to reduce the incidents of injury and illness on the job. However, in view of the large volume of critical comment which has been directed at this law and the evidence of serious problems confronting the business community, it is becoming increasingly clear that in practice this law is not working as the Congress intended.

Experience has shown that in execution the law is punitive rather than constructive.

As with many high-minded and well-intentioned experiments which have been enacted into law, it has become all too apparent that Congress has produced a burdensome and ineffective piece of machinery which at best is heavy-handed in operation and at worst of little help in the promotion of safety.

The objections to this law and its administration are by no means limited to Nebraska. The problems voiced by Nebraskans are similar to those voiced by businessmen all over America.

It has become apparent that less than a creditable job has been done to notify employers what to expect under the law. However, at the same time, much effort has been expended in exercising the stringent enforcement measures of the act. The arbitrary imposition of an estimated 20,000 rules and regulations has placed many businesses, and especially the small ones, in a financial pinch. Often the small businessman is forced to apply for a Small Business Administration loan, as is provided for in the act, and often has been compelled to reduce his work force. At a time when the economy needs full employment, the unduly restrictive provisions of OSHA must be corrected.

The time to reform OSHA is now. Senator DOMINICK's amendment is a most worthy proposal. It goes a long way in correcting many of the injustices that are built into the present law.

I, therefore, urge my fellow members to join wholeheartedly in support of Senator DOMINICK's proposal.

Mr. BAKER. Mr. President, as a cosponsor of S. 1147, I would like to take this opportunity to express my strong support for amendment No. 1215, Senator DOMINICK's proposal to correct existing deficiencies in the Occupational Safety and Health Act, which I am also cosponsoring.

The distinguished Senator from Colorado has already pointed out to the Senate the fact that none of the changes which he proposes to make in the OSHA law would result in lessened protection for employees. I share his full endorsement of the purposes of the Occupational Safety and Health Act: "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources." After several years of experience with the enforcement of the law, however, it is clear that the act has resulted in severe economic damage to many small businessmen, arbitrary assessment of penalties, and a wide-spread loss of respect for the Federal Government within the business community.

The purpose of the law can be successfully fulfilled only if the Nation's employers work with the Department of Labor in a spirit of cooperation, and such a spirit can only be achieved if employers are given the assistance which they need in order to come into compliance with safety standards.

The basic deficiencies in the law are as follows:

First, safety standards are promulgated without adequate consideration of the manner in which they should be applied to various types of businesses, the difficulty which businesses may have in meeting the standards, or the effectiveness of those standards in protecting the health and safety of employees. Amendment No. 1215 would require that OSHA consider the economic impact of proposed new standards on affected employers and publish in the Federal Register a summary statement of economic impact when the standards are proposed. The agency would, therefore, be fully aware of what effect its proposals would have upon employers and consumers prior to adoption of a new standard, and the affected parties would have an opportunity to add their comments to the Department's findings.

Second, insufficient attention has been given to the problem of acquainting employers with the standards, explaining to them how they can comply with the standards, and giving them adequate time within which to comply before inspections are made. Senator DOMINICK's amendment would remedy these difficulties by requiring OSHA to provide advice and technical assistance to employers of 100 employees or less through consultative inspections during which employers can be advised of potential violations of

safety standards without being assessed penalties.

Third, Federal inspectors are given absolute power to arbitrarily issue citations to employers and then to require immediate payment of fines without explaining how the employer can bring his operation into compliance with the law or allowing him enough time to do so. Amendment No. 1215 would alleviate these problems by making several changes in the penalty provisions of the law. First, the amendment would remove OSHA's discretionary power to assess penalties for nonserious violations on the first inspection. In addition, in the case of serious violations of safety standards, the amendment would provide discretion with the Agency as to whether or not a fine must be assessed. An employer's efforts to come into compliance with safety standards and his record of safety could, therefore, be taken into consideration by OSHA. Finally, the amendment would allow an employer to apply for a variance from OSHA standards after he has received a citation on the grounds that safety measures in effect in his place of business at the time of the citation were equally as effective as the OSHA regulations in protecting his employees.

Several of the amendments contained in amendment No. 1215 were recommended by the Subcommittee on Environmental Problems Affecting Small Business of the House Select Committee on Small Business after a study of the law's impact on businesses in 1972. I am convinced, Mr. President, that adoption of these changes in the law will greatly increase its effectiveness without detracting in any way from its purpose.

Logic and common sense indicate that it is in the best interest of every employer to provide the safest, most healthful, most attractive working conditions for his employees. This is particularly true of small businesses, where the employer may have a difficult time finding good workers, may invest a good deal of time and money in training them, and where his income and profit depend very directly upon the workers' productivity and good health. Enforcement of Federal occupational safety and health standards should concentrate on facilitating compliance with those standards and on a realistic attitude toward alternate safety measures which may provide as much or more protection to employees. Experience with the Occupational Safety and Health Act as now written, however, seems to indicate that more attention is placed on collecting fines than on insuring compliance and that the employer is more frequently frustrated in his attempts to understanding and obey the law than knowledgeable about the requirements he must meet and how he can meet them.

Mr. President, I believe that amendment No. 1215 is a reasonable proposal which will increase compliance with the law and restore some of the confidence that has been lost in the Federal Government, and I urge its adoption by the Senate today.

Mr. TUNNEY. Mr. President, this is an inappropriate time to consider amendments to the Occupational Safety and Health Act of 1970. The minimal amount of time that has been designated for debate on this OSHA amendment is totally inadequate for proper consideration and discussion of this serious and far-reaching legislation. This amendment, as well as other OSHA amendments previously introduced and now awaiting committee action, should be aired in open hearings so that all sides might be weighed and discussed. The employers and employees of this Nation deserve more thoughtful and careful consideration than a hasty debate on this Senate floor. May I urge full hearings by the Senate Labor and Public Welfare Committee on this issue rather than hasty floor action here today.

Mr. DOLE. Mr. President, as a cosponsor of this amendment to modify the Occupational Safety and Health Act of 1970 by altering some of its punitive aspects, I would like to say that the law as it now stands has been extremely unpopular in the State of Kansas.

I have received hundreds of complaints from employers—particularly from small firms—during the period since enactment of OSHA, most of them advocating outright repeal of the act. While I do not believe that that type of action is either necessary or practical, I do feel very strongly that we must do something substantial to make the law more reasonable and effective for all concerned.

Perhaps the most objectionable of the present OSHA provisions is the mandatory assessment of penalties for first-instance, nonserious violations of the act. Besides the obvious "due process" constitutional question which this raises, it tends to defeat the whole spirit of fairness with which the enforcement proceedings of any Government program have traditionally been conducted.

I think that this amendment—by making such penalties discretionary, in addition to rescinding authority to issue citations for violations found on employer-requested visits to smaller businesses—will go far toward fostering an attitude of acceptance among those endeavoring to comply in "good faith" with safety regulations.

Certainly, no employer is opposed to taking every reasonable step possible to assure safe and healthy working conditions for those under his supervision. At the same time, he cannot afford to become so preoccupied with forecasting potential hazards—in order to avoid being fined—that the economic viability of his business is jeopardized.

The key to overall success in the implementation of OSHA, then, is to seek cooperation between employers and inspectors in working to eliminate dangerous job situations. The way to arrive at that goal is to encourage and assist those charged with the well-being of their workers to correct the problems which may exist. This may very readily be achieved, I think, by changing the emphasis of OSHA methodology from punitive harassment of employers to offering—in a positive way—technical advice and constructive recommendations in advance of any sanctions or adverse action.

No one solution to any problem is absolute, but the philosophy of allowing a reasonable "grace period" has worked quite adequately with both municipal building and fire inspectors, as well as with vehicle safety officials. The same standard should also be applied to occupational safety and health matters, and I urge adoption of this amendment to accomplish that change.

Mr. THURMOND. Mr. President, I rise in support of the amendment offered by the distinguished Senator from Colorado, Mr. DOMINICK.

The Occupational Safety and Health Act has been the source of unnecessary problems and irritation for businessmen throughout this country. I was one of only three Senators voting against its passage in November of 1970, but I am certain that our number would have been much greater if developments which have transpired in the last 4 years could have been foreseen.

Mr. President, many businessmen resent this act and they resent the manner in which it has been administered. If its objectives are ever to be reached, it will be through a spirit of cooperation and understanding, not coercion, intimidation and the imposition of penalty. All the good faith in the world will be of no good whatsoever until certain provisions of this act are changed so that this attitude can be exercised. This amendment would accomplish precisely that. It would not lessen the protection for any employees, nor would it exempt any employers from coverage.

This amendment contains several provisions. One would require OSHA to provide advice and technical assistance through onsite consultations to those smaller businesses requesting it, with no threat of citations. Many employers with 100 or less employees need assistance in understanding and complying with OSHA standards and this provision would allow it. As the law now stands, such an obviously beneficial course of action is not allowed.

