two ago, it could have immediately been supposed that a plot against the so-called free world had been sprung, that the "international Communist conspiracy" had shown itself, and all the well-oiled alarms would have sounded. Even as a tentative hypothesis, such a notion can hardly get off the ground today.

Each of these leaders fell from causes peculiar to his own circumstances. President Pompidou, of course, died; but his Gaullist movement seems to have fallen victim to the same kind of internal disenchantment that hit Prime Ministers Heath and Trudeau. Premier Caetano in Portugal and President Papadopoulos in Greece grew careless in managing the conspiratorial right-wing politics that kept them in power. Chancellor Brandt and Mrs. Meir plummeted disastrously in their public's esteem as their vision of earlier years went cloudy; then both succumbed to specific mishaps.

The proximate causes of these changes of regime are different, but all seem to spring from roots common to the industrialized world. Alastair Buchan defined them in his Reith Lectures to include "diminishing respect for political leadership, the divorce between social and political loyalties, the adjustment from rural to urban values, and the increasing dominance of the mass media." Confronting these pervasive factors and the rapid acceleration of social change which they are visibly provoking, regime after regime has found itself overwhelmed.

The postwar era which nurtured the present generation of unsteady leaders was a time, by and large, of orderly economic expansion, offering seemingly automatic safety valves to correct social dislocations. With the coming of the nineteen-seventies, and particularly the oil crisis starting last October, the industrial economies found the abstract desirability of growth giving way to the absolute necessity for contraction. "Capitalism in contraction is as much of a social and political monster as capitalism in expansion tends to be a miracle," wrote Prof. Fritz Stern of Columbia University.

To this structural change must be added the seeming inability of leadership groups in country after country to break loose from the traditional issues of strategy and economy, in which they were so well schooled, in order to confront the new problems—scarcity in energy and food supplies, population pressure, deteriorating natural environment, inflation unresponsive to any of the traditional checks—which are taking hold of their societies. It requires a far subtler political mind to lead a society through evolution than revolution.

Improvisation supplanted vision as the quality which created leadership, and it is not enough. The most somber note of all in this time is the incapacity of leadership in yet another nation, which had served as source of much of the inspiration and power that guided the Western world through the postwar era. Already in effect, and perhaps soon in fact, the President of the United States must be added to the list of political leaders fallen from authority.

RUMANIA'S NATIONAL HOLIDAY

HON. THOMAS E. MORGAN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 13, 1974

Mr. MORGAN. Mr. Speaker, the 10th of May is a date of special significance to the peoples of the free world as the anniversary of Rumania's national independence and of the kingdom of Rumania.

It was on May 10, 1866, that Prince Charles of Hohenzollern-Sigmaringen was proclaimed Prince of Rumania in Bucharest. On May 10, 1877, Rumania declared her independence, severing her ties with the Ottoman Empire. On May 10, 1881, Charles I was crowned King of Rumania by the will of his people.

While the present Government of Rumania pursues an independent foreign policy in some respects, we must not forget the circumstances of the people of Rumania and their just aspirations to basic freedoms. I commend the Rumanian National Committee for its observance of the 10th of May.

SENATE—*Tuesday, May 14, 1974*

The Senate met at 10 a.m. and was called to order by Hon. HOWARD M. METZENBAUM, a Senator from the State of Ohio.

PRAYER

The Reverend Monsignor Louis W. Albert, pastor, St. John the Evangelist Church, Silver Spring, Md., offered the following prayer:

O God of might, wisdom, and justice, through whom authority is rightly administered, laws are enacted, and judgments decreed, assist with Thy counsel and fortitude the Members of the U.S. Senate. May their deliberations always be conducted in righteousness and be eminently useful to the people whom they serve. Let the light of Thy divine wisdom shine in their proceedings and in the laws framed for our rule so that they may tend to the preservation of peace, the promotion of national happiness, the increase of industry, sobriety, and useful knowledge, and may perpetuate to us the blessings of equal liberty. Give them the courage and insight to discharge the duties of their office with honesty and ability. May the laws so enacted in the Senate be in conformity with the knowledge of Thy most holy law. May the Senators be preserved in union and in peace. Although there may be diversity of thought, let the differences be always modified with charity and understanding.

This we pray through Christ our Lord. 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 14, 1974.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. HOWARD M. METZENBAUM, a Senator from the State of Ohio, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

Mr. METZENBAUM 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 13, 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.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar.

There being no objection, the Senate proceeded to the consideration of executive business.

The ACTING PRESIDENT pro tempore. The nominations on the Executive Calendar will be stated.

COASTAL PLAINS REGIONAL COMMISSION

The second assistant legislative clerk read the nomination of Russell Jackson Hawke, Jr., of North Carolina, to be Federal Cochairman of the Coastal Plains Regional Commission.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

DEPARTMENT OF JUSTICE

The second assistant legislative clerk read the nominations in the Department of Justice as follows:

John T. Pierpont, Jr., of Missouri, to be U.S. marshall for the western district of Missouri for the term of 4 years.

David G. Trager, of New York, to be U.S. attorney for the eastern district of New York for the term of 4 years.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be notified of the confirmation of these nominations.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

There being no objection, the Senate resumed the consideration of legislative business.

MONTANA—NOW OR NEVER

Mr. MANSFIELD. Mr. President, as my colleagues here in the Senate are aware, one of my preoccupations during the 93d Congress has been the rush to the coalfields of the West and the serious problems it creates for a State like Montana which is agriculturally oriented and is not interested in vast disruption of its land and economic and social patterns.

Steve Doherty, a student at the University of Montana, has prepared an excellent paper for a seminar on this general subject. I share his general conclusions and I am most impressed with the documentation. I believe it is worthy of being brought to the attention of my colleagues in the Senate.

Mr. President, I ask unanimous consent to have Mr. Doherty's paper, "Montana—Now or Never," printed in the RECORD.

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

MONTANA—NOW OR NEVER

(Prepared for Env. St. 301, Environmental Case Studies Seminar, Dr. Robert Giegengack, by Steve Doherty)

A Blackfoot Indian Chief had this to say about the value our society tried to place on the land.

"Our land is more valuable than your money. It will last forever. It will not even perish by the flames of fire. As long as the sun shines and the waters flow, this land will be here to give life to men and animals. We cannot sell the lives of men and animals; therefore we cannot sell this land. It was put here for us by the Great Spirit and we cannot sell it because it does not belong to us. You can count your money and burn it within the nod of a buffalo's head, but only the Great Spirit can count the grains of sand and the blades of grass of these plains. As a present, we will give you anything we have that you can take with you; but the land, never." [20]

Fortunately, he was not aware of the advances of modern technology which make it possible, on an enormous scale, to peel away the land, layer by layer, and cart away a currently valued seam of minerals. He was not aware of stripmining and its consequences.

It is my aim to examine the various stages of the coal rush, from stripmining through energy conversion facilities, for their effects on the land, air, water and people of South Eastern Montana and by extension, the rest of the Northern Great Plains. Concurrently, I will evaluate the response of Government (both State and Federal) and citizen's interest groups to the problems posed by the development of this resource. Out of this analysis I will draw some conclusions and make some recommendations.

It is hard to describe the feeling you get when you are with this land. In the winter the winds come down out of the Canadian Arctic and with nothing in their paths, temperatures of −30°F are not uncommon. In the summer the sun dries up a lot of the smaller streams and temperatures often exceed 100°F. Rainfall in this arid land, ranges from 9'' in the lower elevations (1300 ft.) to 24'' in the high country (4300 ft.).

These Northern Great Plains are marked by rolling hills, broad valleys and sharp coulees. Often the ridges reveal scoria, a red clay like substance which becomes like baked porcelain when an exposed coal seam is ignited and burns below it.

The soils are saline and alkaline. The vegetative cover is restricted to drought resistant, short-prairie grasses and sagebrush. Several species of pines appear at higher elevations.

The land, although not overly productive (15–40 acres are required to sustain one animal for one year), has nurtured a ranching and farming society since the arrival of the white men. Ninety percent of the land is in farms and ranches; and depending on the market prices of wheat, barley, oats or beef, some $50–80 million is contributed to the state's economy annually by agriculture.

The region abounds with wildlife. Deer, antelope, pheasants, grouse, partridges, turkey, fox, coyotes, hawks and eagles are often sighted. Each fall the area is overrun by hordes of hunters trying to get their game. The hunters, by the way, contribute heavily to the local economy by their recreational spending.

The land is always with you. It can swallow you up and hide animals, people and towns. The distances between points are greater than they seem because of the vast expanse of space.

The people who live on this land have had to be tough and self-reliant to withstand the extreme fluctuations of nature and the marketplace. The spirit of independence has fostered a wariness of outsiders, a suspicion which has been well justified in the past. K. Ross Toole, Professor of Western History at the University of Montana writes:

"The Montana pattern has been brief, explosive, frenetic, and often tragic. The economic picture has been one of exploitation, overexpansion, boom, and bust . . . Everyone of the salient industries has been extractive, from beaver through beef to copper . . . The object of men had to be to trap it, mine it, shoot it, and get out . . . The land was far away from the main stream of American life. Its wealth, almost without exception, was of such a nature that it could only be converted into coin of the realm by devices and methods created and paid for outside of the region. The raw material could rarely be fabricated on the spot because of the simple economics of distance. And so the land—what was on it and in it—was given over to others. Distance meant cost, cost meant capital, capital meant absentee ownership, absentee ownership meant absentee control and absentee control meant operation in the essential interest of outsiders with local interests a very secondary consideration. And so it was with beaver, beef, sheep, silver, copper, oil, and to a lesser extent, even with lumber and wheat." [21]

And now, in this decade, perhaps an even more ominous problem presents itself, that of coal. Tradition dictates "boom and bust" type of economy. If present day corporate coal cowboys have their way yet another resource will be torn from the land. But the development of this resource is unlike any other in the history of Montana. The repercussions of a drag line and energy conversion facility are far-reaching and severe. They alter the quality of life and present land uses in a harsh and irreversible manner. The decisions which are now made regarding development will determine what options are available later on. Let's examine the information upon which the decisions are based, the decisions themselves and then their impacts.

People have known about the coal since the days of the Lewis & Clark expedition. Early settlers used coal for heating purposes. The railroads used it to power their locomotives until the late 1950's when the switch to diesel fuel occurred. Large scale use of this resource was not considered economically feasible because of the distance from marketable areas and low BTU content of the coal. (averaging 8–9000 BTU's)

With the advent of the "energy crisis", the energy industries set their sights on the Northern Great Plains. Here was a readily expoitable, easily recoverable, highly profitable source of fuel. There were other factors, however, that prompted interest in this resource.

Federal Air standards were being enforced making it illegal to burn coal with a high percentage content of sulfur. Federal deep-mining safety laws were being enforced, thus making deep mining more expensive. And so, under the broad umbrella of solving a hypothetical need, justification was sought to exploit this specific area and is resource.

There is no arguing the extent of the resource. Various estimates have put the coal reserves in the Fort Union formation that underlies parts of Montana, North Dakota and Wyoming at one and a half Trillion tons, about 40% of the known U.S. reserves. The sulfur content ranges from .2–2.0%, with an average of .9%. The beds of coal, ranging from 7' to 130' in thickness, are covered by soil from 80' to 300' in depth. These are Nature's facts, and indisputable.

The magnitude of the rush to get the coal is as staggering as the extent of the coal beds themselves. Estimates from the Montana Coal Task Force indicate the tempo of the rush. (see Table I).

TABLE I.—Source:[18] Montana coal production

[Production in millions of tons]

Year:	
1969	1
1971	7
1973	16
1975	20
1980	75–80

The urgency of a seventy-five to eighty fold increase in one decade is going to blunt the effectiveness of any planning program that can be established.

The effects of the development of this resource are felt in two stages; stripmining, removing the soil and extracting the coal, and the use of the coal in energy conversion facilities (electrical generation, gasification and liquification plants).

The major portion of the coal presently stripped is now exported for use outside the state. However, there are plans to use it in nine month electrical generating plants, the second stage of development.

"To cite one example, the Bureau of Reclamation in colaboration with some 35 power utilities released a study in October of 1971 entitled the *North Central Power Study*. It proposed that 42 nine month generating plants be constructed in the northern plains area, primarily in Wyoming, Montana, and North Dakota. If constructed, these power plants would produce some 403 billion kilowatts of electricity per year, more electricity than is produced annually by any country in the world save the U.S.S.R. or the U.S. (In 1969, the U.S.S.R. produced 659 billion kilowatts of electricity)." [22]

Given the nature of the rush, its magnitude and implications for the people of the area and U.S. Energy Policy, it is interesting to note the response of the concerned entities, and the validity of the claims of those who would exploit this resource.

The Federal Government first entered the picture in October of 1971 with the previously mentioned *North Central Power Study* and then Followed up with the *Montana–Wyoming Aqueducts* in April of 1972. Both documents were basically blueprints for the construction of a massive generating complex. The public interest was equated with the private utility companies interest; they remain as sterling examples of collusion between the Federal Government and the private utility industry.

The reports had a built-in bias,

Footnotes at end of article.

"An assumption basic to this report is that use of electric energy in the North Central area will continue to increase in the years ahead. Recent history has shown electric consumption to double every 10 years—equivalent to a compound average annual rate of 7%." [21]

Decreased demand due to energy saving measures were not even factored into projections. Lip service was paid to alternative forms of energy.

These reports shocked the people of the area into awareness of the stark realities of resource development. The government shelved its plans for the North Central Power Project because of the opposition of citizens groups, but there was one redeeming aspect of the NCPP. It was a plan, a framework upon which to work. Now that it is in limbo, development is on an "every-utility-company-for-itself" basis. The Federal Government, meanwhile, has come up with another acronym to replace the NCPP, the NGPRP, the Northern Great Plains Resource Program whose primary objective is to

". . . provide an analytical and informational framework for policy and planning decisions at all levels of government. The end result is intended to be a decision making tool for Federal, State and Local interests who together must plan and manage the area's land and natural resources." [22] The NGPRP has yet to produce a public report or have substantial impact on policy making. The Federal stance can best be described as a "non-policy" one. Such avoidance of the issues leads to quick exploitation (a boom), which is favored by the companies involved, but pays little heed to the inevitable result of that type of exploitation, a "bust".

The Montana State Government has responded well to the problems brought about by development. Citizen input by such groups as the Northern Plains Resource Council has raised awareness levels and prompted studies and legislation. The Montana Reclamation Act of 1973, reputed to be the toughest in the country, is one example of Montana's response.

Given the claims made for development and response from the various entities concerned, it is interesting to analyze these claims for their validity.

First is this admission from the NGPRP.

"Although (the coal produced by 2000 A.D.) is a significant increase in production, Northern Great Plains coal *will still be of relatively minor importance* to the national energy picture under the Most Probable forecast for NGP coal production." [8] (Italics Added)

Next it is interesting to note the relative abundance of low sulfur, strippable coal compared to low sulfur coal available by deep mining methods in the Northern Plains States. (See Table II).

TABLE II.—DEEP MINE, STRIP MINE, LOW SULFUR, AND COAL COMPARISONS

[Units in millions of tons, sulfur content 1 percent or less]

State	Total reserves	Deep mine reserves	Strip mine reserves	Ratio [1]
Montana:				
Bituminous	2,104.6	3,104.6	0	0
Subbituminous	132,116.6	127,636.0	3,176	40:1
Lignite	87,481.7	83,984.7	3,497	24:1
Wyoming:				
Bituminous	12,819.0	13,819.0	0	0
Subbituminous	107,903.9	94,518.3	13,377	7:1
North Dakota:				
Lignite	350,698.0	348,623.0	2,075	167:1

[1] Deep mine to strip mine.

The ratio of deep mine, low sulfur coal to strippable, low sulfur coal for the *whole* United States is 30:1 [9]

Is there an alternative to strip mining the Western lands for coal? The figures themselves suggest traditional deep mining as one alternative. The costs of initiating and continuing production in a deep mine are 5 to 8 times those for a strip mine operation. However, the strip mine cost figures do not take into account the environmental impact or economic loss due to agricultural lands being taken out of production. These costs are unacknowledged. If they were injected into cost analysis figures I suspect the Deep mine/strip mine cost-ratio would be lowered. From the Environmental Policy Center,

"With the passage of the Clean Air Act in 1970 the importance of low sulfur coal (coal less than 1% sulfur) became widely acknowledged. The coal industry has been quite reluctant to point out or even admit, however, that the overwhelming percent of low-sulfur coal is deep mineable, not strip mineable, and that *the eastern coalfields contain low sulfur deep mineable coal reserves that are 43 times more abundant than low sulfur strippable coal reserves.*" [7] (Italics added)

Eastern coal, "in terms of its superior quality and heat content (BTU's) . . . represents a far greater energy source closer to the market areas in the East." [9a] If mining is phased out in the East, what will happen to the areas it leaves behind in the East and the Mid-West? Will there be a major shift of population following capital investments? What about the unemployed miners in Appalachia? [9a 17a 12] These questions have implications not only for the Great Plains but also for the nation as well.

In light of this analysis, there can be only one conclusion as to why Western coal has become important. It isn't the public interest (however it may be twisted), nor is it needed to meet inflated energy projections, nor is it going to make the U.S. self-sufficient in energy. Simply stated, the reason for the current interest in Western coal is profits. (See [17]). It is the imperative of our free market system that companies make profits, not that they consider the ecological, economic or social impacts of their projects. This is not to say that profits, in and of themselves are bad. It is to say that other environmental costs have not been factored into the costs of development.

Having established a reference base on present and projected land uses (however invalid the rationale for those projections is), I next want to examine the problem of surface vs subsurface ownership rights, a key element to the development of the coal.

There are four broad categories of surface and subsurface ownership in the Northern Plains.

(1) private surface, private mineral
(2) private surface, federal mineral
(3) private surface, state mineral
(4) private surface, indian mineral

Conflict arises when there is a mixed ownership and the two parties have differing views on the land use.

The reason for this grab-bag of ownership lies in the Homestead Acts which deeded land to settlers while the Federal Government retained the mineral rights, the Railroad Siting Act of 1864 which deeded huge tracts of Western land to railroads of the West, and various treaties with the Indians, which have resulted in Indian ownership of coal underneath white owned ranches.

Added to this is the concept of eminent domain, by which "the owner of the minerals can condemn the surface property owner in order to mine them." [11] The implications of this law are frightening. It became standard procedure for coal companies and speculators to threaten condemnation in order to get a reluctant landowner to sell out. The Montana legislature acted to correct these abuses in 1973 when it added the following section to the eminent domain law,

"the use of the surface for strip mining or open pit mining of coal . . . is not a public use and eminent domain may not be exercised for this purpose." [11]

The coal companies have argued that such a limitation is discriminatory and have asked that this section be ruled unconstitutional in federal courts, and cases are in litigation as of this writing.

As an example of the arrogance of the companies involved it is enlightening to recount the story of the dealings of the coal companies with the Northern Cheyenne and Crow Indains, as told in the *Borrowed Times*.[2]

In 1966 the BIA, which is the legal protector of the tribes, started a parade of coal company officials before the Northern Cheyenne Tribal Council. Their purpose was to get the Cheyenne to sign away their mineral rights to the companies. The tribal council leased (for one dollar an acre and 17½ cents a ton royalty) the rights to 243,808 acres of land on the reservation (a total of 56% of the reservation) for Peabody Coal, Consolidated Coal and several speculators.

Meanwhile, showing that there is no honor among thieves, Consolidated coal separately began negotiations for another 70,000 acres of the tribe's lands (bringing the total amount leased up to 72% of the reservation) for $35 an acre and 25 cents a ton royalty. They also held out the plum of a $1.5 million donation for a new medical center, which is badly needed by the tribe. The catch clause was that Consolidated was planning an energy conversion facility that would bring in a population of around 30,000 people. These employees would be eligible for treatment at the center and in time become its major users.

Somewhat similar events were occurring on the Crow reservation. The Crow Tribal Council let out 292,680 acres of land for 17.5 cents a ton royalty. They also gave away options on 140,000 acre/feet of water per year without a penny of payment.

Wholesale degradation of the environment might be the result of these transactions, for there is no Federal Reclamation Law. Montana state laws do not apply to Indian reservations, and the BIA Reclamation regulations are considered worthless. The Northern Cheyenne, seeking redress, have recently asked the BIA "to declare null and void all existing coal mining permits and leases on their reservation . . . (because) the BIA has failed to make the required studies prior to granting the leases and permits." [25] The petition is under consideration as of this writing.

The energy companies have not limited their activities to the private sector. Over 50% of the coal bearing lands in the Northern Great Plains are Federally administered through the Department of the Interior. From the Council on Economic Priorities;

"The Mineral Leasing Act of 1920 and the Omnibus Tribal Leasing Act of 1938 authorize the Secretary of Interior to issue coal leases to private industry. Such leasing must be consistent with Departmental goals of orderly and timely resource development, the receipt of fair market value, and the protection of the environment . . . Industry has taken the initiative in the leasing program in the absence of government direction. At *industry's request*, 67% of all leases were issued between 1960 and 1971 *ahead of market demand*. The result has been an *absence of competition for coal lands, a loss of revenue to the public treasury, and widespread speculation with public resources* . . . (They conclude) *The leasing program has failed abysmally.*" [4a] (Italics added)

The BIA has not protected the interests of the Indian tribes. And the Department of the Interior has catered to the whims of the coal companies, not the need of the American people.

The true concerns of the coal companies are thinly veiled in light of such business practices. Many firms have already contracted to supply Mid-Western utilities with coal, before any impact studies have been made.

Footnotes at end of article.

Now that the nature of the risk is understood it is possible to examine the impacts of strip mining and energy conversion upon the land, air, water and life in the area.

The operation of a surface mine consists of removing the successive horizons of soil until the coal seam is exposed. The coal is then removed, the cuts filled in and the operation moves on. The problems arise when you try to re-establish a vegetative cover on the spoils of a strip mine. This process is termed reclamation.

By reclamation is meant—restoring the land to at least it's former level of productivity and use, in as short a time period as possible. There are difficult and sometimes insurmountable problems to overcome in this process because

". . . surface mining, by its very nature, destroys the original mantle of the mining site. Topsoil salvage reserves a portion of the developed soil but the salvage process itself destroys or alters many important physical characteristics of the soil system which developed over thousands of years. This time development factor cannot be duplicated." [30]

The saline—alkali soils that receive low rainfall in this region are subject to erosion by wind and any rain that does fall.

From research being conducted by the Montana State University Agricultural Station four integral phases of Reclamation have been determnied.[14, 15, 30] They are:

(1) Spoils Segregation—replacement of soils in the order in which they were removed from it, burying toxic material using suitable material for the topsoil.

(2) Surface manipulation—the surface is modified to reduce the rate of water flow and allow for infiltration.

(3) Topsoiling—salvaging the developed layer and placing it on the surface.

(4) Species mixture seeding—to produce a diverse plant cover for establishment of permanent plant communities.

Each of these phases must be implemented for successful reclamation.

The research being done on the subject of reclamation is excellent, but there is far too little of it. An estimate of over 100 acres being used in research would be liberal, but it is appalling when it is considered that ". . . full employment of Montana's strippable reserves could disturb a maximum of 770,000 acres." [18]

Since coal beds are often aquifers, strip-mining can alter ground water patterns. Since the full effects are unknown, studies must be implemented to determine what these effects will be.

When the land is disturbed the wildlife that formerly inhabited the mine area must migrate. Studies were just initiated in 1973 to determine if animals will recolonize strip-mined lands.

Early estimates of reclamation costs ranged from $300–$800 per acre. (19a) More probable estimates are furnished by the Montana Power Company as approximately $930 per acre.[5]

However, the following points must be considered:

(1) No reclamation site has yet to stand the test of use by livestock.

(2) Even with the best results, from the MSU data again, "It may be possible to compress normal successional time requirements into a decade or more . . .".[30]

(3) From Bob Curry, Associate Professor of Environmental Geology at the University of Montana, "We at present completely lack the base line data upon which to assess or conduct reclamation." There is simply a paucity of knowledge on the subject.

(4) A National Academy of Sciences report warned:

(a) Reclamation in the West is much more difficult than in other areas of the world where coal has been extensively stripped.

(b) Some Western land, especially areas with less than 10 inches of precipitation a year, have such low possibility of reclamation that strip mining in many places must be considered as eliminating productive use of the land—perhaps for centuries.

(c) Restoration of Western land (in the sense of returning it to the way it was before mining) is virtually impossible for all western coal areas.

(d) The potential for rehabilitation of any surface mined land in the West is critically site specific.[11 20]

The response of the state of Montana to this problem has been excellent. In passage of the Montana Strip Mining and Reclamation Act it provided for:

1. An annual permit system and selective denial of permit to mine lands.
2. A complete ban on contour strip mining.
3. Mandatory restoration of the land affected to the approximate original contours.
4. Establishment of permanent, diverse negative cover.
5. Adequate bonding levels; Penalties for violations; Authority to halt operations.
6. Citizens rights.
7. Termination of all existing reclamation contracts entered into before passage of this law.[11]

However, the ultimate success of the law depends on how stringently it is enforced. The Federal response is noted by its vacuum.

Given the state of reclamation research and the problems encountered in reclamation, is it possible to reclaim surface mined land in the West? By following a somewhat circular argument, a tentative answer is yes. Given a strict enforcement of the provisions of Montana law; Reclamation of surface mined lands is possible. When those lands, and only those lands that are identified, through previous studies, as reclaimable are opened for surface mining.

Once the coal is out of the ground there are several options for its utilization. It can be shipped to marketable areas or it can be converted on the spot to some other form. The primary energy conversion method for coal now envisioned is to fire electrical generators. There are also proposals for gasification and liquification plants. For the purposes of this study they will be considered as a single consumptive (of coal and water) entity, except where specific impact is noted.

It is the energy conversion phase of the coal rush that potentially will have the greatest impact on the air, land, and water and people of the Northern Great Plains. The coal fired steam generating plants are the most inefficient, in terms of converting the energy available in the coal into usable energy, ranging from 30–40% conversion. Gasification plants in Europe now recover approximately 69% of the energy available in coal.

The key limiting factor to the development of energy conversion facilities in the area is Nature's not Man's. The availability of water will determine the extent of exploitation.

Water is a scarce commodity in the Yellowstone River drainage system. Most of the water available comes from the nearby mountains as runoff from the melting of snow. Development of Ground water resources is not seen as a viable alternative to surface water appropriation. There is a set amount of water available for everybody's use; industry, agriculture or municipality.

From the Montant Environmental Quality Council,

"Current industrial water use in Eastern Montana is slight, probably less than 10,000 acre/feet per year. The primary use of water is for agriculture, in the Yellowstone Basin about 1.25 million acres are irrigated." [11]

Under a full development scheme, water would be diverted from the free-flowing Yellowstone (which is under consideration for designation as a "Wild and Scenic" River) and channeled, by a system of aqueducts, to the coal fields to cool coal fired steam generating plants.

In a letter to the Regional Director of the Bureau of Reclamation Dr. Ernst Habicht of the Environmental Defense Fund outlined the problems inherent in such a scheme.

"The annual average discharge of the Yellowstone into the Missouri is approximately 8.8 maf (million acre feet). This Aqueduct Report suggests this flow rate could be reduced to 1.7 maf; this represents an 81 percent reduction in mean annual Yellowstone River flows." [13]

During periods of low flow the Yellowstone would become a cesspool. The destruction of aquatic life and the riverine ecosystem and limitations on recreational and agricultural use of the water would be the inevitable results of such action.

And, as is noted by the Montana Coal Task Force; "Once such industrial water consumption commences, it may be expected to continue *regardless* of the flow conditions in the Yellowstone River. The marketplace will continue to demand power." [18] (Italics added)

Obviously some sort of low flow regulation is then required. But there are hydrological problems to be considered as the result of building a dam (aside from a desire to keep the river free flowing). From the Student Environmental Research Center at the University of Montana.

"An increase in flow could make a meandering stream into a braided stream; a decrease in discharge could make a braided stream into a meandering one . . . The implications to farmers and ranchers owning river front property becomes important. Frequently, good hay land is found in the meander loops of streams and rivers. Should the meander pattern suddenly change, these meadows may be cut up into odd-shaped pieces which may make harvesting uneconomical. Some meadows may disappear completely, while new loops are formed elsewhere." [4]

It must be pointed out that projections for water use do not take into account the increased demand for water for human consumption as a result of population increases due to the industrialization of the region.

The conclusions of the National Academy of Sciences are strongly compelling.

"The shortage of water is a major factor in planning for future development of coal reserves in the American West. Although we conclude that enough water is available for mining and rehabilitation at most sites, not enough water exists *for large scale conversion of coal to other energy forms (e.g. gasification or steam electric power). The potential environmental and social impacts of the use of this water for large scale energy conversion projects would exceed by far the anticipated impact of mining alone.* We recommend that alternate locations be considered for energy conversion facilities and that adequate evaluations be made of the options (including rehabilitation) for the various local uses of the available water." [20] (Italics added)

The major impact once the plants are built, the rivers drained to serve them and the prairies stripped for coal, will be on the air quality of the area. Even with the most effective pollution control equipment in use, the sheer magnitude of the coal used to feed the electrical generating plants will produce huge quantities of pollutants.

The effects of the respiration of particulate matter in humans are well known. Diseases such as bronchitis and lung cancer have a much higher incidence in polluted areas. The accumulation of trace metals such as fluoride, mercury, lead and cadmium into the bodies of animals can cause irreversible degeneration of nervous tissue and harm internal organs (such as the kidney) as well. Certain species of shrubs and grasses are extremely sensitive to the presence of fluoride; and destruction of vegetation have been documented elsewhere.[1]

A useful index of the impact of air quality

Footnotes at end of article.

degradation is found in between the pages of the North Central Power Study. Under full development, "this generating complex would produce more air emissions than the New York City and the Los Angeles regions combined, even with the latest air pollution control technology." [23] However vague and ineffectual the guidelines of the NCPS might have been, since its dissolution, admonishments such as the above have been ignored and development is proceeding in a haphazard manner. Permits are granted now on a case by case basis, they do not take the *cumulative* effects of construction into consideration.

The rapid transition from a rural, agriculturally based economy to an urban, industrial base is fraught with many problems. Roads have to be built, sewer and water lines laid, recreational services expanded, law enforcement agencies enlarged, health care delivery programs developed and schools constructed. Initiating such undertakings is a monumental task in itself in any undeveloped area. When the tempo of the rush is added to the pot, chaos, not orderly planned growth will be the result. Depending *on whose* figures you use, an influx of from 100,000 to 800,000 people will magnify the problems that much more. Local governments do not have the expertise (nor the money to hire such expertise) in order to adequately prepare for the deluge.

The companies involved maintain that an increased tax base will be sufficient to cover the increased costs for services. Preliminary reports do not find this to be true in practice. From the Northern Plains Resource Council:

". . . the rapid construction of 2 major mines, 2 railroad spur lines, and a 700 mw delivery programs developed and schools coalfired generating plant developed by Montana Power and Puget Sound Power and Light Company have not returned to Rosebud County sufficient tax monies to develop the associated services required by an increasing population. . . If the benefits from increased population and employment, "increased county tax base", and increased revenue from the Energy companies are to be derived from the development of coal, they are not coming quickly enough to balance the drain upon the county by service delivery.[24]

No projections have been made on what happens to the area after the coal is gone? No studies have been done, comparing the renewable contribution of agriculture and the one shot contribution of coal to the area's economy. May be their effects even out after 10, 20 or 30 years? No one can say, because the options haven't been fully explored yet. We have the grim reminders of the after effects of the coal boom in the ravaged hills of Appalachia.