Another provision would allow an employer to operate under a variance from OSHA standards if his work procedures were found to be equally effective in protecting his employees. This is only reasonable.

Some of the other provisions would change the penalty for serious violations from mandatory to permissive and disallow the imposition of penalties for nonserious violations detected on the first inspection. In this way, employers will not be fined automatically for serious violations when the circumstances do not warrant it, and fines for nonserious violations of standards which are unknown to the employer will be precluded.

Mr. President, opponents of this amendment contend that we are moving too fast and that these propositions

should be studied and analyzed before they are considered. In my judgment, this concern is unwarranted. This amendment is simple and straightforward. It is not subtle or complex. The faults in the law which this amendment addresses have been allowed to exist too long and the sooner we adopt these remedial measures the better off business in this country will be.

Mr. President, I am pleased to be a cosponsor of this much needed amendment and I hope that my colleagues will give it their favorable consideration.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have a statement by the distinguished Senator from Florida (Mr. CHILES) printed in the RECORD.

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

STATEMENT BY SENATOR CHILES

The amendment that Senator Dominick has submitted to S. 3203, providing for changes in the Occupational Safety and Health Act of 1970, points very clearly to the continued concern with this law, as presently constituted, and the interest in amending legislation. In the several years since enactment of OSHA, I and I am sure many of my colleagues have become aware of a pervasive dissatisfaction among members of the business community with the administration of OSHA. The objections that have been raised by employers do not represent a lack of support for the goal of assuring safe and healthful working conditions but a concern with a pattern of unreasonable requirements, confusing standards and a lack of assistance, in achieving compliance, that, if anything, works against the development of better working conditions.

It is my conviction that significant progress in the reduction of on-the-job injury and illness will only take place with the establishment of a working partnership between the employer and OSHA. At present there is an atmosphere of acrimony and suspicion that is most certainly working against the development of a truly effective worker safety program.

In response to what I feel have been reasonable and responsible criticisms of the way OSHA operates, I have offered a number of amendments which I feel will rectify the problem areas and put the effort to accomplish improved worker safety back on the right track. Over a year ago, Senator Dominick introduced legislation providing for amendments to the act. Yet there has been no action on these proposals which has prompted the introduction of this amendment to S. 3203.

The level and persistence of interest and concern in respect to the performance of the Occupational Safety and Health Administration indicates quite clearly the need for the Senate and particularly the Labor and Public Welfare Committee to address itself to this issue. Hearings should be initiated promptly to take a long, hard look at the experience of the employer with OSHA and to determine areas in which the law can be amended—not to lessen worker protection but to foster a better working relationship between OSHA and the employer with the ultimate result being improved safety and health conditions for working men and women.

Mr. DOMINICK. Mr. President, I do not have any more requests for time. If the manager of the bill is ready—Mr. President, may I have the attention of the manager of the bill?

Mr. WILLIAMS. Mr. President, I am sorry. I am being asked by the Senator from North Dakota (Mr. BURDICK) if I had promised hearings this year. Is that the question?

Mr. DOMINICK. No. My question is whether the Senator is ready to yield back his time.

Mr. WILLIAMS. The answer is "Yes." I am prepared to yield back my time and move to table the amendment.

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

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

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the motion to table.

Mr. DOMINICK. Mr. President, I suggest the absence of a quorum so that we can bring into the Chamber enough Senators to secure the yeas and nays.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOMINICK. 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. DOMINICK. Mr. President, I ask for the yeas and nays on the motion to lay on the table.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. MCCLURE). The question is on agreeing to the motion to lay on the table the amendment (No. 1215) of the Senator from Colorado (Mr. DOMINICK). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. METCALF (after having voted in the negative). Mr. President, on this vote I have a pair with the Senator from Ohio (Mr. METZENBAUM). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withdraw my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Alabama (Mr. ALLEN), the Senator from Missouri (Mr. EAGLETON), the Senator from North Carolina (Mr. ERVIN), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), the Senator from Montana (Mr. MANSFIELD), the Senator from Ohio (Mr. METZENBAUM), the Senator from Alabama (Mr. SPARKMAN), and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

I further announce that the Senator from Florida (Mr. CHILES) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Oregon (Mr. PACKWOOD) is necessarily absent.

The result was announced—yeas 47, nays 40, as follows:

[No. 184 Leg.]

YEAS—47

Abourezk	Fong	Kennedy
Bayh	Hart	Magnuson
Beall	Hartke	Mathias
Biden	Haskell	McGee
Brooke	Hathaway	McGovern
Burdick	Huddleston	Mondale
Byrd, Robert C.	Humphrey	Montoya
Case	Inouye	Moss
Clark	Jackson	Muskie
Cranston	Javits	Nelson
Pastore	Ribicoff	Symington
Pearson	Schweiker	Taft
Pell	Scott, Hugh	Tunney
Percy	Stafford	Weicker
Proxmire	Stevens	Williams
Randolph	Stevenson	

NAYS—40

Aiken	Cotton	Johnston
Baker	Curtis	Long
Bartlett	Dole	McClellan
Bellmon	Domenici	McClure
Bennett	Dominick	McIntyre
Bentsen	Eastland	Nunn
Bible	Fannin	Roth
Brock	Goldwater	Scott, William L.
Buckley	Griffin	Stennis
Byrd, Harry F., Jr.	Gurney	Talmadge
Cannon	Hansen	Thurmond
Church	Hatfield	Tower
Cook	Helms	Young
	Hruska	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Metcalf, against

NOT VOTING—12

Allen	Fulbright	Mansfield
Chiles	Gravel	Metzenbaum
Eagleton	Hollings	Packwood
Ervin	Hughes	Sparkman

So the motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. MCCLURE). The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

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

Mr. STAFFORD. Mr. President, I am introducing an amendment to the Occupational Safety and Health Act of 1970 which will provide initial onsite inspections not subject to penalties in certain cases and provide for a more adequate means of voluntary compliance with the provisions of the act.

The bill would require the Secretary of Labor to file public reports on violations classified by industry and occupation and furnish these documents to trade and labor organizations to facilitate voluntary compliance.

The Occupational Safety and Health Amendments of 1974 that I am introducing are designed not to have a detrimental effect on the objectives of the 1970 act for it is the right of every American to work in a danger free environment, and it is the responsibility of the employer to provide a safe working environment.

I cannot think of a better manifestation of concern for the public interest than the 1970 Occupational Safety and Health Act and I commend its principal sponsor, Senator WILLIAMS, for the hard work which he put into the development of this act.

As many of my colleagues are aware, the administration of OSHA has been the source of frequent complaints from both labor and management in the field. It is my belief that these complaints are a result of unrealistic administration of the act by the Department of Labor.

It is my belief that the act was not meant to be punitive to those employers who wish to comply with the provisions.

The hearings held by the Labor and Public Welfare Committee during the last Congress showed our concern for a

better enforcement of the law and one that was just for both employee and the employer. I believe a number of improvements have been made in the administration's program. However, a couple of points of the 1970 law do not adequately address the problems faced by the workers and employers. Therefore, I am introducing a bill which will substantially improve the administration and enforcement of the act by allowing for fuller cooperation between Government and private industry.

First, my bill would require that the Secretary of Labor compile and publish at least semiannually a report of cases of violations under the act which most often occurred during the 6 preceding months and that this report be issued to all those who have interest in receiving it so that it would facilitate compliance.

Second, the bill would amend section 9 of the law to allow an employer to request an initial onsite inspection in order to facilitate his compliance with the provisions of the law. This initial inspection to facilitate compliance to be done by an inspector who would compile all existing potential violations and provide the employer with a listing. The employer would not be given citations for such violations in this initial requested inspection but would be given a reasonable time, not exceeding 20 working days, to abate the violations as required by the law.

After the conclusion of such "reasonable time" the inspector would resurvey the site to ascertain whether the violations had been corrected. If the violations were corrected or satisfactory interim steps were taken by the employer to provide a safe working environment, then no citations would be issued. However, if the employer failed to correct any such violations, then the inspector would issue citations for still existing violations and the normal course for imposing penalties would take place.

This new provision could not be utilized by any employer who had been fined for a serious violation of the provisions of the act and could not be used more than once by an employer.

This provision provides the necessary consultation that an employer needs to find violations which he might not be aware of while placing the burden on the employer to correct the violations as soon as possible. The employer is only relieved of the penalties of the law when he has corrected the violations of the law.

The responsibility of the employer to comply with this act or that of the Federal Government to enforce the act should not be waived in whole in an attempt to facilitate compliance. By the method that I propose in my bill, of an initial request inspection by an employer with a period of grace for correction of violations, we can obtain speedier compliance in a safer working environment without abrogating our responsibility.