A perusual of the issues raised reveals no simple solution to the problems encountered and envisioned. Given the momentum of the rush, it is unlikely that the drag lines now in use can be brought to a halt. However, their impact can be softened. Their proliferation and that of energy conversion facilities can be planned and regulated.

An examination of the needs for new energy sources has found that projections are narrowly based and alternatives inadequately considered.

The callous disregard for the rights of the local people and the public trust has stripped away the sheep's clothing that the energy companies are fond of wearing.

The impacts on air, water, and that elusive "quality of life" are severe and irreversible. The land may be put back to its former use, may be, after a decade.

The questions we must now ask are these. Should the residents of a rural area, who neither create the demand for the energy nor benefit proportionately from its generation, bear most of the adverse effects of resource development and utilization? Do we favor short range "booming" and avoid thinking about the "bust"? Or do we plan and regulate projects so they provide a steady source of revenue, with adverse impacts minimized?

The projected "life" of the power plants is 30 years. These years are my years. The decisions made now will determine the quality of life we will be able to lead in Montana during the next 30 years. I do not want the options of lifestyle curtailed by a series of nondecisions. By not deciding, a decision has implicitly been made. The results of this analysis lead me to make the following recommendations:

(1) A moratorium on further strip mining starting July 1, 1974 and ending July 1, 1979. If you aren't in the ground by this date, you won't be allowed to initiate operations.

(2) A moratorium (of the same time span) on the construction of energy conversion facilities.

(3) A moratorium (of the same time span) on the appropriation of water for industrial use. (Note: the Montana legislature just passed a 3 year moratorium the first week of April)

(4) Legislation requiring full disclosure of corporate plans for development.

(5) The formulation of a National Energy Policy, with adequate funding for research into:

(a) "alternative" energy sources such as solar energy, methane gas from sewage, and wind power.

(b) improving the efficiency of present methods of extraction and energy conversion.

(6) A heavy federal tax on coal that is strip mined; to foster the development of our more extensive deep mining reserves. And make deep mining more competitive (dollar wise) with strip mining.

During the moratorium period studies on the feasibility of reclamation can be done, land use planning programs can be established, and alternatives considered in depth. Fundamental to all studies should be input from the local people. The job of slowing down the rush and planning for development is a difficult one, but we should find heart in the words of Mrs. Carolyn Alderson of Birney, Montana.

"To those of you who would exploit us, do not underestimate the people of this area. Do not make the mistake of lumping us and the land all together as overburden and dispense with us as nuisances. Land is historically the issue in any war. We are the descendants, spiritually, if not actually, of those who fought for this land once, and we are prepared to do it again. We intend to win." [26]

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SENATE CONCURRENT RESOLUTION 85—PROCLAIMING OCTOBER 14, 1974, A DAY OF NATIONAL OBSERVANCE OF THE 200TH ANNIVERSARY OF THE FIRST CONTINENTAL CONGRESS

Mr. HUGH SCOTT. Mr. President, on behalf of myself and the distinguished majority leader, I send a concurrent resolution to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tem-

port. The concurrent resolution, with its preamble, will be read.

The assistant legislative clerk read as follows:

S. CON. RES. 85

Concurrent Resolution to proclaim October 14, 1974 a Day of National Observance for the 200th Anniversary of the First Continental Congress, and for other purposes

Whereas, the meeting at Carpenters' Hall in the City of Philadelphia in the Colony of Pennsylvania from September 5 to October 26, 1774, which has become known as the First Continental Congress, will have observed during 1974 its two hundredth anniversary; and

Whereas, the actions of that Congress in uniting, for the first time, the thirteen disparate American Colonies to seek redress of their many grievances against the Parliament and King of England, set in motion a series of events leading to the meeting of the Second Continental Congress which produced the Declaration of Independence and guided the new Nation through the American War for Independence; and

Whereas, the precedents set by the meeting of the first Congress in 1774 from the foundation upon which rests the principles and practices of the existing Congress of the United States of America; and

Whereas, October 14, 1774 was the date on which the delegates to the first Congress adopted the Declaration and Resolves, expressing to the King of England their rights as Englishmen and their determination to achieve those rights, and is therefore, in itself, an historic date; and

Whereas, on October 14, 1974 special ceremonies, sponsored by the City of Philadelphia, the National Park Service of the Department of the Interior and the American Revolution Bicentennial Administration, will be held at Carpenters' Hall in Philadelphia, Pennsylvania to properly and appropriately observe for the Nation the two hundredth anniversary of the First Continental Congress; and

Whereas, the two hundredth anniversary of the First Continental Congress marks one of the first historic commemorative events of the American Revolution Bicentennial celebration: Now, therefore be it

Resolved by the Senate (the House of Representatives concurring), that the Congress hereby proclaims October 14, 1974 to be a Day of National Observance for the 200th Anniversary of the First Continental Congress and calls upon the people of our nation to fittingly observe and honor this important date in our country's history; and

Be it further resolved, that the President Pro Tempore of the Senate and the Speaker of the House be authorized to select, upon the recommendation of the respective majority and minority leaders, four members of each House to represent the Congress of the United States of America at ceremonies in Carpenters' Hall, Philadelphia on October 14, 1974 and to present at said ceremonies to a representative of the City of Philadelphia a copy of this Resolution.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. HUGH SCOTT. Mr. President, this resolution proclaims October 14, 1974 a Day of National Observance for the 200th anniversary of the First Continental Congress. It also calls for the appointment of an eight-member congressional delegation to represent the Congress in ceremonies at Carpenters' Hall in Philadelphia on the 14th of October 1974.

Carpenters' Hall is the actual site of the first meeting of the Continental Congress.

The 200th anniversary of the First Continental Congress is one of the first historic commemorative events of the Nation's bicentennial observance. That Congress is important in that it is viewed as the forerunner of the Congress today.

Mr. President, the resolution warrants swift congressional approval.

I may add, Mr. President, it is the meeting in Carpenters' Hall which most people believe explains the origin of the phrase "upper house," which has so often been derided by our friends in the other body.

Actually, at one time, the Senate met on the upper floor and the House of Representatives met on the lower floor. Therefore, the "upper house" has no meaning of hierarchy and should not be viewed as being pejorative or derogatory in any way whatsoever.

It simply meant that Senators, being more vigorous, had to climb the stairs.

[Laughter.]

Mr. ROBERT C. BYRD. Mr. President, is there any explanation as to why Members of the other body run for office in this body?

Mr. HUGH SCOTT. I think the explanation is that the view was better from the upper floor.

Mr. MANSFIELD. The explanation is 6 years.

[Laughter.]

The Concurrent Resolution (S. Con. Res. 85) was agreed to.

The preamble was agreed to.

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

Appendix 38, Meeting: The President and Haldeman, Oval Office, April 17, 1973. (9:47–9:59 am)

(Band Music)

H. Yes, Sir.

P. Oh, hello—sit down. I was thinking that we probably ought to use John Connally more to try to hammer out what our strategy is here on Watergate.

P. Rose, I am sorry I didn't intend to push your button now.

RmW. OK.

P. Thank you, Rose, I will call you later.

H. The only question there would be whether we ought to meet earlier on the basis that, well, we—

P. I understand I can't I have the Italian for a while. I could meet at 12:30. No, after that—1:00 o'clock.

H. The reason being, and the only reason, there is felt to be—and we may not want to react to it but we may—there is felt to be—Colson, for instance, called Ehrlichman this morning and said that his sources around town, department sources and everything, say that we've got one more day to act on our initiative.

(Material unrelated to Presidential action deleted)

H. And that all these breaks, this White House is all over town.

P. So we may have to go today.

H. And you have also seen or know the Los Angeles Times has the story.

P. About (unintelligible)

H. The White House has got to move, and the thought is that if we are going to move today we probably ought to meet earlier so we are ready to move by three o'clock or 3:30 or something.

P. Fine. OK. If you just get together. I think we have to move today.

H. Well, if we look like we have anything, we have to get out in front some way.

P. Well you might have to give them the full report today the way it is breaking so fast. Let me say that the problem you've got here—I had quite a long talk with Rogers, etc.—of course he was much more rational than Len. Len's (unintelligible). On the other hand, you've got the problem of you and John sort of being nibbled to death over a period of time.

H. Yep.

P. And by not moving, having a situation where, frankly, the chances of your being—I mean of your being publicly attacked.

And also even the steam of the prosecution is greater. You know what I mean. It is a curious thing, but I am afraid that is the way it operates. You know every day there is some damn little thing that somebody touts around with, you see, so everything can be explained and try to defend and all that sort of thing. But I am not prepared to make that suggestion, but I want you to talk to John about it.

H. Yeh. OK.

P. Dean met with Liddy on June 19th, must have been when he did it. He was in California in January but that is irrelevant. But they keep banging around and banging around. The prosecution gets out the damn stuff. Did John talk with you about it?

H. Yeh, he mentioned it. Dean did tell us that story in Ehrlichman's office last week or two weeks ago.

P. But not to go all through this.

H. I don't think so.

P. Yeh.

H. I think I mentioned it to you. Remember I described the story to you in some detail (unintelligible) walked down 17th Street—

P. This was all after we had started our own investigation.

H. Oh, yeah.

P. I mean it wasn't back then. It wouldn't indicate that we knew about all this, etc. Another thing, if you could get John and yourself to sit down and do some hard thinking about what kind of strategy you are going to have with the money. You know what I mean.

H. Yeh.

(Material unrelated to President's actions deleted.)

P. Look, you've got to call Kalmbach so I want to be sure. I want to try to find out what the hell he is going to say he told Kalmbach? What did Kalmbach say he told him? Did he say they wanted this money for support or—

H. I don't know. John has been talking to Kalmbach.

P. Well, be sure that Kalmbach is at least aware of this, that LaRue has talked very freely. He is a broken man. The other thing is that this destruction of the (unintelligible) things is troublesome, of course. John tells me, too, and basically the culprit is Pat Gray. Does Colson know about that? Is that why they are calling Colson because Colson was in the room when it was handed to Gray?

H. No he wasn't. Well, apparently he wasn't.

P. He says he wasn't?

H. Colson thought, well there was a meeting before that, where they talked about the deep-sixing and all that supposedly.

P. He was in that meeting?

H. Which Colson was supposed to have been in.

P. Right, right, right.

H. Colson doesn't remember being in it, but Colson flatly says that there was never anything where he was where there was a discussion of Hunt getting out of the country. Kehrli says the same thing. He was supposed to be at the same meeting. In fact, Ehrlichman has checked everyone who was at that meeting and nobody recalls that be-

ing said except Dean. And we now have the point that Dean is the one who called Liddy and told him to telephone Hunt to get out of the country and then called him later and said not to.

P. I would like a policy. I think, Bob, we have to think, I must say, we've got to think about a positive move. I think it ought to be today.

H. I agree.

P. I think it should be at 3:00 today. We have already, I hope the story doesn't break today in—

H. Even if it does you can get into cycle with it.

P. Yeah. Well, I don't want to be answering it.

H. No.

P. That is the problem with this Italian here. I want a thing done today and you and John have got to think, frankly, in terms, let me say, not just in terms as a national group for the President and all that—but also you have to think in terms of having this damn thing continue to be dragged up bit by bit and answers dragged out bit by bit, anyway, I suppose. But the point is that Dean's incentive with the U.S. Attorney, incentive with everybody else will be this and that, you get my point?

H. Yep.

P. I am sure you and John can talk about it. You see what's happened, the prosecutor has been pretty clever. They got Magruder. Well Magruder just caved, but it had to come. It had to come, Bob. It was going to come.

H. Yes I think so. I think it had to and should.

P. That's right. The other point is the other element. The question now that is coming as far as Dean is concerned. He basically is the one who surprises me and disappoints you to an extent because he is trying to save his neck and doing so easily. He is not, to hear him tell it, when I have talked to him, he is not telling things that will, you know—

H. That is not really true though. He is.

P. I know, I know, I know. He tells me one thing and the other guy something else. That is when I get mad. Dean is trying to tell enough to get immunity and that is frankly what it is Bob.

H. That is the real problem we've got. It had to break and it should break but what you've got is people within it, as you said right at the beginning, who said things and said them, too, exactly as Dean told them. The more you give them the better it will work out.

P. I have to go. As a matter of fact, I am sure I will be ready by 1:00 o'clock.

H. Ok.

Appendix 39. Meeting: The President, Haldeman, Ehrlichman and Ziegler, Oval Office, April 17, 1973. (12:35–2:30 pm)

(Material not related to Presidential actions deleted)

P. Where did we come out?

E. Well, we got two things, we got a press plan but it rests upon some decisions that you have to make on sort of an action plan.

P. Right, alright.

E. And, I just finished an hour with Colson who came over very concerned and said that he had to see you. That the message he had for you that he had to and wanted to explain in length is why Dean had to be dealt with summarily. His partner has a tie in with the U.S. Attorney's office and they seem to know what is going on there. Very simply put, I think his argument will be that the City of Washington, generally knows that Dean had little or no access to you.

P. True, that's quite right. Dean was just a messenger.

E. That knowledge imputed to us is knowledge imputed to you and if Dean is (unintelligible) and testified that he imputed great quantities of knowledge to us, and is allowed to get away with that, that, that will seriously impair the Presidency ultimately. 'Cause it will be very easy to argue—that all you have to do is read Dean's testimony—

E. Look at the previous relationships—and there she goes! So, he says the key to this is that Dean should not get immunity. That is what he wants to tell you.

P. Well, he told me that, and I couldn't agree more.

E. Now he says you have total and complete control over whether Dean gets immunity through Petersen. Now that's what he says. He said he would be glad to come in and tell you how to do it, why, and all that stuff.

P. I don't want Colson to come in here. I feel uneasy about that, his ties and everything. I realize that Dean is the (unintelligible). Dean, of course, let's look at what he has, his (unintelligible) and so forth about (unintelligible) go popping off about everything else that is done in the government you know, the bugging of the—

E. Well, the question is, I suppose is which way he is liable to do it most.

P. First of all, if he gets immunity he'll want to pay just as little price as he can.

E. Well, the price that—the quid-pro-quo for the immunity is to reach one through us to all of us. Colson argues that if he is not given immunity, then he has even more incentive to go light on his own malfactions and he will have to climb up and he will have to defend himself.

P. Now when he talked to me I said, "Now I understand John. I understand the tactic of all three resigning." I said, "all offered to resign." I told him that, you understand. I told him that you and John had offered to resign so he's aware of that.

H. Well, have they told him that the price of his immunity is that if we resign they'll give him immunity? Do they feel that makes their case? Or, does he have to give them evidence?

P. I don't know. He's going to have a tough time with that.

E. Well, to go on. My action plan would involve—

P. What would your plan be?

E. My action plan would involve your suspension or firing of Dean in the course of a historical explanation of your reliance on the Dean Report—his apparent unreliability—

P. But going out—you see the Garment guy got him in today—Garment says it's all going to come out anyway (unintelligible) etc., etc., etc., with the U.S. Attorneys. That's what Petersen's view is, of course.

E. What's that? The Garment deal?

P. That it is all going to come out, and Haldeman and Ehrlichman are going to resign. He told me that on Sunday. I asked him again yesterday. I said, "Now look at it. That's pretty damned flimsy." He said, "Yes, I'm not talking about legal exposure. I'm just talking about the fact that as this stuff comes out they're going to be eaten, but eaten alive. Mr. President, the clamour is going to be something you cannot stand." I said, "Would it be better for them to get leave or something?" And he said, "No, this is the government. Rather to sit there and later as a result of this tid-bit and that tid-bit and so forth—he lied and I don't lie and so forth. Haldeman against Dean and Haldeman against Ehrlichman, Ehrlichman against Dean, who to hell is lying?" He said, "Definitely they'll say, (expletive removed), Mr. President, can't you let these fellas—" Now that's my point. That's what he said.