Senator WILLIAMS, in his letter of May 6, stated that he intends to hold hearings in the Labor and Public Welfare Committee when the General Accounting Office's complete study of OSHA compliance and enforcement is completed. I hope at that time that we can also examine the different pending pieces of legislation that would amend the Occupational Safety and Health Act of 1970 in view of all the information we have available.

I think subcommittee hearings and full committee consideration is a necessity when we consider changes of this magnitude that effect the lives and health of the millions of American workers.

Mr. TAFT. Mr. President, before the debate is closed on S. 3203, there are a number of areas that I would like to clarify. Under section (b) of S. 3203, a new subsection 2(14) is added to the National Labor Relations Act; it is to read as follows:

> (14) The term "Health Care Institution" shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged persons.

As pointed out by the committee report this new definition is not meant to cover public employees and, therefore, the applicable exemption in section 2(2) of the act is to continue unchanged. The scope of the application of this amendment is meant to include patient care situations and is not meant to include purely administrative health connected facilities. As an example, an insurance company specializing in medical coverage would not fall under the scope of these amendments, but would remain under general coverage of the act. An administrative facility or operation within a hospital, however, would be within the scope of the amendments as there would be a connection directly and indirectly with ongoing patient care. The crucial connection is the welfare of the patients and such connection would in certain cases be mere geographical proximity to ongoing patient care. As to doctors' offices and clinics, I would think the board would continue to apply reasonable monetary standards—the board's current self-imposed jurisdictional standards for proprietary hospitals is $250,000 total annual volume of business and at least $100,000 for proprietary nursing homes. At least these standards, if not greater monetary levels, should be applicable in light of current inflation.

As to coverage of health maintenance organizations, our intent was to parallel the definition contained in Public Law 93-222, the Health Maintenance Organization and Resources Act of 1973. Each of these areas of coverage, I believe, certainly merits a finding of rational connection with interstate commerce and the public welfare. I would particularly note the increasing financial impact of health care to the national economy with a projected estimate that the health care field may be the Nation's largest employer by 1975. As an example of the impact, just in nursing homes, I would note the board's decision in University Nursing Home, 168 NLRB 263 (1967).

Second, I believe it should be stressed that the only time the 10-day strike-picket notice in new section 8(g) would not apply would be in usual and ordinary unfair labor practice cases. Only where the actions of the employer "reflect a flagrant example of interference by the employers with the expressly protected right of their employees to select their own bargaining representative," *Mastro Plastics Corp.* v. *National Labor Relations Board*, 350 U.S. 270(1956) at page 278 would the restrictions and requirements of 8(g) not apply. It is not correct that this 10-day period can be nullified by "an unfair labor practice" as was stated by one of the cosponsors of S. 3203 in debate on the bill last Thursday. My intent in drafting this provision was only to permit the nullification of 8(g) requirements of exceptional cases such as Mastro Plastics supra, due to the overriding public interest in continuity of patient care. This point and intent by the committee was underscored by reference to the Mastro decision on page 4 of the report in discussing application of the 10-day notice.

Further, as I stated in my opening remarks, it is important to remember that a violation of 8(g) will constitute an independent unfair labor practice and may also constitute a refusal to bargain under 8(b)(3). Violation of this subsection may also constitute violation of other provisions of the act. It is absolutely crucial that these sanctions be available to give meaning to this new subsection.

Another issue that was not discussed in the opening day of debate on S. 3203 pertains to supervisors. The committee report on page 6 quite accurately and succinctly explains the committee rationale for rejecting proposed amendments to section 2(11) of the act. I would note with regard to the continuing evaluation in this area, contemplated by the report, my positive reaction to a decision in this general area last month by the Supreme Court, *National Labor Relations Board* v. *Bell Aerospace Co., Division of Textron, Inc.* (slip opinion No. 72-1598, April 23, 1974). Certainly the same general principles will apply in the health care field, as the test as to whether an individual is an employee or not will not rest solely on the test of a "potential conflict of interest in labor relations." Such an approach as contained in Bell Aerospace, supra, certainly is consistent with the objectives of S. 3203.

As to the issue of bargaining units, I would like to clarify that my omission in my opening remarks to mention the footnote to the Extendicare case in the committee report, certainly was accidental. As stated in the committee report:

> By our reference to Extendicare, we do not necessarily approve all the holdings of that decision.

Part of the unit findings in that case, it can be argued, was overly broad and not consistent with minimization of the number of bargaining units in health care institutions. Certainly, every effort should be made to prevent a proliferation of bargaining units in the health care field and this was one of the central issues leading to agreement on this legislation. In this area there is a definite need for the Board to examine the public interest in determining appropriate bargaining units. *NLRB* v. *Delaware-New*

Jersey Ferry Co., 128 F. 2d 130 (3rd Cir. 1942).

Another area that was discussed last week was the possibility of the Board ceding jurisdiction to a particular State law. A case in point is the State law of Minnesota. As the Senator from Minnesota (Mr. MONDALE) pointed out last week, this State law has worked extremely well and is endorsed by the State AFL-CIO, and the State Hospital Association and other interested groups in the State. Under these circumstances, it would certainly seem that the Board should consider ceding jurisdiction under 10(a) of the act. This provision reads as follows:

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this act or has received a construction inconsistent therewith.

The key here are the words "inconsistent with the corresponding provisions of this act or has received a construction inconsistent therewith." In examining the legislative history of this provision in the 1947 amendments it is not clear that the Congress rejected a liberal interpretation of this section. That is to say, a State act may share the same objectives of the national act and be compatible with regard to unfair labor practice settlement procedures, representation procedures, and other duties and obligations under the act. If a State act went beyond these procedures, however, with regard to strike situations it would not necessarily have to be consistent with the 1947 amendments. First, the National Labor Relations Act has only a few provisions with regard to impasse situations. These particular provisions are commonly known as the Taft-Hartley emergency disputes procedures under section 208 of the Labor Management Relations Act. Certainly a State could enact a law consistent with the provisions of the National Labor Relations Act and be ceded jurisdiction under 10(a) without necessarily becoming involved in strike resolution procedures. Even if the Board felt that such consideration was necessary in reference to 10(a), such procedures in a State could be consistent with the purposes of the act if they were designed to resolve disputes consistent with section 208 of the Labor Management Relations Act. These principles certainly should be explored with relation to the Minnesota State statute for labor relations in hospitals.

Mr. President, S. 3203 is a compromise and as in all compromises it represents give and take by all parties. I realize that there will be those who are not completely satisfied from both a labor and management perspective as to the final draft of S. 3203. As I have stated previously, however, I believe labor relations in the health care sector of the economy will be significantly improved by the provisions contained in S. 3203. This legislation marks the first time in the history of the National Labor Relations Act that a particular occupational group has been singled out for special consideration. This legislation clearly reflects the congressional recognition that health care is significantly different enough from other aspects of the economy to merit special protections and procedures under the act. As was stated last Thursday, particularly in the area of recognition strikes, improvements will result in labor relations in health care institutions. The other statutory protections and intent outlined in the committee report will be a positive step for the framework of future labor relation legislation in this country.

I would like to thank the staff of the Labor and Public Welfare Committee, including Gene Mittleman, Don Ellsberg, Jeff Doranz, and Bob Bohan for their work on this legislation. I also would like to thank representatives from various hospital associations throughout the country for working with my staff on this bill. On the labor side I would like to thank Jack Curran and Bob Connerton, of the International Laborer's Union; Dick Murphy of the Service Employees' International Union; Ken Young and Ken Meikeljohn of the AFL-CIO. Special thanks also should go to Richard Whalen, William Emmanuel, and Clifford Elliott for their outstanding contributions to this legislation. Mr. Elliott and Mr. Emmanuel have been involved with this bill since the outset of consideration of the issues involved and were very instrumental in helping Roger King of my staff in drafting provisions of S. 2292, S. 3088, and S.3203.

Mr. President, I am extremely hopeful that the Senate will adopt this legislation and that my colleagues in the House will also take expeditious action in permitting these proposals to be sent to the President for consideration. I yield the floor.

NLRA COVERAGE OF EMPLOYEES OF NONPROFIT HOSPITALS

Mr. HUMPHREY. Mr. President, it is time that we extended the rights granted under the National Labor Relations Act to employees of charitable health care institutions. It is simply unfair that the rights of these individuals not be protected under provisions similar to those available for the rest of America's workers. However, in extending these workers their due, the needs of our citizens for reliable health care has to be given careful consideration.

I believe that the bill before us today, which I support—S. 3203—represents a very reasonable approach to meeting these twin objectives. While extending NLRA coverage to nonprofit hospital employees, this bill makes special provision to safeguard hospital patients.