E. I understand.

P. That's an argument to be made. He said that to Rogers last night and that, of course, is Garment's argument. And I guess Rose, Chappie Rose agrees with that, or whatever. My problem is, at the present time, I just don't want to have to talk to each of these side-line people individually, 'cause I don't know. I think some—Garment came in and was talking about the (unintelligible) story in the *Times*. Petersen told me about it last night. He said (unintelligible) had called. And I said, "That must have leaked out of your place." He said, "No, it didn't." Could it leaked out of here?

E. Could it have been Garment?

H. Could have been, but it isn't at all likely. It's a Justice.

P. But you see—what you say about Dean, I said to him (unintelligible). He supports the Garment plan. He's talked to Garment and Garment has talked to Dean.

E. Dean has talked to everybody in this place.

P. I told him not to talk any more. But you see Dean—let's see, what the hell—what's he got with regard to the President? He came and talked to me, as you will recall, about the need for $120,000 for clemencies—

E. You told me that the other day, I didn't know that before.

H. But so what?

P. What?

H. So what?

P. I said, what in the world John, I mean, I said John you can't (unintelligible) on this short notice. What's it cost (unintelligible) I sort of laughed and said, "Well, I guess you could get that."

E. Now is he holding that over your head? Saying—

P. No, No, No, I don't think Dean would go so far as to get into any conversation he had with the President—even Dean I don't think.

H. Well, he can't—you have both executive privilege in conversation with him.

P. Let's just call it executive privilege, but on the other hand you've got to figure that Dean could put out something with somebody else.

P. That's the only thing I can think of he's told me but I've not got him in yet to ask about this thing about you—Liddy (unintelligible)

E. Oh well, they'll be one of those a day.

P. Well, the point is can we survive it?

E. Well—

P. Can Haldeman and Ehrlichman survive it. The point that I—Let me say this. I know your (unintelligible) It's a hell of a lot different than John Dean. I know that as far as you're concerned, you'll go out and throw yourselves on a damned sword. I'm aware of that. I'm trying to think the thing through with that in mind because, damn it, you're the two most valuable members on the staff. I know that. The problem is, you're the two most loyal and the two most honest. We don't have to go into that. You know how I feel about that. It's not bull—it's the truth. The problem we got here is this. I do not want to be in a position where the damned public clamour makes, as it did with Eisenhower, with Adams, makes it necessary or calls—to have Bob come in one day and say, "Well Mr. President, the public—blah blah blah—I'm going to leave." Now that's the real problem on this damned thing and I don't think that kicking Dean out of here is going to do it. Understand, I'm not ruling out kicking him out. But I think you got to figure what to hell does Dean know. What kind of blackmail does he have? I don't know what all he does—

E. Let me make a suggestion.

P. Alright.

E. You've got Dean coming in to you saying, 'I've talked to the U.S. Attorney and I've told him a lot of things that I did wrong." So you put him on leave. He isn't charged with anything yet, but he's said them to you.

P. I asked him that and he said I'll go on leave along with Haldeman and Ehrlichman.

E. Well, he's not in any position to bargain with you on that. Now when the time comes that I'm charged with anything wrong—

P. Well, John, you have been by a U.S. Attorney and by Petersen to me. Petersen is not charging you legal—

E. That's what I mean. See I understand the difference. You see Dean has broken the

law on the face of his (unintelligible) to you—

P. Petersen has said to me, he says that there is—because of the evidence that has come in here—that Haldeman and Ehrlichman should (unintelligible) now I'm faced with that damned hardship.

(Material not related to presidential actions deleted.)

P. Hmmm. Say you get there. So you don't get immunity. Colson thinks it's in order not to give immunity, huh?

E. Right.

P. And tell him. Then he would say, "Well, what are you going to do about Haldeman and Ehrlichman?"

E. What you have to say is nobody—

H. He doesn't have to say that.

P. Yes, he does.

E. What you have to say is nobody in this White House—

P. Dean isn't going to say it. I mean—Petersen—Petersen's the guy that can give immunity.

H. Well, tell him not to give us immunity either.

P. (unintelligible) that's a problem. Now, come on!

H. Well, see, it's none of his business whether you suspend us or not. That's your decision.

P. I know it is. The point is—let me put it candidly. If I do not suspend you, he will probably give him immunity. That's the problem (unintelligible) unbearable. If you do take a leave, I think he will—it's possible—well, it's possible that he would (unintelligible) even if you do leave—that he would (unintelligible) I agree. But Dean is the guy that he's got to use for the purpose of making the case.

H. Yes, but, even Ehrlichman, which he already admits he doesn't have a case on (unintelligible) significance.

P. Well, he says legally, yes, he does. In the case of Haldeman, it'll discuss—the Strachan things have—determine a lot to do with what Strachan says and what Kalmbach says—the 350 thing and that sort of thing.

H. Kalmbach has no relation to me on that.

E. That ah—

P. Have you thought when you say before it gets to (unintelligible) thing out of the way. Have you given any thought to what the line ought to be—I don't mean a lie—but a line, on raising the money for these defendants? Because both of you were aware of what was going on you see—the raising of the money—you were aware of it, right?

E. Yes, sir.

P. And you were aware—You see, you can't go in and say I didn't know what in hell he wanted the $250 for.

H. No—I've given a great deal of thought (unintelligible).

P. Well I wonder. I'm not—look—I'm concerned about the legal thing Bob, and so forth. You say that our purpose was to keep them from talking to the press.

E. Well, that was my purpose—and before I get too far out on that, ah, I want to talk to an attorney and find out what the law is—which I have not yet done.

P. Right!

H. That's just what I want to do too. This is only a draft.

P. Right. Good. The only point is I, I think it is not only that but you see that involves all our people. That's what I feel—it involves Kalmbach—

E. Well.

P. And what to hell Kalmbach was told.

E. Well, Mr. President, when the truth and fact of this is known, that building next door is full of people who knew that money was being raised for these people.

P. EOB?

E. Yes, sir, just full of them.

P. Many who know, but there were not so many actors. In other words, there's a difference between actors and noticees.

E. O.K. Well, apparently not, because I'm not an actor, ah—

H. The question there is testimony, I suppose.

P. I'm not trying to make any case—

E. No, but—

P. I'm not stating a case.

E. No, but I want you to think very critically about the difference here between knowledge of the general transactions going on, on the one hand, and being an affirmative actor on the other, because that's the difference between Dean and me. Now on this business on whether Dean should have immunity, I think you have to ask yourself really, the basic question, whether anybody in the White House who does wrong, ought to get immunity, no matter how many other people he implicates.

P. Strachan included?

E. Anybody—anybody. I just question whether in the orderly administration of justice, it looks right for anybody in the White House to get immunity.

P. I could call Petersen in (unintelligible) basic (unintelligible) public statement out at 3:00 p.m. is that right?

H. Well, yes—but you don't have to.

P. Well, Garment says we have to.

H. Well, yes, but isn't that what Garment said yesterday, the day before, and the week before that? Garment (unintelligible)—

P. Well, understand, I'm not panicking myself but they tell me there seems to be a considerable feeling that a—

E. Well, I agree with you.

P. (unintelligible) LaRue's been called, Strachan's been called, Dean might put up a story of the times. You never know. We don't need a Haldeman/Ehrlichman.

E. Yea, but you see it's typical Dean position. If Dean is treated different from us, he will go out and say he's a scapegoat for higher-ups.

H. That figures 'cause he knows Ostrow and Ostrow is the guy that covers Justice.

P. I see and Petersen told me that. He told about conversations with that the wife of (unintelligible) apparently sat at some table with (unintelligible) libber they addressed, and the top guy, Rosenblatt or something like that, at the Post was talking to somebody else on the staff. "The Press is going to get out in front—we've got a hell of a lot more—we've just held it back." They might be bluffing—I would doubt that they are at this point.

H. I would think they probably have more, but I would guess what they have more of is in the Committee. I don't think they got much more in the White House, unless, I don't know what it could be unless they got Colson stuff—that would be the only area.

P. (unintelligible)

H. Yeah, That's the only area where you have any jeopardy in the White House.

P. Let me say with regard to Colson—and you can say that I'm way ahead of them on that—I've got the message on that and that he feels that Dean—but believe me I've been thinking about that all day yesterday—whether Dean should be given immunity. The point is—I don't know that it can happen, but I can call Petersen in and say he cannot be given immunity, but nobody on the White House staff can be given immunity. And I—whether he'll carry that order out—that's going to be an indicator that that's Dean and (unintelligible). And then what do I say about Dean. Do I tell him that he goes?

E. Well, you see, the thing that precipitated Colson's coming over is that he found that Dean was still here. You see, Dick Howard called Chuck and went through that business of the FBI men sending him into the arms of Dean. So, Colson called and says you've got an asp at your bosom over there, and so, today he checked again, apparently with Howard, and discovered that Dean was still here and he called and said, "I've got to see you." He came in and he says, "You guys are just out-of-your-minds," and said he wanted to see the President. He was fit to be tied about it.

P. Colson was?

E. Yes, because he thinks—

P. But you see if I say, "Dean, you leave today," he'd go out and say, "Well the President's covering up for Ehrlichman and Haldeman" alright. There you are. Because he knows what I know." That's what he would say. I tried to put—I mean—I'm trying to look and see—John—what to hell we are really up against. First it was Liddy (unintelligible) scapegoat, now John Dean is.

H. Well, the answer to that is that if he said it publicly, the President is not covering up for anybody, and will not tolerate—

P. The way he's put it to me, Bob, very cute, as I have said, "Son of a gun (unintelligible) in view of what you have told me, if Haldeman and Ehrlichman are willing to resign, and so forth, I too, will resign." In other words, he basically put the shoe on the other—which of course is what led me to the conclusion that that's exactly what his attorney told him to do. If he can get Haldeman and Ehrlichman, that some way gets him (unintelligible) that's what you have here.

E. Yeah, because then that will be argued back to the U.S. Attorney, "Well you see, the President thought enough of Dean's charges to let these guys go."

P. I was trying to indicate to him that both of you had indicated a willingness to—in the event—that—you know what I mean.

E. And here's a guy that comes in and in effect, confesses to you the commission of crimes.

P. And charges you.

E. And charges us, that's right.

P. That's right. And I said, "Now wait—these charges are not—" and you see he also has an alibi in the U.S. Attorney—

E. Small wonders.

P. He's asked (inaudible) Attorney General that the President should act—

E. Well, you see my point and—

P. Yeah

E. And you'd have to obviously, call us when—

P. Go ahead. Go ahead on the action—

E. Well, it would involve the suspension because it would involve a recounting of how you happened to get into the personal investigation of this by reason of Dean's being unable to reduce his full report to writing for you. And that that rang a bell, and you personally turned to and have spent a great deal of your time in the last several weeks on this—and have seen dramatic progress in the Grand Jury in the last several days. That would be Step 1. Now in addition to that you would say the Ervin Committee has come up with a good set of ground rules which do provide us with—

P. Well, did you work that out?

E. Well, you'd say this. I think you'll find that they are going to go on television under oath, pretty much regardless, but, the ground rules give you a toe hold. They do provide for Executive Session.

P. Is Executive Session considered executive privilege?

E. And they will consider—

P. And otherwise they will go into open hearings.

E. Yes, but there again executive privilege is reserved.

P. Executive privilege is reserved, fine.

H. At this point, the way we're in the soup now, we can lose nothing by going.

P. That's right.

H. I think we may gain.

P. That's right, I couldn't agree more. So if you can prepare me with at least that much, I'll agree. That I can say that today.

H. Well, that's a hell of a bomb shelter right there.

P. Yes, it is. But, let's get on with rest of it.

E. That's it. That's all I have for today. But it gets you into the case—its you leading it. It notices the progress and the Grand Jury

as related to your efforts and it doesn't say what they are.

P. Well, the point is though the story today is that John Dean is suspended, but—and then John Dean is going to be out there plastering—out saying the President has indicated that Haldeman and Ehrlichman too might go.

H. Let me suggest a different process, which is that you don't suspend John Dean, but that you instruct John Dean that he is not to come to work any more. He is in effect suspended, but not publicly suspended.

P. *He'll say,* "What about Haldeman and Ehrlichman?

H. I would suggest to you that you do the same with us. And I was going to suggest, I was going to request that action. For this reason—I've got to speak for myself. John's got to speak for himself. I have now concluded that my course is that I must put out my story. I must put it out in total and in my words, before I go to the—I don't know about the Grand Jury—before I—

P. Before you go to the Senate Committee?

H. Go to the Senate Committee. I'm going to have to put it out there anyway.

P. I don't think you're ever going to get to the Senate Committee. I don't think the Committee Hearings will ever go forward.

H. I do. I don't think there is any chance of them not going forward. You think because of legal case (unintelligible) O.K. Great if they don't. Then maybe I never tell my story. But my view is that at some point in time I'm going to have to tell it.

P. But you—the way—I would reserve, Bob, the right to tell that story until you felt you did have to go to the Committee Hearings. See what I mean? Or, unless you got to a point where you were nibbled to death.

H. That's right. Or until a partial charge comes up. For instance, if the Grand Jury leaks or the Justice people leak the Strachan stuff, then that forces my hand.

P. John?

E. Well, subject to attorney's advice.

H. That's what I was going to say. I will not make this statement until I have worked it out.

P. Bill said he just couldn't remember.

H. Well, we've got some leads. We're going to start on today, so we've got that, but my interest is served and I will also argue that the better off I come out of this, the better off you come out of it—vis-a-vis me. In other words, anything I do to my interest is to your interest.

P. Let me ask you this, John.

E. What's that?

P. You said that you ought not to come for awhile. On what basis? I mean, we do this on an oral basis.

H. What I'm doing now is requesting you, on an oral basis—

P. Yeah.

H. To not expect me to carry out any duties for awhile because (inaudible) perfect this and get it ready—

P. Where would you do it, at home or in the office here?

H. I can do it wherever you want me to. I think I ought to do it in the office, but—

P. Alright.

E. If Dean says, "What about Haldeman and Ehrlichman?" You say "John, I'm talking to you about you. Now I'll take care of them my own way. I'm not going to have you bargaining with me."

H. I don't think the President can be in the position of making a deal with John Dean on anything.

E. Yeah. "I'll go if they go." Supposing I said, "I won't go unless Henry Kissinger goes!" Yeah, it's ridiculous. Let me speak to this. I have pretty much unplugged myself of my day-to-day stuff, because with this kind of stuff going on you just can't think about anything else.

P. Of course, it's been a little hard for me to also.

E. Sure. Now, I have a need to get into all kinds of records and my date books and these are volumes and volumes of correspondence and stuff. If I couldn't come into the office, I probably couldn't prepare a defense.

P. What about Dean coming in? Why not him? (unintelligible) I think I've told Dean he's to have nothing more to do with this case.

E. Well, he'rs sure not following out your orders, if that's the case.

P. You see what I mean.

E. Now, you'd have another problem, and I don't know what's been going on in the last week or so, but I imagine he's carted stuff out of here by the bale. I just don't know.

H. You don't know that.

E. I certainly—

H. If you suspend him or tell him to leave in any way, you also move in to take care of his files.

P. Could I say this, "John, both Haldeman and Ehrlichman have both requested the opportunity to be relieved of their duties—I mean their main duties, so that they can concentrate on this matter to prepare for their appearance before the Grand Jury." Could I say that?

E. Sure, well—

P. Wait.

H. The trap you're falling into there is that you're admitting to Dean that you regard the allegations that he has raised against us as of the same validity of his own criminal admission to you.

E. If that's the case then maybe that's what you should say.

P. No, no, no, there are two different levels.

E. Then that's the way it ought to be put. He brought in a lot of silly garbage about me which doesn't add up to a nickel's worth of a law suit. Ah, he's come in and told you that he's been involved in all kinds of stuff. It seems to be a very different qualitative problem. Here again, I hate to argue my case—it's very awkward.

P. You should argue, John. I wonder if whether or not I trapped myself (unintelligible) about this business when I said, "Look, John," I said, "both Haldeman and Ehrlichman have offered to resign."

E. Well, I offered to resign at your total and sole discretion. You don't have to have a reason—

P. (expletive removed) (unintelligible) Then I said—

E. Well—

P. Wait a minute. Wait a minute. Then Petersen said, he said, "We've got to have corroborative testimony." So you see what I mean?

E. Yeah.

P. Before we could get—Let me put it this way. He realizes that before he could try to give Dean immunity he's got to have corroborative testimony on the value of Dean's evidence. That's what he's trying to get at the present time. That's why he was calling Strachan, Colson, Kalmbach, et al. The purpose of it being, John, to get corroborative evidence that would say, well, Dean's evidence is so valuable as far as other people are concerned, that we can therefore give him immunity. Now I'm not a criminal lawyer, but does that make any sense?

E. I don't know.

P. But you see what his tactic is?

E. I put it.—I don't know what the previous commitment to him is, but he's not being fired, he's not being suspended, he's being directed to stay away from the office.

P. I might put it that since you are talking to a U.S. Attorney. If I could put it that way to him I might be able to make some hay. Bring the U.S. Attorney in. And I'll say don't give him immunity.

E. From a public policy standpoint.

P. Yeah, (unintelligible) And I'll tell you what Petersen did tell me. He did say this much. I said, "what about Dean?" and he said, "Well, we haven't made a deal with him yet." I think I told you about this—

E. Yep.

P. I said, "Why do you have to make a deal?" And he says "Well, he wants to make a deal." And I said, "What do you mean let him off?" He said, "Well, that's what you do, Mr. President." I said, "Well," I said, "you're sort of (unintelligible)." We've had some real good talks. I mentioned this to Rogers. Rogers just shook his head and said, "That's right." And I said, "They have both said that." And I said "I will certainly have it under consideration."

E. Now there's another matter. If this is awkward for you, the best thing you should do is get rid of me, you know, once and for all.

P. Yep.

E. But if it is anything short of that—

P. Yeah.

E. Then it seems to be that you have to take into account qualitative differences.

P. Yep.

E. And if you don't want to make a formal suspension, then the thing to say is, "I want you to stay away from the office. Just don't come around, because I know everything that happens in this building is being funneled directly to the U.S. Attorney through you, or I have reason to think that, and I cannot have that situation." Now that's the way—Yeah.

P. So he isn't going to do it simply on the basis. He isn't giving Dean immunity simply on the basis of what Dean has already said.

E. I understand. Ah, my fear here is—

P. Dean getting immunity?

E. Dean getting immunity, or anybody in the White House getting immunity, it is in itself treatable as a cover-up. And obviously is we are put in a position of defending ourselves, the things that I am going to have to say about Dean are: that basically that Dean was the sole proprietor of this project, that he reported to the President, he reported to me only incidentally.

P. Reported to the President?

E. Yes sir, in other words—

P. When?

E. Well, I don't know when, but the point is—

P. You see the problem you've got there is that Dean does have a point there which you've got to realize. He didn't see me when he came out to California. He didn't see me until the day you said, "I think you ought to talk to John Dean." I think that was in March.

E. All right. But, but the point is that basically he was in charge of this project.

P. He'll say he reports to the President through other people.

E. Well, O.K. Then you see what you've got there is an imputation. He says then—as that kind of a foundation—"I told Ehrlichman that Liddy did it." What he is saying is that, "I told the President through Ehrlichman that Liddy did it."

H. Which means that it was perfectly acknowledged as far as Ehrlichman was concerned and there was nothing that you were required to do about it anyway.

E. That's right. But you see I get into a very funny defensive position then vis-a-vis you and vis-a-vis- him, and it's very damned awkward. And I haven't thought it clear through. I don't know where we come out.

P. Yeah. You see Dean's little game here (unintelligible). One of the reasons this staff is so damned good. Of course he didn't report to me. I was a little busy, and all of you said, "let's let Dean handle that and keep him out of the President's office." And maybe you didn't want him in there for other reasons too. But he did.

E. Well, the case I'm going to make—

P. Well, of course, he would then say who the hell did he report to?

E. Well, in many cases, to no one. He just went ahead and did things.

P. The other point is that they'll say (unintelligible) the first time he reported to the President—

E. Well statistically, it's interesting. I'm now far enough in my records for last year.

P. You probably had five meetings a month.

E. Less than that. Matched against that, all the other things I was doing—substantive things—and Dean becomes practically the least of my worries.

P. How about you, Bob?

H. I haven't any idea. I don't have a log. Unless Dean does.

P. The only thing he doesn't have is the fact thta you should have come in to see me. Ziegler talked to him, I guess and so forth and so on.

E. Moore—frequently.

P. Moore—all right—Moore (unintelligible) but I haven't talked to Moore either, have I?

E. Well, I think, I've got to think this through. I just don't know where that leads.

P. (unintelligible) White House staff, John Dean, John Dean's highly sensitive information (unintelligible). Well, damn it, John Dean's highly sensitive information was on only one count. Believe me guys we all know—Well—the (unintelligible) stuff regarding Bob. Strachan has got to be worked out. I don't know how that's going to work out. Bob, did Strachan have a—the plan? What he says about whether he did have a plan—whether he did show it to you—remains to be seen.

H. He apparently said he did not.

P. All right. The other point is whether Strachan got information now that is the stuff that is clearly identifiable according to Petersen as being telephone taps. Strachan will probably say no it was not. And so, that's that.

H. The discrepancy between Strachan and Magruder is because what Strachan got that could have been from that it turns out, was not. It was something else. When they get that, they'll get an interesting new problem, because Strachan would say it was Operation GEMSTONE, not Operation SEDAN CHAIR—and GEMSTONE wasn't Watergate so that will uncover that there was something else that they did. I don't know what it was.

P. Something else you mean?

H. I guess, 'cause there was an Operation GEMSTONE that Strachan got reports on.

P. They tell me that GEMSTONE was the code word for everything—GEMSTONE is for everything.

H. Well I thought SEDAN CHAIR was the Watergate thing, O. K. Well if GEMSTONE is the total thing, then what he got was reported from that. And it's a confidential sources indicate that—It did not clearly identify, according to Strachan. I can't tell you anything else.

P. (unintelligible) I want you to know what he's told me.

H. All right.

P. John, I'm just trying to see what the options are on Dean—what we turn loose here.

E. Absolutely. Well, let's go back to the press plan. Maybe that will give us some guidance.

P. Right.

E. If you say in the press plan, "The President got concerned about this," the question, "why didn't he get concerned sooner because this has been in the paper for months and months?" Well, "the reason he didn't get concerned sooner is he was resting secure in the belief that he had the whole story."

P. Right.

E. Well, what made him insecure?

P. Do I ever ask Dean in and ask him answers? The answer is no.

E. No, but the point is that you were resting secure on his assurances.

P. Go ahead.

E. Well—

H. Didn't you at some point get a report from Dean that nobody in the White House was involved.

E. Didn't we put that out way back in August?

P. I mean, I just said "Well, that's all I know now." It was never in writing. He never came in orally and told me Dean—John Dean I never saw about this matter. You better check, but I don't think John Dean was ever seen about this matter until I saw him, when John Ehrlichman suggested that I'd better see John Dean.

E. You better check Bob, back in that period of time July—when we were in San Clemente—my recollection is that he did come and see you at that time—but we can check that.

P. Oh—by himself? No.

E. Well, by himself or with one of us. I don't know.

P. He may have come in, but it was a pretty—I hope he did, hope he did. But he might have come in sort of the end, and someone said, "Look here's John Dean from Washington," and I may have said, "Thanks for all your hard work."

E. Well—let's follow this line and see where it leads us. The President rested secure in the belief that his Counsel had investigated this and assured him that nobody in the White House was involved.

E. O. K. Then, what moved him off of that belief and assurance? Well, what moved him off was the sequence of events leading to John Dean being sent to Camp David to write it all down.

P. What moved him off first were reports that occurred in the court testimony.

E. That's right.

P. Charges were made by McCord—and other charges—Charge were made by McCord. I wouldn't say (unintelligible). Charges were made by McCord that, in open, before a jury committee, The President ordered a full investigation.

E. Well, the first thing you did—and maybe you can avoid saying this—but you're saying you ordered a full press investigation when Dean came back and said to Bob, "I can't write that down."

P. He told me that too.

E. Then that rang a bell. Because if Dean can't write that down, then we must have problems bigger than I ever thought. And so that's when you put on the full court press.

P. Well all right. Here's—you've got the dates on this. Well—

E. I have them in there, yeah. Let's see what Dean says on that. Well he says, "The reason I couldn't write them down is because Dick Moore and others said (unintelligible) said how could I write it down—draw the wagons up around the White House?" That phrase, remember that, isn't that a Dean phrase?

H. Sure. His line was that you could do that because there was no problem at the White House, the problems were at the Committee.

P. What did he tell you with respect? What was Dean's line before he deserted?

E. Well, what he said—

P. My point is—you've got to watch out. He may say, "Well, they were trying to get me—conspired to get me to write a report that was untrue."

E. Well, I understand, except that he was sent to write it without anybody being near him.

P. Except Moore (unintelligible)

E. I'm sure that when he went through this exercise, it was impossible for him to write it down without it being a confession. And he said, "My God, I don't know how this case is going to break, but I'm crazy to have a piece of paper like that around."

P. Then I could say then that I ordered—who conducted the investigation?

E. The way we got it doesn't say—

H. You asked other staff members to explore this—you had Ehrlichman, Moore, Garment, Haldeman.

P. That's right. All right. And then—

E. Then you contacted some people and said, "Don't hold back on my account."

P. Yes, like Hunt—Liddy.

E. Like Mitchell and Magruder.

P. I passed the word to all sources that everybody was to talk, to tell the truth, which I had done previously. I reaffirmed. I reaffirmed specific terms to specific people.

H. Well, you had reason to believe that they might have a misapprehension on it.

P. Any misapprehension and so forth and so on—to all parties involved—who were those people. I should not say—

H. You can't list those people.

P. I should not say—well you can't list the people for a reason that would prejudice them. I talked to all parties concerned that if there was a shred of information which might in any way—which they might have on this case—I reaffirm what I had said publicly—that we must cooperate fully and tell the whole truth. Then, we come to the last weekend. On Saturday—a major development occurred—I can't say, "that as a result—" That would be an overstatement.

E. Nope.

P. Then on Sunday I can't say that I talked with Kleindienst. Just say on Sunday.

E. Except—remember I informed Kleindienst on Saturday—so you—

P. I informed Kleindienst. Then we'll get questions. "Did you inform him in person?" I can say I passed the information.

H. Say you passed the word to Kleindienst.

P. I informed the Attorney General. At my direction Ehrlichman filled in the Attorney General completely on the information that we had found and on Sunday the Attorney General and (unintelligible). They indicated as a result, a major development in the case—these major developments in the case—we've got to get Petersen.

E. Then Ziegler or you could turn it over to Petersen, and let him say something innocuous.

P. And I directed Petersen to direct to me personally on any developments and any member of the White House staff or Federal Government was to be available to the Grand Jury and would testify—would be directed by the President to testify. Now you come to the next thing—you see Garment's scenario here will be (unintelligible) "I have asked that any government people who have been—who might—who have been—who are directly or indirectly—subjects of the investigation, even though having—this is no indication of any guilt—will be relieved of their duties and until the Grand Jury (unintelligible). Anyone who refuses to cooperate will be dismissed. Anyone (unintelligible)."

H. Is that it?

P. Yes (unintelligible) Anyone who refuses to cooperate will be dismissed. Anyone will be given leave until his trial is finished. He's had an opportunity to have his day in court. (unintelligible)

E. How about anyone granted immunity?

P. Anyone granted immunity will be—let me try Petersen on you today?

P. Your idea about Petersen would be to hit him (unintelligible) with that.

E. Trouble policy—I can't have it.

P. Until I do that, the President (unintelligible) follow it or (unintelligible) Petersen has—the President's—

E. Tying our hands—

P. Tying our hands. But we're not telling Dean not to talk. I direct everybody to talk, but nobody is to be given immunity.

E. In other words, you don't need—there

are plenty of ways of proving a case around here—besides granting some fellow immunity.

P. Yeah.

E. You don't need that, and it looks like what you are doing is letting somebody off scot free.

P. That's right. Also, it looks like a cover-up.

H. And particularly somebody—personally associated—in this case.

E. Maybe the point that Petersen is missing—maybe intentionally so, is that Dean is a major act in this thing. And big fish/small fish, nevertheless, if a major actor gets immunity and just walks away from the White House having committed 89 crimes—that—and it is your Justice Department, and the guy that runs it, reports daily to you, what does that say? That says—"Gee, I didn't want my Counsel to get hurt." The only question that remains is why didn't he grant immunity to everybody.

H. What it says is exactly the point—the Counsel knows more than—

P. Now, should I have any more conversations with Dean?

E. No. I don't think you should. I think you should send him a note and tell him what your decision is. Or, have Kehrli or somebody call him and say, "Don't come to work anymore. You're not suspended, you're not fired, but you're not to come into the office until this matter is—"

P. That's a good tough way. What can he do?

E. I don't think he can do anything. If somebody says to him, "Well, did you get suspended?" He can say, "No, I really haven't. I'm just sort of not working until—"

H. He hasn't been to work for a month anyway.

E. He's been out talking to the U.S. Attorney the whole time.

H. Well, he's been here because it serves his purpose to be the inside story. He's been out of the office for a month. He's been—

P. I called him this morning and told him I wanted to talk to him later to ask him about that appointment June 19, but I don't think I better get into that any more.

E. I don't either.

P. And, and he's going to give me some song and dance.

E. Well (unintelligible) for your private information, I have gone back to the participants in that meeting where I was supposed to have said, "send Hunt out of the country." To a man, they say it didn't happen. And two of them said, "Gee if either one of them—"

P. What about the meeting?

E. And they said, "If that had happened, it would have been burned into my recollection." The sort of thing like you ordering—

P. You better damned well remember being—The main thing is this, John, and when you meet with the lawyers—and you Bob, and I hope Strachan has been told—believe me—don't try to hedge anything before the damned Grand Jury. I'm not talking about morality, but I'm talking about the vulnerabilities.

E. Sure, good advice?

P. Huh?

E. Good advice.

P. You guys—damnit—I know you haven't done a damned thing. I do know this—they've tried to track or prejury—you're going have that—

E. Fortunately I have good records—I know who was in that meeting and so, I was able to call—

P. (Unintelligible) attorneys that certain materials. The point is now they talked to people—somebody put those things in the Bag—I suppose Fielding.

E. Fielding or Dean. I don't know. Let me just tell you—

P. Did he inventory? For example, who's going to testify what the hell was in that page?

E. I don't know. May I just finish telling you about this—I think it is important—

P. (Unintelligible)

E. Well—it does—and also—Dean is the guy that made the call sending Hunt out of the country. But, the interesting thing about it all is that Friday, he called Colson and said, "Chuck, do you remember a meeting up in John's office where John said 'So and So and D-6'—and John said—'send Hunt out of the country'—don't you?" And Chuck said, "I told him it never happened." And I didn't raise this with Chuck—he raised it with me. And said, "I had this funny phone call from this guy." So, he's out around planting his seeds.