In particular, it seems to me that the 10-day statutory advance notice of any strike or picketing, which I feel would be an unacceptable interference with workers' rights in most other industries, is fully justified in the case of hospital employees.

I also understand that the National Labor Relations Board will give high priority to the resolution of disputes involving health care institutions. With their help, I hope we will be able to keep actual work stoppages at our hospitals at a very low level.

My only regret is that this legislation will preempt Minnesota's State law dealing with labor relations in nonprofit hospitals. Since 1947, the Minnesota Charitable Hospitals Act has served the citizens of my State well. It has protected workers and patients by prohibiting strikes, on the one hand, and requiring final and binding arbitration, on the other.

My colleague, Senator MONDALE, offered an amendment to S. 3203, when it was in committee, that would have exempted Minnesota's hospitals from this legislation. Regrettably, that measure was not accepted by the committee and would undoubtedly suffer a similar fate if offered today on the floor.

Despite this objection, I do support this legislation. For in most of the States in our Nation, workers in nonprofit hospitals do not have the bargaining power that comes with the right to strike or the requirement of binding arbitration.

I believe it is essential that we pass this bill today and extend coverage of the National Labor Relations Act to those 56 percent of all hospital workers in this country who are today excluded. It is a commonsense solution to meeting the dual objectives of protecting the rights of our workers and assuring reliable health care to our citizens.

Mr. THURMOND. Mr. President, I am opposed to passage of S. 3203. Private nonprofit hospitals have been specifically exempted from coverage under the National Labor Relations Act for 27 years, and I see no reason why such coverage should be extended now. Passage of this bill will expose these hospitals to strikes and lockouts which could severely jeopardize the delivery of health care in many parts of our country.

Mr. President, I am opposed to any extension of the National Labor Relations Act, as it is presently being administered by the National Labor Relations Board. I am particularly opposed when it is extended to an area as vital to the well-being of the American citizen as the health care industry.

Mr. JAVITS. Mr. President, I demand the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, for the information of the Senate, this will be the last rollcall vote today.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

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 Alabama (Mr. ALLEN), the Senator from Missouri (Mr. EAGLETON), the Senator from North Carolina (Mr. ERVIN), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Iowa (Mr. HUGHES), the Senator from Montana (Mr. MANSFIELD), the Senator from Ohio (Mr. METZENBAUM), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that the Senator from Florida (Mr. CHILES) is absent on official business.

On this vote, the Senator from Ohio (Mr. METZENBAUM) is paired with the Senator from North Carolina (Mr. ERVIN).

If present and voting, the Senator from Ohio would vote "yea" and the Senator from North Carolina would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oregon (Mr. PACKWOOD) is necessarily absent.

The result was announced—yeas 63, nays 25, as follows:

[No. 185 Leg.]

YEAS—63

Abourezk	Haskell	Nelson
Aiken	Hatfield	Nunn
Baker	Hathaway	Pastore
Bayh	Huddleston	Pearson
Beall	Humphrey	Pell
Bentsen	Inouye	Percy
Bible	Jackson	Proxmire
Biden	Javits	Randolph
Brooke	Johnston	Ribicoff
Burdick	Kennedy	Schweiker
Byrd, Robert C.	Long	Scott, Hugh
Cannon	Magnuson	Stafford
Case	Mathias	Stevens
Church	McGee	Stevenson
Clark	McGovern	Symington
Cook	McIntyre	Taft
Cranston	Metcalf	Talmadge
Domenici	Mondale	Tunney
Fong	Montoya	Weicker
Hart	Moss	Williams
Hartke	Muskie	Young

NAYS—25

Bartlett	Dole	Hruska
Bellmon	Dominick	McClellan
Bennett	Eastland	McClure
Brock	Fannin	Roth
Buckley	Goldwater	Scott, William L.
Byrd, Harry F., Jr.	Griffin	Stennis
Cotton	Gurney	Thurmond
Curtis	Hansen	Tower
	Helms	

NOT VOTING—12

Allen	Fulbright	Mansfield
Chiles	Gravel	Metzenbaum
Eagleton	Hollings	Packwood
Ervin	Hughes	Sparkman

So the bill (S. 3203) was passed, as follows:

S. 3203

An act to amend the National Labor Relations Act to extend its coverage and protection to employees of nonprofit hospitals, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 2(2) of the National Labor Relations Act is amended by striking out "or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual,".

(b) Section 2 of such Act is amended by adding at the end thereof the following new subsection:

"(14) The term 'health care institution' shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged persons.".

(c) The last sentence of section 8(d) of such Act is amended by striking out the words "the sixty-day" and inserting in lieu thereof "any notice" and by inserting before the words "shall lose" a comma and the following: "or who engages in any strike within the appropriate period specified in subsection (g) of this section,".

(d)(1) The last paragraph of section 8(d) of such Act is amended by adding at the end thereof the following new sentence: "Whenever the collective bargaining involves employees of a health care institution, the provisions of this section 8(d) shall be modified as follows:

"(A) The notice period of section 8(d)(1) shall be ninety days; the notice period of section 8(d)(3) shall be sixty days; and the contract period of section 8(d)(4) shall be ninety days.

"(B) Where the bargaining is for an initial agreement following certification or recognition, at least thirty day's notice of the existence of a dispute shall be given by the labor organization to the agencies set forth in section 8(d)(3).

"(C) After notice is given to the Federal Mediation and Conciliation Service under either clause (A) or (B) of this sentence, the Service shall promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of the dispute."

(e) Section 8 of such Act is amended by adding at the end thereof the following new subsection:

"(g) A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention, except that in the case of bargaining for an initial agreement following certification or recognition the notice required by this subsection shall not be given until the expiration of the period specified in clause (B) of the last sentence of section 8(d) of this Act. The notice shall state the date and time that such action will commence. The notice, once given, may be extended by the written agreement of both parties."

SEC. 2. The amendments made by this Act shall become effective on the thirtieth day after its date of enactment.

Mr. JAVITS. Mr. President, will the Senator yield to me for 1 minute on the bill?

Mr. WILLIAMS. I yield.

Mr. JAVITS. Mr. President, I thank my colleague for yielding.

I wish to commend Donald Elisburg, an aide to Senator WILLIAMS; Eugene Mittelman, my aide, and his assistant, David Dunn; Roger King, who helped Senator TAFT; and Bob Bahan, who helped Senator DOMINICK, for working on the fashioning of this bill. I have every expectation that it will have a good effect, constructive and peacemaking on labor-management relations in the hospital field. It will be our duty in conference to make the measure go as far as the Senate desired.

I particularly wish to congratulate my colleague from Ohio, Senator TAFT, who took great personal interest and had a lot to do with fashioning the measure we have just passed.

I thank the Senator for yielding.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, May 7, 1974, he presented to the President of the United States the following enrolled bills:

S. 1125. An act to extend through fiscal year 1974 certain expiring appropriations authorizations in the Public Health Service Act, the Community Mental Health Centers Act, and the Developmental Disabilities Services and Facilities Construction Act, and for other purposes; and

S. 2509. An act to name structure S-5A of the Central and Southern Florida Flood Control District, located in Palm Beach County, Florida, as the "W. Turner Wallis Pumping Station" in memory of the late W. Turner Wallis, the first secretary-treasurer and chief engineer for the Central and Southern Florida Flood Control District.

STATEMENT OF SENATOR BARTLETT BEFORE SENATE COMMERCE COMMITTEE ON CONSUMER ENERGY ACT OF 1974

Mr. LONG. Mr. President, Senators and others will find it useful to have the views of the junior Senator from Oklahoma (Mr. BARTLETT) when considering proposals for extending further regulation to oil and gas production, as well as in connection with proposals leading toward nationalization of the industry.

I ask unanimous consent to have printed in the RECORD testimony before the Senate Commerce Committee on the Consumer Energy Act of 1974 by the Honorable DEWEY F. BARTLETT on April 23, 1974.

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

TESTIMONY BY SENATOR DEWEY F. BARTLETT

Mr. Chairman, I believe you and I want adequate supplies of domestic energy at reasonable prices for the consumers of the United States. However, this bill is not the vehicle to achieve that goal. On the contrary this bill would be counterproductive to that goal.

The real issue involved in this piece of legislation is whether the private enterprise system of this country should be replaced by governmental corporations.

If I might borrow an analogy from a fellow Oklahoman, "the current travail of the oil industry can be likened to a horse whose master has ridden it long and hard, without giving it sufficient feed along the way. Then, when the animal falters, the master begins to beat it to death because it has 'failed' him."

The Consumer Energy Act of 1974 does not address the real problem of increasing the energy supplies. There have been obvious imperfections in the federal policies toward and controls of energy over the last twenty years.

The free market system is truly the eighth wonder of the world. It has made this country great.

The working of the free market has been encumbered by Federal regulations, much like the fine lines of a once beautiful antique covered with many layers of paint. In-

stead of removing the layers of paint to reveal the beauty of the system, S. 2506 would slap on another layer—a thick layer of drab paint.

We saw it happen to the railroads. They were regulated to death. History is repeating itself.

If we are to have adequate supplies of natural gas in this country, the price must be deregulated. The Commerce Committee staff summary of the issues before this Committee (sent to members of the Committee by letter from Senator Magnuson on January 28, 1974) failed to mention the comments of Senator Tower, Senator Fannin, Senator Buckley, Senator Hansen, Senator Dole, Senator Bellmon, and Senator Bentsen before this Committee.

The basic assumption inherent in all of S. 2506 is that the petroleum industry is noncompetitive.

It is revealing that the years of Judiciary Committee testimony have not led to that conclusion.

The fact is that the producing industry is highly competitive. There has been no evidence to show that the industry is noncompetitive despite years of study by the Federal Trade Commission and the Department of Justice. Moreover, both the Federal Power Commission and the Supreme Court have stated that the producing segment of the industry is highly competitive.

I personally listened to a dozen days of hearings by the special subcommittee of the Interior and Insular Affairs Committee on Integrated Oil Operations. There was no convincing evidence to indicate that there is a lack of competition in the petroleum industry especially in the producing segment. Quite to the contrary there was significant data submitted showing that the exploration and producing industry was highly competitive.

It is significant that the independent refiners and marketers have increased their share in recent years. The decrease in the independent's role in exploration and development is directly attributable to direct and indirect controls of price. This bill will further reduce competition by squelching the independent out of business.

Independent producers drill 82% of the wells drilled in the U.S.; the top 30 majors drill only 18%. The petroleum industry is relatively unconcentrated when compared to other key industries such as steel, autos, aircraft and many more in which four firms have over 70% of the value of shipments of their industry.

The profits of the major oil companies are not indicative of monopoly profits. John Winger has said that petroleum profits are insufficient to meet their capital needs if the consumers' needs are to be satisfied (insert John Winger's "The Profit Situation").

It seems to me that if the producing industry were not competitive that the independent producer would be telling us so. Instead they have consistently testified over the years that today what is needed is deregulation of petroleum prices. They want freedom to compete—not a subsidized noncompetitive big brother.

The consequences of making the wrong assumption—that the petroleum industry is not competitive—are staggering. S. 2506 would increase our dependence upon foreign imports to satisfy our domestic energy needs. Not only would we have a balance of payments deficit that would be overwhelming, but the possibility that our supply might be cut off at any time would be intolerable.

Even if the petroleum producing industry is proven not to be competitive, S. 2506 is not the way a person who believes in free enterprise would solve the problem. If oligopoly is proven to exist, let's address the problem forthrightly, not in a round about way.

The federal government need not become involved in the business of producing petroleum when that function can be fulfilled by private enterprise. The government's role is that if being a referee, not a player. If the government is a subsidized participant, its fairness as a referee would be doubtful.

The Federal Oil and Gas Corporation provided for in the Consumer Energy Act has been advocated as following in the footsteps of the Tennessee Valley Authority.

However, there is a basic fundamental difference between the basis for the formation of the Tennessee Valley Authority and the alleged need for the Federal Oil and Gas Corporation.

TVA stepped in to do a job which was not or could not be done by private concerns at that time. We were in the midst of a great depression with high unemployment and gross under utilization of labor, and plants and a shortage of available monetary capital. The huge capital investment required for the project was totally beyond the capability of the private industry.

The TVA Act granted authority to the TVA to develop the Tennessee River with Electric power as one part of the overall river basin development. However, through a broad interpretation of the original law, the TVA has become the exclusive source of electric generataion over a large seven state area with more than 85 percent of its assets representing power facilities. It has built an extensive transmission network and has driven almost all privately owned electric companies out of this vast area.

The subsidies provided FOGCO in S. 2506 render invalid the argument that the Corporation would constitute a meaningful "yardstick" to measure oil and gas prices, the elements of cost to be applied in appraising the prices to be compared with would be completely different and incompatible. FOGCO would be no more than a yardstick of oil and gas prices than TVA has been in measuring the costs of electricity, and like TVA would, because of extensive sudsidies, provide a means for driving private enterprise out of business, particularly the small businessman—the independent—who invariably suffers from government regulation.

The conclusion is inescapable that enactment of S. 2506 would fail in its alleged purpose to increase energy supplies by strengthening competition in the petroleum industry and instead would undermine the free enterprise system, with the American people the losers.

Mr. Chairman, I know that you want to be fair and just to all parties, but S. 2506 would also be unfair to many land owners.

Farmers and other owners of mineral rights who have leased their land to a controlled major oil company would receive lower royalty payments for its oil or gas while those who had leased to an independent producer would receive higher royalty payments even if their land is adjacent and the oil or gas produced is from the same reservoir.

I might also point out that if the price allowed for the oil and natural gas produced from federal lands is held below the free market price that the public will not be receiving just compensation for federal lands in the form of a bonus bid and royalties. This means that all of the taxpayers of the United States would be subsidizing those consumers of oil and gas produced from federal lands. That is unfair. It is happening today in the case of natural gas.

The intrastate natural gas market, the sole remaining free market, provides an important yardstick for the value of gas as a commodity.

It is the only market in which natural gas can presently be sold at the price a willing buyer will pay a willing seller for the commodity.

Recently, higher intrastate prices have caused a revitalization of drilling activity in gas producing states, and a concomitant increase in gas well completions. The extension of federal regulation into the intrastate market would only dampen the enthusiasm for finding more oil and gas.

If the intent is to cause more competition for existing supplies, regulation of the intrastate market does not achieve this goal. A regulated ceiling on intrastate gas—presumably one consistent with the interstate ceiling—would retard competition. Producers would simply obtain the ceiling price and, to the extent that exploration was discouraged, less gas would be available to serve total needs.

It is not coincidental that the shift from gas abundance to extreme scarcity has occurred during the past 20 years of FPC regulation of producer prices. Regulation by cost based public utility standards is doomed to continued failure in a high risk business such as petroleum production.

The intrastate market does not use gas for inherently "inferior" purposes.

It is true that a higher ratio of intrastate gas is consumed for industrial purposes and by electrical utilities for the generation of power than in the interstate market. This has been a natural result of low price, price controls, and location. Many industries tended to settle near areas of gas production when supplies were plentiful.

Approximately one half of intrastate industrial use is by refineries and chemical plants that are heavily dependent on this gas for continued production. For example, the fertilizer industry which I know the chairman knows, is suffering from a severe shortage which can have a devastating effect on agricultural production—depends on the intrastate market for more than one half of its supply of feedstock and processed gas. It is quite clear that these gas uses are not "inferior" and, in any event, any regulatory scheme which suddenly deprived these customers of their needed supplies would cause a severe and unwarranted economic dislocation and the loss of thousands of jobs in producing states with repercussions for consumers in all parts of the United States.

The Expropriation of Oklahoma's oil and gas will not increase the overall domestic energy supplies. Oklahomans are willing to share their energy supplies at a free market price so long as other states are willing to share their portion of the burden to develop their own resources, site refineries, drill on their lands and off their shores and provide for deep water ports.

No case has been made that any public benefit would be derived from the extension of federal control to the intrastate gas market. On the contrary, there is no experience which has been more disastrous to the American consumer than the 20 years of Federal regulation of interstate gas prices. Regulation of intrastate producer prices would bring forth no new gas for interstate buyers and is certain to discourage the development of new gas supply. Any effort to reallocate existing intrastate use would cause severe economic dislocation, major hardship and gross inequity. Regulation of the intrastate market is—as Congress intended when it enacted the Natural Gas Act—a proper area for state rather than federal authority.

The Consumer Energy Act of 1974 is not in the consumers interest. It is not in the consumers best interest to see the petroleum industry become like the post office or another railroad industry and then to suffer from shortages as the government flounders about while trying to make up for its mistakes.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Heiting, one of his secretaries, and he announced that on May 6, 1974, the President had approved and signed the following act:

S. 2770. An act to amend chapter 5 of title 37, United States Code, to revise the special pay structure relating to medical officers of the uniformed services.

EXECUTIVE PAY INCREASES—MESSAGE FROM THE PRESIDENT

The PRESIDING OFFICER (Mr. McCLURE) laid before the Senate a message from the President of the United States, transmitting a draft of proposed legislation, which with the accompanying papers, was referred to the Committee on Post Office and Civil Service. The message is as follows:

To the Congress of the United States:

The recent rejection by the Congress of higher salaries for the Executive, Legislative and Judicial branches has created a problem within the Government that needs to be quickly remedied.

Under the law, career officials in the General Schedule—"GS employees" as they are called—cannot be paid a higher salary than anyone on the lowest rung, Level V, of the Executive Schedule.