H. He's playing the Magruder game—flying from flower to flower—planting his pollen.

E. So, I don't think—

P. I think those (unintelligible) you got very clever liars. I told you this before—very clever liars.

E. Yep.

P. (Unintelligible) I got to get out of this—

E. I think you can slide by that by just saying, "Stay home. Don't come in to the office."

P. Yep. I can say, "John, I think it's best that you don't come into the office."

E. I can tell you one way you might do it is to say, "I've had a report that an FBI man about to serve a subpoena on Dick Howard told Howard to come and talk to you. I can't have that. Because you cannot sit there as an agent of the U.S. Attorney."

P. I indicated that already.

H. Dean will say the same thing that you just said, that I can't prepare my case for the Grand Jury if I can't work with my files and so forth, and so if you are telling him not to come in, "I'll send a truck over and have my files brought to my home." That would take care of getting his files—

P. (Unintelligible) his files subpoenaed?

H. Well, there's a question on that—

E. That's the position you ought to take on that.

H. Damn right. All of the files are yours and they are not subject to any action that your files are subject to.

P. Shall I tell him that?

E. Nope. Let's wait until the question comes up.

P. Well, how do I answer the question—Bob, what do I say, "I have to have your files?"

E. Well, he's already made his statement. It's obvious to the U.S. Attorney. He's past that point.

P. I don't think you can write him a note. It's going to anger him anyway. No sense in doing that. See what I mean? We've got to remember whatever he is doing—I don't mean that you can't—he's going to do anything to save his ass. That's what is involved. But on the other hand—

E. O.K.—I got an idea—

P. You got to remember (unintelligible) he put this a lot higher. He could say, "Well, I told the President about $127,000, that we needed $127,000 and the President said, 'well I don't know where we could get it, I don't know'."

H. How could you do that though—that's true (unintelligible).

E. Alright. I'll tell you how you might be able to handle that. The FBI has just served a subpoena on our WH police which asked that they produce the names of people cleared into the WH/EOB complex from 12:01 AM June 18, 1972—to 11:00 PM June 18, 1972.

P. Where were we then?

H. What date?

P. June 18.

E. The day of the bugging.

H. We were in San Clemente.

E. Really?

H. Yeah.

E. Florida.

H. I mean Florida. I'm sorry. That was the weekend that we flew directly to Grand Cay and you went to Walkers and we went over to Key Biscayne.

P. Well, maybe that's an unsafe thing.

E. The WH Police had notified Fred Fielding of the subpoena—

H. See that's your other problem. You have a WH legal case and you have no WH lawyer—another interesting end to look at.

P. Where's Fielding stand on all this?

H. He's Dean's (unintelligible) lives next door to him. Dean sponsored him. That doesn't necessarily mean he goes Dean's way. Fielding is an honorable guy—provincially so—who may not like what Dean is doing any more than we do.

P. Well, when I see Dean I'll say, "We're not going to publish this publicly or anything of that sort—but I do think that you should not—" What you want to do is get him out of the WH and yet Colson's recommendation is to get him out by firing him—

E. Colson would like to discredit him.

P. Well I know. But the question is what he could do to discredit us.

E. Well.

P. That's a problem.

H. Yeah. But I think at some point, like you do on anything else, you gotta face up to the fact that the guy is either a friend or a foe—or a neutral. If he's a neutral you don't have to worry about him; if he's a friend you rely on him, if he's a foe you fight him, and this guy—it seem at this point—is a foe.

P. When I talked to him I said, "Now John, any conversations are (unintelligible)." I said, "Anything (unintelligible) National Security are (unintelligible) you understand?" He said, "Yes (unintelligible) testified to it (unintelligible)."

H. OK. He said it and it was no problem for him to say it. But it was no problem for him to say a lot of things to us over the last couple of weeks too.

P. The point is, if you break it off with him, then he could go out and say, "Screw the (unintelligible)."

H. No he can't. It's not his privilege. It's yours.

P. I know it's mine, but—

H. If he screws the privilege—

P. Well, I think you have to charge Henry Petersen or whoever is in charge here with protecting your privilege and then that's got to go down to Silberman and Silberman has to be cautioned that he is not to go into matters of executive privilege—he is not to go into matters of national security importance.

P. Any matters involving a conversation with the President—or national security, anything like that, they can ask me.

E. Now, the question comes up—I don't know how far this will run—but this caper in California for instance. Colson asked me this thing of Hunt's out there—the national security connected Ellsberg. Well, Petersen knows about it, I think. It's laying around someplace over there. But if the question comes up, Colson says, "How do I handle that?" I said, "Well, Chuck, if I were asked that—I would say that that was a national security project and I'm not in the position to answer a question on that, because I would have to refer to the President for a waiver of executive privilege on that if he desired to do so." And he said, "Well, can I say the same thing?" And I said, "Well, I don't know whether you can or not. He said, "Well, what would the President say if it's referred to him?" I said, "I don't know. I'll go ahead and ask him." That's what we'd say.

P. That's what we'd say.

E. Can I tell him that for you?

P. Yep. Anything on the (unintelligible) thing, the plumbing thing was national security, the ITT thing. No, I can't believe it was that—you know—the Hunt thing there. That will just have to handle the way it is. (Unintelligible) Colson about (unintelligible) Hunt thing?

E. I don't know. If anybody around here did, if anybody did it, was Dean.

H. I doubt if Dean knew about that. You see, Dean and Colson never tracked particularly well together, I don't think.

E. Whoever operates this at the Justice Department has to be told that the inquiry must not jeopardize your privilege. Some day they're going to try and put you in a crunch spot.

P. Sure.

E. And they'll put a question to me and I'll say, "I can't take that question and then I'll be back to you and it's going to be hard."

P. No turning it off. It's national security—national security area—and that is a national security problem.

E. Or, if it is something that you and I have discussed directly.

P. (Expletive removed) it

E. I'll just (expletive removed) that—I'll just—

H. I don't think anybody is going to try to challenge that.

P. (Unintelligible) conversations with the President (unintelligible).

E. (Unintelligible) just got to be told the background—

H. Awful low before you get to that.

P. (Unintelligible) talk to the President about $127,000 we had to get or were we able to get it or something. I don't know how—why it was at that point—that we were still working on money for Hunt—I don't know how the hell—

H. That was the one that Bittman got to Dean on. He really cranked on it. He was very concerned—professed to be concerned because Bittman's threat was that Hunt said that, "If you don't get it to me I'm going to tell them all about the seamy things I did for Ehrlichman." And when Dean hit Ehrlichman on that, Ehrlichman's immediate reaction was let him go ahead—"There's nothing he can hang me on." Dean didn't like that answer and went on worrying about the money.

P. Told me about it.

H. Told you about it, told me about it. I was in here when he told you.

P. Good. What did we say? Remember he said, "How much is it going to cost to keep these guys, these guys (unintelligible). I just shook my head. Then we got into the question—

H. If there's blackmail here, then we're into a thing that's just ridiculous.

P. He raised the point—

H. (Unintelligible) but you can't say it's a million dollars. It may be $10 million dollars. And that we ought not to be in this—

P. That's right. That's right.

H. We left it—that—we can't do anything about it anyway. We don't have any money, and it isn't a question to be directed here. This is something relates to Mitchell's problem. Ehrlichman has no problem with this thing with Hunt. And Ehrlichman said (expletive removed), "If you're going to get into blackmail, to hell with it."

P. Good (unintelligible) Thank God you were in there when it happened. But you remember the conversation?

H. Yes sir.

P. I didn't tell him to go get the money did I?

H. No.

P. You didn't either did you?

H. Absolutely not! I said you got to talk to Mitchell. This is something you've got to work out with Mitchell—not here—there's nothing we can do about it here.

P. We've got a pretty good record on that one, John, at least.

H. But there's a couple of complications he can throw in there (unintelligible) which would be of concern, but I just can't conceive that a guy—I can see him using it as a threat. I cannot see him sinking low enough to use that. I just—although I must admit the guy has really turned into an unbelievable disaster for us. People don't—he's not unAmerican and anti-Nixon. I'll tell you—during that period he busted his ass trying to work this out. It wore him to a frazel. And I think it probably wore him past the point of rationality. I think he may now be in a mental state that's causing him to do things that when he sobers up, he's going to be very disturbed about with himself.

P. Also, he's probably got a very, very clever, new lawyer (unintelligible) I think that's part of the problem.

H. Could very well be. John, I can't believe, is a basically dishonorable guy. I think there's no question that John is a strong self-promoter, self-motivated guy for his own good, but—

P. But in that conversation I was—we were—I was—I said, "Well for (expletive removed), let's—"

H. You explored in that conversation the possibility of whether such kinds of money could be raised. You said, "Well, we ought to be able to raise—"

P. That's right.

H. "How much money is involved?" and he said, "Well it could be a million dollars." You said, "That's ridiculous. You can't say a million. Maybe you say a million, it may be 2 or 10, and 11"

P. But then we got into the blackmail.

H. You said, "Once you start down the path with blackmail it's constant escalation."

P. Yep. That's my only conversation with regard to that.

H. They could jump and then say, "Yes, well that was morally wrong. What you should have said is that blackmail is wrong not that it's too costly."

P. Oh, well that point (inaudible) investigation—

H. (inaudible)

P. You see my point? We were then in the business of—this was one of Dean's—when he was—was it after that we sent him to Camp David?

E. You sent him to Camp David on about the 20th. I think.

P. I would like to know with regard to that conversation, Bob—

E. I think it was about—his trip to Camp David—about the 23rd of March.

H. When was the (unintelligible) trip?

E. I haven't any idea. I have no idea.

P. Well.

E. Well, you'll know the date of your meeting here.

P. Well (inaudible). I suppose then we should have cut—shut it off, 'cause later on you met in your office and Mitchell said, "That was taken care of."

H. The next day. Maybe I can find the date by that—

P. Yeah. And Dean was there and said, "What about this money for Hunt?" Wasn't Dean there?

H. No, what happened was—Ehrlichman and Dean and Mitchell and I were in the office, in my office, and we were discussing other matters. And in the process of it, Mitchell said—he turned to Dean and said, "Let me raise another point. Ah, have you taken care of the other problem—the Hunt problem?" Something like that. I don't know how he referred to it. But we all knew instantly what he meant. Dean kind of looked a little flustered and said, "Well, well, no. I don't know where that is or something," and Mitchell said, "Well I guess it's taken care of." And so we assumed from that that Mitchell had taken care of it, and there was no further squeak out of it so I now do assume that Mitchell took care of it.

P. The problem I have there is—

H. Mitchell (unintelligible). LaRue was Mitchell's agent—

P. I understand that. What I meant is, I'm just seeing what Dean's lines of attack are.

H. Your saying, "Did I know about it?" I did. There's no question.

P. Say, "Yes, there was talk about it and so forth—and Mitchell took care of it." But you, on the other hand, you make the case that—

H. It's (unintelligible).

P. In this office, but not the other—not in your office.

H. In the other office the question of thing never arose. There again, Dean is the agent on it. Dean is coming in and saying what should I do. Dean's the agent on all this—that's where my money goes. All the input to me about the 350 came from Dean, and all the output came from Dean.

P. Then Dean was the one that said, "Look, Bob, we need 350 for or need the rest of this money."

H. No, they didn't even come that way. Dean said, "They need money for the defense, for their fees." And it was always put that way. That's the way it was always discussed.

P. Right—that's why I want that line. I think that's most important. You can work on—Get a lawyer.

H. And I said to Dean at that time, "Well, look, you've got a situation here. We've for the 350" I thought it was 350—actually it was 328. "in cash that we need to get turned back to the Committee. apparently they have a need for money—so we have a coincidence (unintelligible) now you ought to be able to work out some way to get them to take the cash—and that will take care of our needs and we help meet their needs." And he went back to Mitchell and Mitchell wouldn't do it.

H. And then they agreed to take 40 thousand of it which they did and shortly thereafter they agreed to take the rest, which they did.

P. You think—you check with (unintelligible) before the election in some—

H. It was not before the election.

P. Dean says it was before.

H. Strachan says it was in late November—30th or something like that.

E. Incidentally, remember you told me that Strachan had gone over there with Colson's partner and that the Judge wouldn't take him. It turned out that was Howard who went over. Dick Howard went over with one of Colson's partners. The U.S. Attorney kicked up a fuss about it. Saying that there might be a communication between the partner and Colson and so—

H. Strachan's lawyer is a totally (unintelligible) guy that he's acquired from somebody he knew in law school.

P. Good.

E. Now Colson has pitched me to retain his partner, which I think would be a mistake.

P. You

E. Yeah.

P. You can't retain his partner.

E. I don't think so. Be a big mistake because it would create identity between me and Colson that I don't feel comfortable with.

P. I don't want you—

H. You can't. You'd be out of your mind to do it.

P. Don't get in there with Colson. He'll defend himself.

H. Obviously Colson sees that as a way of getting in.

E. Sure.

H. We should not give Colson reason to get squeemish.

P. No.

E. I'm cultivating him.

P. No, sir.

E. I'm keeping him on the team. He feels that there is a coincidence of interest between you and me and him.

P. Right. Fine.

H. Consider (unintelligible) has to continue—

P. Right all the time. Let's go back now to the decision. First, should we make a statement today?

H. I would say yes.

P. I think so.

H. Ziegler should make it.

E. Well, if it is a carefully limited statement.

P. No questions.

E. I think—no. I think it should be a very tight statement—very conservative—well at least you should think it through so that you can stay away from the soft places. But I think broadly—across the country—people are waiting to see your face on the evening news talking about the Watergate case. And making more assurances.

P. Bill Rogers says this (unintelligible) first thought Ziegler—then as we left the boat last night (unintelligible) he totally rules out the 9:00. He says, "Don't make it the only story (unintelligible) 3 or 4 months (unintelligible)."

H. You know where the Watergate story is in the Washington Post today? Page 19.

E. (unintelligible).

P. I know. I know. And it'll be page 19 five months from now if we handle it right.

E. Now I suggested having Petersen stand by. You don't think that's a good idea.

P. No, no. I just think I should go out there and say, "OK" John, let's come back to this business here—let's come back to the business of the—which is the play of the White House leaders (unintelligible) doesn't work.

E. Well, I think, in view of the foregoing, all that's gone and all that's been said, I think if you can get the results of having Dean out of his office, and I wouldn't worry about the files. I think you could put it on a basis that if he needs a file he could get it upon loan, so that at least you would be able to monitor what he was getting. I think that you would say to him, "In view of your relationship with the U.S. Attorney's office, I just don't think it is prudent for you to be on the grounds."

P. That's right.

E. And, you're going to have to work someplace else.

H. "I don't think there's any appearance problem, because you have been for a month anyway!"

E. Right. It won't be noticed. If we are asked in the press room—

P. That's right.

E. Ah, what your status is, we'll finesse it. And the question will come, "Has John Dean been placed on leave? No. Has John Dean been fired? No."

P. All right.

E. And you could say to him, "If you don't bring it up, we won't."

P. All right.

E. "If this leaks, it's going to leak from you because nobody is going—And, as far as Bob and John are concerned, I will make an appropriate arrangement with them."

P. I'm going to make an appropriate arrangement covering them. Course, it's something different—

E. "But, I cannot be in a position of having you dictate to me what it should be."

H. And you can't be in a position—

P. I can tell him, "I've made an appropriate arrangement, but it's got to be in my own way, depending upon what each is doing."

E. I think you could argue with him that the transition from John Dean being away from here and the transition being away from here is a very different kind of thing.

P. Yeah. That's right. We're not asking anybody to resign, John, because I think that would prejudice their rights.

E. Taking a formal leave—

P. All right fine, you can do that, but you're rejecting the Garment proposal that everybody leave until everybody is clear that I talked with you a moment ago?

E. Well, I think a leave is the same as being fired in this context.

P. Do you Bob?

E. Prior to the charges.

H. When you have charges—

P. Here's the point. Let me—let me tell you what's going to happen in my view. And by charges, I don't mean indictments. But when they finally make their deal with Magruder (unintelligible) out of the D.C. jail—they're going to take him into open court. This is their deal, now because Sirica question (unintelligible) John last night. They are going to make this statement. I would assume then the charges would be made, at least as far as Magruder is concerned.

H. And they said Magruder makes charges against me? Interesting!

P. Bob, I don't know whether he does or not. Let's be damned sure (unintelligible). He's certainly going to say that Dean was involved and that Mitchell was involved.

E. And he'll say Strachan was involved.

P. He'll say Strachan was involved.

E. And, "Who's Strachan?" Well, Strachan was Mr. Haldeman's employee. But, my prediction is that if the Judge says, "Well, did Mr. Haldeman tell you to do anything or this or that," he'll say, "No sir, he was never involved in this."

H. He told me that is what he would say.

E. And he told me that is what he would say.

H. He told John that is what he would say in front of his lawyers. That's what he had said, and he flatly says that is what is the truth.

P. Yeah.

H. And it is what's the truth.

P. All right. So your view, John, Bob, is that—you know that you got to look at—at being eaten away and then having to come in and say look, "I'm so impaired, I—

H. No, I don't expect to be eaten away. I think when I get hit, I mean publicly. Let's say Magruder does name me. Let's say Magruder does implicate me publicly.

P. Or Dean. Say Dean names you.

H. Someone that's known publicly. As soon as Dean is known publicly—my view would be that I should then—I should request you to give me a leave of absence so that I can deal with this matter until it is cleared up.

P. You agree with that John?

E. It'll depend a little bit, I should think on degree. If it is a Jack Anderson column—

P. (Unintelligible) another point I make (unintelligible) relation that I have now is this case. Suppose that the Assistant Attorney General comes in, Magruder and Dean have made charges. His argument is, "You have an option sir, and you as President should act. And I'm telling you now that those charges are in the possession of the government." That's what I'm—

H. OK, but what's (unintelligible) you do that. I happen to know what his motive is and I'll sure as hell use it (unintelligible).

E. OK. You say, "Mr. Assistant Attorney General, I want to explain my policy to you so that you'll know what our relationship is. Our policy is that I will immediately suspend—on leave—anybody against whom formal charges are filed by indictable information.

P. By information you mean—

E. In other words, formal charges are filed. "As soon as that happens those men will go on leave. This is a town that is so full of wild charges that if I operated on any other basis, even of those who were brought to me by 20 Bishops and an Attorney General, I couldn't be suspending people around here or the place would look like a piece of Swiss cheese. But let me suggest you do this. You go ahead and diligently pursue the Haldeman and Ehrlichman case because I need to know."

P. Right.

E. And, if you come to me and say that you filed charges and I'll have really no discretion in the matter.

P. If you come to me and say that you are planning to indict criminal charges, then I'll—at that time—move instantly, before we do it publicly.

E. Or Dean, or anybody else. But I can't treat them any different than anybody else. And you have brought me basically, uncorroborated charges. You've said so yourself that you aren't going to be able to deal with Dean.

P. I feel comfortable with that.

E. But, if you lay out the general ground rules first—

P. What, what basically, John, what the hell is the Garment, Rose I guess Moore (unintelligible).

E. They're writing a New York Times editorial which is that this is a terrible cancer at the heart of the Presidency and that there must be drastic surgery. And that in a case like this you lean over backwards and fire and so forth. And, I'm sure it will be an editorial in many, many newspapers, that Dean has raised serious charges and so on so forth. And you'll hear a lot of that. Maybe the thing to do is for Ziegler—if he gets a question about suspension or firing—to say, "This is the President's general policy—without regard to individuals—any individual whose bound by the Grand Jury—"

P. Why don't I say that today?

E. That's fine.

P. Fine. All right. I think I got the message. If you will write up a brief, brief, brief statement. You know—I can use—or do you have one you can get back to me? I have to do it at 3:00. How much time do I have?

E. You've got about 45 minutes.

P. I've got plenty of time.

H. Ziegler should delay the 3:00. They've only scheduled a posting. He can make it 4:00. Briefing at 4:00.

P. Yeah, that's right.

H. You ought to tell him now, though, that you're going to do it though.

P. I better do that.

H. Better get Ron in quickly and review this. Just tell them to send Ron in.

E. Sure.

H. Would you get Ziegler?

H. Any question about my theory now?

E. I wonder if we should talk to him about how to operate the next couple days? (unintelligible) suspicion before grant him immunity. I thought so too. (unintelligible) be on the wires, I would think.

H. Even if they have, could withdraw (unintelligible) get him before he acts.

E. I don't know.

E. Now, with us out of the play here for a couple weeks ah, you're going to need a different mode of operation, I would think on the domestic side—

P. Yeah, Cole.

E. And, Ken is fully abreast of everything.

P. All right.

E. And I think you ought to just call him direct when you have something.

P. I will. I'll use him just like I'd use you. He'll have to wear two hats for awhile.

H. My office can run itself. To cover your bases, you can deal with Steve. On schedule basis you'd be better off to deal with Parker. You haven't started doing it so you probably don't want to.

P. Things we do. I'd like to get acquainted with him anyway.

H. Weekly review and things you would talk to me about, Parker knows the reasons behind eveything.

P. Let us not overlook one greater—let us suppose no charges are filed, and basically—charges are filed. (Unintelligible) thing. Charges might be that Haldeman had knowledge, and that he participated—cover-up—I'm trying, Bob, to put my worse—

H. Sure.

P. Do you agree Bob, they might make that a charge—the heat would really go on.

H. Sure.

P. In John's case they make the deep six charge (unintelligible). I'd (unintelligible) with you on that.

E. It's up to you.

P. No, I mean that's a difference in degree.

H. I think each of those is something that we have to deal with at the time.

P. That's right.

H. In the context of time, because I don't think you can anticipate now what the context will be. You don't know what the newspaper stories will be. For instance, right now—and that's another argument against taking any action regarding me—is that I'm not in the thing at all in the public mind, and it would be startling as hell.

P. Yeah. The reason for not going the Garment road—he wants, John, he wants Mitchell separated. He said, "Mitchell's got to come out (unintelligible). See my point? Don't suppose that's occurred to you? I think what we do, I think I will make a brief statement today, and I was wondering how late I can make it. Don't believe I can make it at 3:00. What do you think?

Z. You got to make it at 4:00 or 4:15.

P. Fine, but I'll have to go to work on it.

Z. We'll have to call them in.

P. Let me ask you this, fellas, you want me on the television?

E. Yes sir, that would be my preference.

P. I'll just walk out.

Z. I think depending on the statement, they'll get it to the lab. Don't worry, they'll get it out.

P. (Unintelligible).

Z. I'll just say you have that flexibility from 3:30 to 4:15.

P. OK. Fine, fine.

E. Oh, Yeah. Ron I'll need that—

Z. This?

E. Yes. Where's page 1?

Z. It's—say page 1—

E. Good work.

P. I wonder, John, I wonder that unless you sank Dean, basically, if we're putting too much emphasis on the fact (unintelligible) in that office. Understand, I'd just thinking what it is worth to us to get him out of that damned office. I relieve him of his duties?

E. Well, the alternative is somehow or other to pass the word to everybody in the place that he's a piranha. I don't know how you do that.

P. What? What do you mean everybody in the place.

E. I mean people like the White House Police. That if they get a subpoena they shouldn't ask him what to do. The Secret Service, a guy like Dick Howard.

H. Who should they ask?

E. Damned good question.

P. Moore?

E. Make Moore Acting Counsel. He has very good judgment.

H. Very good judgment and absolutely no procedural knowledge.

E. Garment?

H. He's worse.

P. Fielding?

H. Let Fielding be the operative. Say that he can take no action without checking with Moore.

P. How's that sound, John?

E. That's good.

H. Fielding is to be the front man as Deputy Counsel, but he is to report to Dick Moore.

P. But you see, I just don't know if that kind of action is worth taking that kind of risk.

E. Well, if he's here, people will go to him for advice. I'm just sure of it.

P. OK. I've told him he's not to give any advice, and he's not to have anything to do with this case at all. All right?

E. I don't know. Maybe I'm being unduly harsh, but—and maybe the negatives are more than the positives—it seems to be that it can be done without breaking any asses.

P. I can just say, "Well, people are coming in. They're on the WH Police now—so forth. I think it's going to look strange if he doesn't."

E. It puts him in an impossible conflict-of-interest situation.

P. That's right.

H. That's the problem. He knows what is coming in—what questions are coming.

P. All right. The second point, with regard to Petersen, ah, that the—that's the highest—I better get him in and tell him (unintelligible).

H. Yeah, and the no immunity thing.

P. And just flatly say, "Now this is the way I'm going to handle the matter. I cannot let people go simply because charges are made until they are corroborated. That's my decision," and so forth. And second, "I've thought over the immunity thing and I want nobody on the WH staff given immunity. I don't want anybody shown any consideration whatever."

E. This has been a law and order administration.

P. Right, and third, "I'm directing everybody to cooperate (inaudible) They've been told they are not to. I've already helped him on that. I haven't helped him, I've tried. But I will not have a member of the White House Staff testifying in the Senate against others.

E. Yes, sir, and I think that the fourth point that you should cover with him is that if I'm before that Grand Jury and I am asked about Dean's information within the Grand Jury, I will have to say that Dean told me that it came from Petersen.

P. Yeah.

E. And, there's no point in your getting way out by saying out here to the press that I'm relying on Henry Petersen as my good right hand and then have him compromised at a later time.

P. That's right.

H. I think you must, from here on—

P. (unintelligible)

H. Yeah, but also, that you don't, from now on, until this is totally done, maybe never, express confidence in anybody, (expletive removed), don't say, "I know this guy is doing the thing right or anything else." That applies to me, Ehrlichman—

P. Well, you know how I feel.

H. Yes, but don't say it. Just—it just doesn't serve the cause properly. And I don't think you should say it. And you should not about Henry Petersen, Dean, or anybody else. Ron must not say it either. Don't let Ron con you into saying, "Well, I have full confidence in what's his name."

E. I got a name today, and I don't know anything about this fellow—but let me advance his name to you. There's a lawyer here in town by the name of Herbert Miller. You may know him. He was head of the criminal division at the Justice Department. He was there thru 61 to 67, Kennedy and Johnson, but he's a Republican.

P. Yeah, all right.

E. Now, it may be possible to get a fellow like that to substitute.

P. I don't know. This case is moving too fast. You call in a substitute and he's got to learn the damned case.

E. O.K. He reviews it. He gets the complete file with the pros and cons. He goes through it and he draws on seven years experience and he comes over to you and he says I've got to call this shot and I wonder if you have anything to add?

P. (Unintelligible) counsel?

E. Yes, but as your counsel, he has no control over the prosecution.

P. (Unintelligible) Petersen

E. That's right, and he's feeding a bunch of baloney, in my opinion.

H. He also, I understand, told you that Strachan got very good treatment over there.

P. No, no, no. He told me the opposite.

H. Oh.

P. He said that Strachan just got the hell beat out of him.

H. He did. He was absolutely astonished. He came out of there and he said it was just beyond belief. They threatened his life practically, told him he better hire—

P. A lawyer.

H. Best possible counsel. Provide for support for his wife, and because he'd be going to jail, and that he was in serious trouble. Said he would be disbarred.

E. What they are trying to do is put him in the hands of an attorney who'll deal for immunity.

H. They are trying to get him to make the same play that Magruder made.

E. No doubt that they salvaged Dean the same way, and they scored on him. Well, all I'm saying to you is, I don't think in terms of the kinds of stuff they are talking about. That is all that complicated for an experienced man to pick up, so I wouldn't want you to think that this guy is indispensable.

P. Yeah, but should I make that decision today?

E. Well, every day that goes by is going to make it that much tougher on somebody new coming in and you got a guy in here that I wouldn't trust, knowing what I know, and maybe you can.

P. This guy gets relieved, and says well I told the President that he ought to fire Haldeman and Ehrlichman and he fired Dean.

E. I don't think that he would say that. He's a pro. He's been around this town a long time and he knows if he said that, that you would come right back and say, "No, the reason I fired him is that I've reason to believe that he is responsible for leaks out of the Grand Jury," and that would destroy him.

P. OK. Can you get that paper back to me?

E. Yeah, I'll get it right back.

P. Shall I get Dean down first?

E. I would.

P. Tell him that—

E. Tell him you are going to make a statement and that it is not going to refer to him.

P. Yep.

E. Or anybody, and that you're going to deal with the people at the White House on an individual basis.

H. Maybe you ought to get Petersen in first to talk immunity.

P. Yeah, get Petersen in first. Call and tell Petersen to (unintelligible)

H. All right.

Appendix 40. Telephone conversation: The President and Ehrlichman, April 17, 1973. (2:39–2:40 p.m.)

Opr. Yes, sir.

P. Mr. Ehrlichman, please.

Opr. Thank you.

P. John—I don't want to interrupt your statement preparing,

E. Yes, sir. That's all right.

P. But I just wanted to be sure to check the points you want with Petersen. He will be in just 10 minutes so, (1) no immunity. However, I would say that for any of the top three.

E. Uh, huh.

P. In other words, so that I can, if it sort of appears that if you want to give it to Strachan, that is ok. See? Don't you think that is a good line?

E. I think that is good. Any of the people in—The four points as I wrote them down were to inform him that you were making a statement; Your policy with regard to suspension and firing.

P. Which is charges or indictment—

E. Indictment for suspension and firing for

conviction, which will be in the statement that I am drafting.

P. Wait a minute.

E. He'll tell the press that.

P. Right.

E. Then privately to him, your policy with regard to immunity for top people.

P. Yeah, and leaks from the Grand Jury.

E. I wouldn't limit it to three. I would say any top person, like Dean or up.

P. Yeah.

E. It will sell.

P. Then I will say, as far as a fellow like Strachan, that is fine. You can do what you want.

E. Yeah.

P. That strengthens the position.

E. Colson, Dean, anybody of that kind, no dice.

P. He has mentioned these four to me. I will just say that.

E. And then, of course, the leaks out of the Grand Jury. And put it to him whether he doesn't think that later exposure would prejudice the whole investigation and whether he shouldn't withdraw at an appropriate time so that a replacement can be obtained.

P. Charges and—I am going to follow a policy of accepting resignations on charges or indictment. Is that it?

E. No. Suspension on indictment and a resignation on conviction.

P. Of course. That is right. Everybody would know that. Suspension on indictment and resignation on refusing to cooperate. Right?

E. Or conviction.

P. Right. And what about charges? I mean remember we had that gray area.

E. Well, there again you will have to reserve the right, depending on the seriousness of the charge—

P. Yeah. I will say if there is a serious corroborated charge,—

E. Then you want him to bring it to you and you will reserve judgment on the individual case.

Appendix 41. Meeting: The President and Petersen, Oval Office, April 17, 1973. 2:46–3:49 p.m.)

Stewart. Mr. Peterson.

P. Right.

P. All right—he can come in.

Steward. Have him come in now, Sir?

P. Yeah.

P. Hi.

HP. Mr. President, how are you?

P. Sit down, sit down.

HP. Thank you, Sir.

P. (Inaudible) meeting—in the middle of the night for a change. The, ah, anything new I need to know?

HP. No, sir, ah.

P. Don't. As a matter of fact, I don't want you really to tell me anything out of the Grand Jury unless you think I need to know it. If it corroborates something or anybody here I need to know it—otherwise I don't want to know about it.

HP. No, Sir.