For the past five years, the salaries of those in the Executive Schedule have been frozen, and with the recent action by the Congress, will continue to be frozen until 1977.

During this same period, in actions approved by the Congress, the salaries of those in the General Schedule have been gradually increasing.

The result now is that GS employees in the top three levels of the General Schedule—GS 16s, 17s, and 18s—are almost all paid the same salary, $36,000, which is the same salary as a Level V employee on the Executive Schedule.

For the 10,000 careerists in the top levels of the General Schedule, this salary bunching or "pay compression" denies them fair increases in compensation, robs them of the incentive to seek promotions, and adversely affects their future annuities. Already it is creating greater difficulties in recruiting and retaining top-flight career personnel, and it could lead to a serious decline in the quality of the managerial work force.

To correct this problem, I am transmitting to the Congress today legislation which would raise the salaries of those in the lowest three levels of the Executive Schedule and thereby permit a significant increase in the salaries of those in the highest grades of the General Schedule.

This proposal would raise the salaries of Level V, IV and III employees to $41,000, $41,500 and $42,000 respectively. No increase would be provided for any Federal official now making more than $42,000.

By virtue of this reform, there would be a significant reduction in the salary compression for top-level GS employees whose salaries could continue to increase in a way that they deserve.

For the sake of the career employees within the Government and the quality of management which we need within the Executive Branch, I urge the Congress to give this proposal its swift approval.

RICHARD NIXON.

THE WHITE HOUSE, *May 7, 1974.*

EXECUTIVE MESSAGES REFERRED

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

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

DEFENSE SUPPLEMENTAL APPROPRIATION AUTHORIZATIONS, 1974

Mr. SYMINGTON. Mr. President, I ask unanimous consent that the Committee on Armed Services be discharged from further consideration of H.R. 12565.

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

Mr. SYMINGTON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 12565.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

H.R. 12565, a bill to authorize appropriations during the fiscal year 1974 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, and other weapons and research, development, test and evaluation for the Armed Forces, and to authorize construction at certain installations, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SYMINGTON. Mr. President, I move that all after the enacting clause of H.R. 12565 be stricken and that the text of S. 2999, as passed by the Senate on May 6, 1974 be inserted in lieu thereof.

The PRESIDING OFFICER. The motion was agreed to.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill (H.R. 12565) was read the third time and passed.

Mr. SYMINGTON. Mr. President, I move that the Senate insist upon its amendment to H.R. 12565 and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Messrs. STENNIS, SYMINGTON, JACKSON, THURMOND, and TOWER conferees on the part of the Senate.

The PRESIDING OFFICER. Does the Senator request that S. 2999 be indefinitely postponed?

Mr. SYMINGTON. I do, Mr. President.

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

Mr. SYMINGTON. 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.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, may I inquire of the Chair whether or not there are any special orders for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. There are none.

Mr. ROBERT C. BYRD. There are none. I thank the Chair.

ORDER FOR ADJOURNMENT TO 11:30 A.M.

Mr. ROBERT C. BYRD. That being the case, Mr. President, I ask unanimous consent that when the Senate competes its business, it stand in adjournment until the hour of 11:30 a.m. tomorrow.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS AND CONSIDERATION OF S. 3267 TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized under the standing order tomorrow, there be a period for the transaction of routine morning business of not to exceed 30 minutes, with statements limited therein to 5 minutes each, and that at the conclusion of routine morning business, the Senate proceed to the consideration of Calendar Order No. 758, S. 3267, a bill to provide standby emergency authority to assure that the essential energy needs of the United States are met.

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I believe I have already gotten consent that at some point tomorrow, not later than 3 p.m., the leadership be authorized to call up one of the education bills. Am I correct. I ask the Chair?

The PRESIDING OFFICER. Either bill; that is correct.

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

ORDER FOR RECOGNITION OF SENATOR PROXMIRE ON FRIDAY, May 10

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Friday, after the two leaders or their designees have been recognized under the standing

order, Mr. PROXMIRE be recognized for not to exceed 15 minutes.

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

ORDER FOR ADJOURNMENT FROM WEDNESDAY, MAY 8, TO THURSDAY, MAY 9, AT 9:30 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in adjournment until the hour of 9:30 a.m. on Thursday.

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

Mr. ROBERT C. BYRD. Mr. President, that convening hour may be changed. However, I should think that the Senate would have to come in no later than 9:45 on Thursday in order to begin action on the Postal Service bill, which, under the agreement, will have to be taken up at 10 a.m. that morning.

So for the moment I shall leave the hour stand at 9:30 a.m.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, on tomorrrow the Senate will convene at the hour of 11:30 a.m. After the two leaders or their designees have been recognized under the standing order, there will be a period for the transaction of routine morning business of not to exceed 30 minutes, with statements limited therein to 5 minutes each.

At the conclusion of routine morning business, the Senate will take up, on a first track, the bill (S. 3267), the energy bill, and, based on my conversations with Mr. JACKSON, the chairman of the Committee on Interior and Insular Affairs, opening statements will be made on that bill on tomorrow. He does not anticipate action on tomorrow beyond that of making opening statements.

At some point during the afternoon, not later than 3 p.m., the leader will call up one of the education bills, and inasmuch as no statements have been yet made on that legislation in connection with either of those bills, I gather, from talking with the chairman of the subcommittee handling the legislation, Mr. PELL, that the opening statements will be made. Whether or not any amendments to that bill will be readied by tomorrow remains to be seen. If so, votes could occur.

Conference reports, being privileged, and/or other matters, if cleared for action, may be called up at any time, and yea-and-nay votes could occur.

Incidentally, there is no time agreement on either the energy bill or the education bill as of now.

On Thursday, at 10 a.m., the Senate will proceed to take up S. 411, a bill relating to the Postal Service. There is a time agreement on that bill. Yea-and-nay votes are expected.

I assume that the joint leadership would probably be agreeable, if it meets with the approval of the Senate, to delay any vote on that bill until the afternoon so that committees will be allowed to meet without interruption during the morning hour. In any event, that is a matter that can be decided later.

Following the disposition of S. 411 on Thursday, the Senate will then resume the consideration of S. 2985, a bill to authorize appropriations for carrying out provisions under the International Policy Act.

I assume that those two bills will probably consume most of Thursday. Yea-and-nay votes will probably occur on both bills.

I should think it quite possible that amendments may again be offered to the International Policy Act—amendments dealing with wage-price controls, et cetera.

On Friday, the Senate will resume its consideration, on the double track system, of the energy bill and the education bill. Yea-and-nay votes could concur—especially on amendments to the education bill.

Again, I say that conference reports and other matters that have been cleared for action may be called up at any time.

I think that by and large what I have stated will, for the most part, probably cover the program for the next 3 days—Wednesday, Thursday, and Friday.

ADJOURNMENT TO 11:30 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 11:30 a.m. tomorrow.

The motion was agreed to; and at 4:44 p.m. the Senate adjourned until tomorrow, Wednesday, May 8, 1974, at 11:30 a.m.

NOMINATIONS

Executive nominations received by the Senate May 7, 1974:

DEPARTMENT OF STATE

The following-named Foreign Service Officers for promotion in the Foreign Service to the classes indicated:

Foreign Service Officers of class I:
James E. Akins, of Ohio.
Julio Javier Arias, of the District of Columbia.
Philip Axelrod, of Florida.
John A. Baker, Jr., of Connecticut.
Richard W. Boehm, of Maryland.
David B. Bolen, of Colorado.
John R. Burke, of Wisconsin.
Patricia M. Byrne, of Ohio.
Herman J. Cohen, of New York.
William R. Crawford, Jr., of Pennsylvania.
Oliver S Crosby, of Washington.
John B. Dexter, of Maryland.
Lawrence S. Eagleburger, of Wisconsin.
William B. Edmondson, of Nebraska.
Culver Gleysteen, of Pennsylvania.
Elizabeth J. Harper, of Missouri.
Robert B. Hill, of Rhode Island.
Robert B. Houghton, of Michigan.
Kempton B. Jenkins, of the District of Columbia.
Curtis F. Jones, of Maine.
William B. Jones, of California.
Roger Kirk, of Michigan.
Loren E. Lawrence, of Maryland.
John C. Leary, of Virginia.
Jack C. Miklos, of California.
Michael H. Newlin, of Florida.
Albert V. Nyren, of the District of Columbia.
Frank V. Ortiz, Jr., of New Mexico.
Stephen E. Palmer, Jr., of California.
Harry M. Phelan, Jr., of Tennessee.
Laurence G. Pickering, of Nebraska.
Paul Monroe Popple, of Illinois.
Lloyd M. Rives, of Rhode Island.
David T. Schneider, of Maryland.
William C. Sherman, of Kentucky.
William B. Sowash, of Ohio.
Heywood H. Stackhouse, of Florida.
Edward J. Streator, Jr., of New York.
Charles R. Tanguy, of Maryland.

Foreign Service Officers of class 1 and Consular Officers of the United States of America:
Thomas J. Dunnigan, of Ohio.
Pierre R. Graham, of Illinois.
John M. Howison, of Texas.
LeRoy F. Percival, Jr., of Connecticut.
Lewis M. Purnell, of Delaware.
Herbert E. Weiner, of New York.

Foreign Service Officers of class 2:
David Anderson, of New York.
George R. Andrews, of Tennessee.
Diego C. Asencio, of New Jersey.
George M. Barbis, of California.
Melville E. Blake, Jr., of Maryland.
Paul H. Boeker, of Ohio.
Lewis W. Bowden, of Maryland.
John A. Bushnell, of Connecticut.
Harry A. Cahill, of Virginia.
David H. Cohn, of Florida.
Peter D. Constable, of New York.
Walter L. Cutler, of Maine.
Mario R. DeCapua, of Connecticut.
Francis De Tarr, of California.
Robert S. Dillon, of Virginia.
John T. Doherty, of Maryland.
Robert W. Drexler, of Wisconsin.
Albert A. Francis, of the District of Columbia.
Robert E. Fritts, of Maryland.
Fred J. Galanto, of Massachusetts.
Paul F. Gardner, of Texas.
Mark J. Garrison, of Indiana.
Alan A. Gise, of California.
Erland H. Heginbotham, of Maryland.
John W. Holmes, of Massachusetts.
Hume A. Horan, of New Jersey.
Herbert Eugene Horowitz, of Florida.
Herbert Kaiser, of Maryland.
Robert V. Keeley, of Florida.
William Kelley, of Florida.
Lawrence J. Kennon, of California.
Barrington King, Jr., of Georgia.
David Adolph Korn, of Missouri.
Dennis H. Kux, of New York.
Melvin H. Levine, of Massachusetts.
Gifford D. Malone, of Florida.
Vernon D. McAninch, of Texas.
Edward Joseph McHale, of New York.
Frazier Meade, of the District of Columbia.
William D. Morgan, of Virginia.
Robert J. Morris, of the District of Columbia.
Daniel O. Newberry, of North Carolina.
Robert B. Oakley, of Louisiana.
Nancy Ostrander, of Indiana.
Ronald D. Palmer, of the District of Columbia.
Jack R. Perry, of Georgia.
Sol Polansky, of California.
Ernest H. Preeg, of New York.
Anthony C. E. Quainton, of Washington.
Donald E. Rau, of Florida.
Robert G. Rich, Jr., of Florida.
Carl W. Schmidt, of New Jersey.
Peter Sebastian, of Florida.
Walter John Silva, of Texas.
Walter Burges Smith II, of Rhode Island.
Roger W. Sullivan, of Massachusetts.
Charles R. Wilds, of Georgia.
Marshall W. Wiley, of Florida.
William M. Woessner, of New York.

Foreign Service Officers of class 2 and Consular Officers of the United States of America:
John Edward Karkashian, of California.
Sam Moskowitz, of Illinois.
Raymond L. Perkins, Jr., of Colorado.
Theodore A. Wahl, of Maryland.

Foreign Service Officers of class 3:
James E. Baker, of California.
G. Paul Balabanis, of California.
Robert L. Barry, of New Hampshire.
Donald P. Black, of California.
Jay H. Blowers, of Florida.
William D. Boggs, of West Virginia.
M. Lyall Breckon, of the District of Columbia.
Arthur E. Breisky, of California.
Edward W. M. Bryant, of New Hampshire.
Ralph H. Cadeaux, of Florida.
William Clark, Jr., of the District of Columbia.
Paul M. Cleveland, of Massachusetts.
Douglas McCord Cochran, of Pennsylvania.
Edward M. Cohen, of New York.
John R. Countryman, of New York.
Dwight M. Cramer, of Nebraska.
Trusten Frank Crigler, of Arizona.
Curtis C. Cutter, of California.
Daniel H. Daniels, of Pennsylvania.
Richard A. Dugstad, of Virginia.
William J. Dyess, of Alabama.
Joseph O. Eblan, of New Hampshire.
William H. Edgar, of the District of Columbia.
David K. Edminster, of Connecticut.
Robert Duncan Emmons, of California.
Ralph F. W. Eye, Jr., of New Hampshire.
James R. Falzone, of California.
Donald C. Ferguson, of California.
John P. Ferriter, of New York.
Charles E. Finan, of Ohio.
Sherman Jay Fine, of Connecticut.
John A. Froebe, Jr., of Ohio.
George A. Furness, Jr., of Maryland.
Louis P. Goelz, of Pennsylvania.
Olaf Grobel, of Tennessee.
William H. Hallman, of Texas.
Martin G. Heflin, of Florida.
John P. Heimann, of Connecticut.
Lyle R. Hewitt, of Washington.
Richard C. Howland, of New York.
George F. Jones, of Texas.
Robert E. Kaufman, of the District of Columbia.
George Lockwood Kelly, of Georgia.
John W. Kimball, of California.
George L. Kinter, of Vermont.
James A. Kiemstine, of Virginia.
Tadao Kobayashi, of Hawaii.
Donald A. Kruse, of Pennsylvania.
Joseph P. Leahy, of Virginia.
Perry W. Linder, of California.
Wingate Lloyd, of Pennsylvania.
Samuel Eldred Lupo, of California.
Richard R. Martin, of the District of Columbia.
J. Thomas McAndrew, of New York.
Sherrod B. McCall, of Illinois.
Mary E. McDonnell, of the District of Columbia.
John H. Moore, of the District of Columbia.
James M. Murray, of Illinois.
Thomas M. T. Niles, of Kentucky.
Robert P. Paganelli, of New York.
Russell O. Prickett, of Minnesota.
Lawrence R. Raicht, of New York.
Fernando E. Rondon, of Virginia.
Gerald A. Rosen, of New York.
Edward B. Rosenthal, of New York.
Lawrence D. Russell, of Florida.
Thomas J. Scotes, of Maryland.
John W. Simms, of Pennsylvania.
Frederic N. Spotts, of Massachusetts.
Richard L. Springer, of Ohio.
Peter A. Sutherland, of Massachusetts.
John J. Taylor, of Tennessee.
Richard W. Teare, of Ohio.
Charles H. Thomas II, of New Hampshire.
Joseph W. Twinam, of Tennessee.
Harold E. Vickers, of Massachusetts.
Richard Noyes Viets, of Texas.
W. Robert Warne, of California.
Joseph R. Yodzis, of Pennsylvania.
Foreign Service Officers of class 3 and Consular Officers of the United States of America:
Alice M. Smith, of North Carolina.
Victor Wolf, Jr., of New York.

Foreign Service Officers of class 4:
Norman L. Achilles, of Pennsylvania.
Alvin P. Adams, Jr., of New York.
James A. Allitto, of California.
Theodore L. Austin, Jr., of Maryland.
Michael I. Austrian, of New York.
Richard W. Baker III, of New Jersey.
James E. Baldridge, of Illinois.
John A. Barcas, of New Jersey.
Irene Mary Bauer, of Kansas.
Richard D. Belt, of Ohio.
Robert B. Bentley, of California.
Charles G. Billo, of New York.
Eli William Bizic, of Texas.
Robert D. Blackwill, of Nevada.
David L. Blakemore, of the District of Columbia.
John W. Bligh, Jr., of New York.
Barbara J. Blume, of California.
Charles R. Bowers, of California.
G. Gardiner Brown, of Ohio.
Timothy C. Brown, of Nevada.
David H. Burns, of Massachusetts.
Weldon D. Burson, of Texas.
Edward A. Casey, Jr., of New Jersey.
James H. Cheatham, of Tennessee.
Joseph P. Cheevers, of Kansas.
Helenann Clarke, of California.
Henry L. Clarke, of California.
Harvey T. Clew, of Connecticut.
L. Selwyn Coates, of Ohio.
Peter Collins, of New York.
Richard E. Combs, Jr., of California.
Alford W. Cooley, of Connecticut.
Arthur B. Corte, of New York.
Donald E. Crafts, of Georgia.
Brian G. Crowe, of Maryland.
Frank B. Crump, of Pennsylvania.
Carl B. Cunningham, of California.
Hilary J. Cunningham, of Michigan.
Rolfe B. Daniels, of California.
Francis J. Dennett, of Florida.
Don J. Donchi, of New Jersey.
Robert W. DuBose, Jr., of California.
David J. Dunford, of Connecticut.
Faye E. Dunn, of Alabama.
Michael L. Durkee, of New York.
Clarke N. Ellis, of California.
Donald C. Ellson, of Virginia.
Harvey Fergusson, of New Jersey.
David C. Fields, of California.
John D. Finney, Jr., of Missouri.
Charles W. Freeman, Jr., of Massachusetts.
Townsend B. Friedman, Jr., of Illinois.
William A. Garland, of Maryland.
John Charles Garon, of Maryland.
Frederick H. Gerlach, of Virginia.
Charles A. Gillespie, Jr., of California.
John A. Graham, of Washington.
John R. Graham, of Pennsylvania.
Larry C. Grahl, of Ohio.
William Rogers Gray, of California.
George G. B. Griffin, of Maryland.
John E. Hall, of New York.
Peter T. Hansen, of Florida.
Thomas M. Harrington, of Rhode Island.
Frederick H. Hassett, of Missouri.
Marianne B. Hewitt, of Washington.
Richard J. Higgins, of Missouri.
Herbert A. Hoffman, of Pennsylvania.
W. Nathaniel Howell, Jr., of Virginia.
James S. Huffman, of California.
Arthur H. Hughes, of Nebraska.
John J. Hurley, Jr., of Massachusetts.
Donald E. Huth, of California.
Linda C. Irick, of Arizona.
Lowell Richard Jackson, of Missouri.
Richard L. Jackson, of Massachusetts.
Martin Jacobs, of Florida.
Larry Craig Johnstone, of Washington.
M. Gordon Jones of California.
Peter Edward Jones, of Maryland.
Louis E. Kahn, of California.
John H. Kelly, of Georgia.
William P. Kelly, of Pennsylvania.
David T. Kenney, of the District of Columbia.
Dennis W. Keogh, of West Virginia.
Susan M. Klingaman, of New York.
Harry Kopp, of New York.
Norman C. LaBrie, of Massachusetts.

Robert B. Lane, of the District of Columbia.
Warren A. Lavorel, of California.
Lawrence B. Lesser, of New York.
Roscoe C. Lewis, III, of the District of Columbia.
Velma H. Lewis, of New Hampshire.
Bonnie M. Lincoln, of Minnesota.
Larrie D. Loehr, of California.
Raymond B. Lombardi, of Rhode Island.
Lewis R. Macfarlane, of Washington.
Arturo S. Macias, of Wisconsin.
Edward M. Malloy, of New York.
Gerald Eugene Manderscheid, of California.
Charles A. Mast, of South Dakota.
Stephanie Mayfield, of California.
Shirl F. McArthur, of Washington.
J. Phillip McLean, of Washington.
Thomas E. McNamara, of New York.
Roger B. Merrick, of Colorado.
William B. Milam, of California.
Thomas F. Milliren, of Pennsylvania.
Ned E. Morris, of Tennessee.
Richard W. Mueller, of Connecticut.
Alvis Craig Murphy, of Ohio.
Dennis P. Murphy, of Washington.
Peter K. Murphy, of Massachusetts.
Robert P. Myers, Jr., of California.
John L. Nesvig, of Minnesota.
Donald R. Niemi, of Wisconsin.
Jerrold M. North, of Illinois.
James Ozzello, of Washington.
Alan Parker, of Kansas.
David D. Passage, of Colorado.
Edward T. Paukert, of Nevada.
Miles S. Pendleton, Jr., of Washington.
John H. Penfold, of Colorado.
Vernon D. Penner, Jr., of Maryland.
Philip E. Penninger, of North Carolina.
Edward B. Pohl, of Louisiana.
Gordan R. Powers, of Idaho.
Robert Maxwell Pringle, of Virginia.
Robert E. Prosser, of Pennsylvania.
Herbert Rathner, of Virginia.
Richard J. Redmond, of Nebraska.
Randolph Reed, of Ohio.
Oscar A. Reynolds, of Texas.
Karl S. Richardson, of Nebraska.
Floyd A. Riggs, of Virginia.
Wilson A. Riley, Jr., of Connecticut.
James Joseph Romano, of Virginia.
Herman J. Rossi III, of Washington.
William E. Ryerson, of Maryland.
L. Benjamin Sargent, Jr., of Washington.
Thomas J. Scanlon, of California.
Arnold P. Schifferdecker, of Missouri.
Ruth M. Schimel, of New York.
Andrew D. Sens, of the District of Columbia.
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Andrew Jan Winter, of New York.
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Barbara K. Bodine, of California.
Joseph J. Borich, of South Dakota.
Kevin C. Brennan, of California.
Ralph M. Buck, of Florida.
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Gary Lee Everett, of Texas.
Robert Lindsey Glass, of Massachusetts.
Bruce N. Gray, of California.
Andrew Grossman, of New York.
Steven Charles Haas, of Kansas.
William Henry Hall, of Delaware.
Carolee Heileman, of Nebraska.
Rex L. Himes, of Washington.
Michael J. Hogan, of Utah.
Thomas L. Holladay, of Arizona.
John F. Hoog, of Missouri.
William J. Hudson, of California.
Ferris Richard Jameson, of Iowa.
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Donald Willis Keyser, of Virginia.
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John Scott Monier, of Illinois.
Richard A. Morford, of Indiana.
Paul T. Murphy, of Connecticut.
Thomas J. Perich, of Texas.
Robert D. Persiko, of New Jersey.
William Morris Pollack, of New York.
Marilyn Ross Povenmire, of Virginia.
Haywood Rankin, of North Carolina.
John R. Ratigan, of Colorado.
Peter Robert Reams, of Nevada.
Margot Ellen Reiner, of New Jersey.
Joseph A. Saloom III, of Virginia.
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Patrick Francis Kennedy, of Illinois.
Alan P. Larson, of the District of Columbia.
Dana M. Marshall, of New York.
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Larry A. Nelsen, of Oklahoma.
Jon Lane Noyes, of Wyoming.
Mark Robert Parris, of Virginia.
Alice Kathleen Straub, of New Jersey.
Gregory Michael Suchan, of Ohio.
Annette L. Veler, of Wisconsin.

The following-named Foreign Service Information Officers for promotion in the Foreign Service to the classes indicated:

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Michael T. F. Pistor, of Arizona.
Yale W. Richmond, of Virginia.
McKinney H. Russell, Sr., of Florida.
Jack H. Shellenberger, of Maryland.
John W. Shirley, of Illinois.
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Everet Bumgardner, of Virginia.
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Frances E. Coughlin, of California.
Charles E. Courtney, of California.
William S. Dickson, of New Jersey.
Philip DiTommaso, of Pennsylvania.
Daniel Garcia, of New York.
Roman L. Lotsberg, of Maryland.
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Lewis W. Pate, of Nebraska.
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Guy W. Farmer, of Nevada.
Aurelius Fernandez, of New York.
Forrest Fischer, of Illinois.
James M. FitzGerald, of Virginia.
Eli Flam, of New York.
Lawrence B. Flood, of the District of Columbia.
Frank P. Florey, of Colorado.
C. M. Fry, of Missouri.
Robert Barry Fulton, of Pennsylvania.
Shirley B. Hendsch, of California.
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Ronald P. Oppen, of Florida.
Louis E. Polichetti, of New York.
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Phifer P. Rothman, of Florida.
Deirdre Mead Ryan, of Connecticut.
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Earle W. Sherman, of California.
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Phillip F. Thomas, of Tennessee.
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John P. Harrod, of New Hampshire.
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Carmen C. Suro, of Maryland.
Rosalind L. Swenson, of New York.
Cornelius C. Walsh, of Connecticut.
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Robert B. Hall, of Oregon.
E. Ashley Wills, of Georgia.

EXTENSIONS OF REMARKS

BILL TO AUTHORIZE ADDITIONAL DRAINAGE WORK FOR VERNAL AND EMERY RECLAMATION PROJECTS

HON. GUNN McKAY

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 7, 1974

Mr. McKAY. Mr. Speaker, I am today introducing a bill to authorize the construction of necessary drainage works and to amend the respective repayment contracts for the Vernal unit, central Utah project, and the Emery County project. Both are participating projects under the Colorado River storage project.

The repayment contract negotiated with the Uintah Water Conservancy District and for the Vernal unit, signed July 14, 1958, provides for the construction of all drainage facilities for the Vernal unit which the Secretary of the Interior feels are necessary for project purposes at a cost not to exceed $675,000. Such costs are to be held within the limit of funds made available by Congress.

Similarly, the repayment contract with the Emery Water Conservancy District of May 15, 1962, provides for the construction of drainage facilities which the Secretary decides are necessary at a cost not to exceed $999,000, and again within the limit of funds made available by Congress.

Since the time of the contract negotiations, water delivery features for the Vernal unit have been completed for 14,700 irrigable acres. In the operation of the project it has become evident that more acres have a drainage deficiency than originally anticipated. Project drains have been completed and are now serving about 1,250 acres. Drainage facilities are needed for about 2,450 additional acres in order to complete a viable