P. That's good, because I find—Incidentally, if I might—I don't think I like—for example, I haven't been in touch with John Mitchell but he might call me sometime and I don't want to be a position of ever saying anything, see?

HP. Well, I understand how you feel—its a—

P. I guess it would be legal for me to know?

HP. Well yes, I think it is legal for you to know.

P. Is it? Well, but don't do it, right. The problem that concerns me some there (inaudible)—I did see Rogers last night as you know—

HP. Yes, Sir.

P. I wanted to get an independent judgment on this when I was talking (inaudible) . . .

HP. He is an admirable man.

P. Able fellow—was a fine Attorney General, and so forth. I gave it all to him with the bark off and (inaudible). And, his views are somewhat different from yours and I am sure you would respect them—perhaps mine as well—because it is a tough call.

HP. Indeed so.

P. I might say somewhat different—I don't mean in terms of where you come out eventually, I understand.

P. but in terms of timing, and so forth, and so forth. First, there is a problem of—oh—which I don't want you to get in the wringer on this but, the leaks from the Grand Jury—you remember I have already mentioned that to you before.

HP. Yes sir.

P. I think you have to know that Dean has talked very freely to Mitchell.

HP. I am sure that's so.

P. And Mitchell, of course, is—I can imagine, I don't know, but I think you should know that. Whether he has talked to others about that, I do not know.

HP. Well he feels a very close personal relationship with Mitchell. I am almost positive of that—

P. The point is I think you will have to assume that Dean in this period, who was basically sort of in charge of it for the White House (and the rest of us were out campaigning—traveling, so forth, so on) will probably have told people that he has information from the Grand Jury. Now you just have to evaluate that yourself. I just don't want the Department of Justice, and you particularly, after your, ah—the way you have broken your—

HP. Mr. President—I am sure that is so.

P. I don't want to get embarrassed, see?

HP. I have no concern about that.

P. After the pumping of Rogers—I am not enough of a criminal lawyer to know enough about it—but Rogers was greatly concerned about the leaks from the Grand Jury. H asked me that—he said

HP. Well, two things are occurring—one, Magruder is talking, Magruder is going around trying to make peace with each—in other words, he will come in to me and say look I am in this bind and I have to testify and there is nothing I can do but I got to tell the complete truth about the others but with respect to you I am doing the best I can.

P. Yeah.

HP. Which is the pitch he is making, Now,

P. You've talked to—?

HP. We have talked to his lawyers about that. With respect to Dean—it doesn't surprise me that he has gone to Mitchell. He's, he's,

P. Understand what I am driving at?

HP. He's probably getting information from the Grand Jury.

P. What I am concerned about is leaks and leaks from the Grand Jury, not now but leaks during the period—the summer.

HP. Oh, Oh yes.

P. That's the point—during—June, July, August, September, and so forth that is the point that I mean, that a—

HP. I don't think that is a critical problem so far as I am concerned, Mr. President, for this reason.

P. See we don't want—after this agony—I don't want the—well—the man that I'm relying on to be in any kind of a (inaudible) position.

HP. Mr. President, I don't like to be in that position.

P. Well no, you've got your life (inaudible) ahead.

HP. Let me tell you—when I spoke to Dean and I for example, am not going to, I'm not worried about this, I

P. I just want to be sure that—

HP. Well, let me make three points—when I say this, and it's almost awkward to say this—

P. That is why Rogers for example is recommending a special counsel—

HP. Right.

P. He is very much afraid that anybody who has been handling the damn thing up to this point is going to have somebody—

HP. Well, there, ah—

P. (Inaudible) feel about that?

HP. Well with respect to John Dean—it is almost awkward to say it—my conversation with Dean touched upon three things: (1) leaks—which frankly I tell you I don't take very seriously—see what I mean—that's part and parcel of the Washington business;

P. Yeah.

HP. (the second) was Dean's personal involvement—that is to say—

P. What did he do.

HP. Well we didn't suspect him, but what did he do with respect to the securing of the equipment and records in Hunt's office in connection with the motion to suppress where he was a potential witness for the defense on the motion to suppress. And the third was status reports—now from those status reports, I spoke to him in terms of ultimates. Magruder was a good witness in his own behalf. Magruder—the Grand Jury didn't believe what he said about the money—but not the testimony itself—the result of the testimony. So I don't have any problem . . .

P. That has no problem of (inaudible)?

H.P. No sir, and I can disclose to an attorney for the government in the course of my work. Dean was in addition to Counsel for the President, obviously an attorney for the government—and there is not anything improper in that.

P. Right—well good, I am relieved to hear that.

HP. Now, politically if someone wants to say—as they said to Pat Gray—you shouldn't have been talking to John Dean. Well, there is no way out of that.

P. You see that is why I am raising the point.

HP. There is no way out of that.

P. That was perfectly proper for Pat Gray to talk to Dean you know—as a matter of fact, it would be improper for him not to . . .

HP. Indeed

P. . . . Dean was running the investigation of the damn thing and I certainly expected him to get all of the FBI information he could

HP. Yes.

P. What the hell is the FBI for?

HP. That's right. You know—I don't—

P. Gray got a bad rap on that—

HP. I don't think that—that's demagoguery I think—I don't take that seriously.

P. That's right—quite right. The second point is that with regard to our statement now—the one we talked about yesterday—I am working on it today—I don't know whether I can get it ready—for probably this afternoon—but I will give you a call if I do have one. I have decided—I want to tell you—roughly it is sort of like the one we worked on yesterday—but also covers the Ervin Committ too. We worked out a deal with them now where everything on executive session, no, everything on executive privilege we have in Executive Session.

HP. Right.

P. The right of executive privilege will be reserved and all witnesses will appear in public session—that's the way the deal was signed. So they will take all of our people in executive sessions discuss matters—you know like they bring—the judge brings the lawyers around the bench.

HP. I understand—yes sir.

P. Does that sound like a good procedure to you?

HP.—Yes sir—I've only got one reservation and we alluded to this earlier in connection with the Magruder plea, and that is—whether or not Senator Ervin will be willing to hold off public sessions that might inter-

fere with the right of fair trial for the others.

P. Well you and I know it shouldn't but I mean my point is I've got to say our (inaudible) should work for the (inaudible) at the White House on it, but that is your job.

H.P. OK. Just so there is nothing (inaudible) with it.

P. I don't want the damn Ervin Committee to go forward—

H.P. All right. Okay.

P. I think frankly if I were Mitchell I would be praying that the Committee did.

H.P. Yeah. It gives him delay if nothing else.

P. Correct. Delay! If the Committee gets up there and they will splash a lot of this—I mean McCord and all the rest—in there he's sure to get a change of venue for one thing. Secondly, the thing that he'd be (inaudible) of these days, seems to me, venue is the television and the rest, it's ah, I think the Ervin Committee would be highly irresponsible to move forward.

H.P. That's right.

P. (inaudible)

H.P. That's right.

P. So they should drop the Committee investigation the day the Grand Jury took it up seriously.

H.P. Well your accommodation with the Committee makes my job much easier now.

P. Good—how's that? Because—

H.P. Well I think he would have been very suspicious if I had gone up there and there was still the possibility of some confrontation between you and he.

P. (inaudible)

H.P. No, because we still haven't gotten the assent from—

P. Sirica?

H.P. Well, not only Sirica but Magruder's lawyers—we are still waiting for them to come back.

P. It takes a long time—

H.P. Yes, sir.

P. Now with regard to my policy, I think you should know I thought it over a lot—where we come out in the end we shall see, but can be sure Haldeman, Ehrlichman . . . Dean naturally will have to go because he has admitted very deep complicity. Right? There will be no question about it.

H.P. I don't think that.

P. Haldeman and Ehrlichman at this point had (inaudible) with Rogers—I not only let him read what you had given me but then I elaborated everything I knew about this thing. His judgment is this that on Ehrlichman it is a very thin (inaudible).

HP. Very thin indeed.

P. Never going to (inaudible)—he said particularly he said if they have any witnesses for the fact that he handed a packet to the Director of the FBI and Hunt didn't leave the country (inaudible) discussions. I don't know—I am not trying to judge it—but

HP. No, I understand—I agree that it is very thin.

P. They better have a damn lot more than that or they are not going to get Ehrlichman.

HP. That's right.

P. On that—they may get him on something else. And the other point was, that you made, was Dean said that he had talked—that Liddy had told him everything on June 19th. You remember?

HP. Yes, sir.

P. Do you know when he told Ehrlichman?

HP. No, sir.

P. In California after Ehrlichman had been there in March—February?—in March.

HP. Dean told Ehrlichman then?

P. That's right. So, it is a curious thing as to—Gray's concern to me. I said Dean hasn't told you he didn't tell him ahead of Ehrlichman but I mean that he didn't run right over and tell him.

HP. No, No.

P. The point is that Dean conducted his investigation and did not come to Ehrlichman and say "look we have to go to Mitchell" because that's what that was really about.

HP. Yeah.

P. Liddy had involved himself and subsequently said Mitchell and Magruder. That's what I understand to be the truth of the case.

HP. Well what Liddy in effect said was—what he admitted was that he was present at the Watergate—Dean already knew from prior dealings that Liddy was involved; you see?

P. Oh, I see—present at Watergate?

HP. That's right.

P. Oh, I thought he also—I thought you said—he told everything—that you had copies of everything . . .

HP. Well I think that is correct. He probably filled in the details but you recall at least from the meeting in February in Mitchell's office, Dean knew what Liddy was up to.

P. Yeah.

HP. Because he had come back to Haldeman and said we should

P. Yeah.

HP. not be involved with that—

P. That's right—with that—(expletive deleted)

HP. That's right. That's right.

P. (laughs)

P. Which makes it more credible when you use all salty words.

HP. Laughter.

P. OK now—this brings us to a basic command decision with regard—with regard to what you do about White House people. The main thing is (inaudible) and you can look at it in terms of the fact that anybody who this touches should go out—without—(inaudible). You can look at it in terms of the fact that if it touches them (inaudible) that clearly apart from whether or not anything legal stands up. Let's suppose—just take Ehrlichman is a case in point—that this thing brought in by (inaudible) that proves to be (inaudible) don't get anything else on Ehrlichman then the question is that nevertheless that in itself would raise a cloud over Ehrlichman. That would mean that he would be no longer be useful. Therefore, your advice-on Sunday or least it was now—sack Haldeman, Ehrlichman and Dean now—all three—because in the one case Dean should know he has admitted complicity—in the other case there is a possibility of charges which may not be true and which may not be indictable but which from the standpoint of the public will so involve them that it will cut off their legs. And let me say—I understand the point as well—the only thing is the question of how and when you do it—and as that I (inaudible). And so I have decided to handle each on an individual basis—and by that I mean that our policy generally will be that anyone who refused to cooperate will, of course, be sacked immediately. Anyone who is indicted at this time will be put on leave—indefinite leave—until he is tired. You don't—That is our system. Now, if you indict somebody, I will then put them on leave indefinitely which means he is out of a job—he'll have to go.

What would happen in that instance I think, of course, is that most of the people that are involved here would resign immediately so that—I am just saying—

HP. I understand.

P. That the least of the (inaudible) is that you are going on leave—the guy says— oh hell no, I can never come back after four or five months of trial. That's what we would say at this point. It gives them a chance. Now comes the gray area—if any charge is made publicly—you see—I don't mean in the Washington Post or the Los Angeles Times but I mean publicly by Magruder in open court—any charges are made (not released by the Grand Jury) publicly which corroborate in any way against anybody in the White House staff then he will be asked to take leave also.

HP. Umm-uh.

P. Then, of course, what will happen probably—I would predict—I know—they will come in and resign. I mean they will come in and say, look I can't do my job so I am going to go. But what I mean, the point is—my position is—indictment means—well, ah—failure to cooperate—you're fired; indictment means you are asked to take leave until you are cleared. Then the individual will say "I can't do my job" if he is a top individual, or if it is a secretary, for example . . .

HP. Oh, yeah, I understand.

P. (inaudible)—The big three—Dean, Haldeman and Ehrlichman—and third, in the area of charges—charges are made—what I am thinking of here is Magruder—Magruder goes into open court—As I understand what will happen is you make a statement in open court which will name Mitchell for sure

HP. Well—

P. and might name Halderman and might name Ehrlichman. Right?

HP. Well what we propose to do is file a one count conspiracy indictment that would name Magruder and un-indicted co-conspirators.

P. And put their names in the indictment?

HP. Yes sir.

P. Un-indicted.

HP. Co-conspirators. Then when the court questions the defendant with respect to the facts that reflect his guilt, Magruder then would be expounding on the indictment and in effect stating what the evidence was.

P. On the un-indicted co-conspirators this is Magruder—but that would be on the Watergate side—that would be both before and after. Magruder is mainly before on this—

HP. Well he is also involved in the obstruction.

P. He is, Fine, then he is—

HP. Because he perjured himself before the Grand Jury—

P. Yep.

HP. . . . at the suggestion of others.

P. So what you would have on Magruder you would say we hereby indict Magruder and the following unindicted co-conspirators which means that an undicted . . . (explain to me what unindicted co-conspirators means).

HP. That just means that for one reason or another we don't want to charge them at the time. For example, I am indicted—you're named as an unindicted co-conspirator. You are just as guilty as I am but you are a witness—we are not going to prosecute you.

P. I need to know that because . . . inaudible).

HP. But all those people that we name—we propose to name only to the extent that we feel we can corroborate. The one thing we can't afford to do is to name, for example, John Mitchell and then come up six months later without enough evidence to nail him.

P. Or for that matter—Ehrlichman.

HP. That's right.

P. Or Haldeman or anybody else.

HP. That's right.

P. In other words, you are going to put in there people you know you can indict.

HP. That's right. Now—

P. Well then I'll (inaudible)—I can consider that a charge?

HP. That's right.

P. That's right—in other words, if they're in that I would then say—anybody that was an unindicted co-conspirator would then be immediately put on leave.

HP. It would . . .

P. Get my point?

HP. That's right.

P. That's what I'll tell them I will do. Now the other thing I want to tell you though that—and I say this strongly—I have thought about it a lot—I don't care what you do on immunity to Strachan or any other second people but you can't give immunity to any top people—not Dean—needless to say you don't want to to Haldeman or Ehrlichman. Dean is the counsel to the President—after the flap with Gray—I went over this with Rogers—he says—after your flap on the Gray thing and the rest—it would like that you're . . .

HP. Right—you know why I asked

P. I just want you to know that you if give immunity but I will have to talk (inaudible).

HP. OK, well, let me put it this way, I will not do that without your knowledge. If it is necessary for me to do that I will come to you first and then we can reach an agreement that yes you will have to disavow it and that was the decision of the prosecutor. I don't want to make that decision, Mr. President. I don't want to immunize John Dean; I think he is too high in the echelon but—it's a—

P. The prosecutor's got the right to make that decision?

HP. Yes, sir

P. You better, I think . . .

HP. . . . the point of it is, if it comes to a question of—

P. I think it would—look—because your close relationship with Dean—which has been very close—it would look like a straight deal—now that's just the way you've got to figure it.

HP. That's right.

P. The prosecutor has got to know—I can say as far as the President is concerned if John Dean gets (inaudible) then I don't care—but Ehrlichman, Haldeman and all the rest (inaudible)—why the hell did we give him immunization and not the poor damn Cubans? It just doesn't sound right.

HP. Right.

P. It doesn't sound right—it isn't going to sound good for you—because of your relationship—it isn't going to sound good for the President.

HP. Ah, well I hope we don't have to do that—I would rather have a plea to a lesser offense by Dean. I think too that it's going to look awful. We are in no disagreement on that at all.

P. It would look awful, it really would, particularly . . .

HP. The thing that scares the hell out of me is this—suppose Dean is the only key to Haldeman and Ehrlichman and the refusal to immunize Dean means that Haldeman and Ehrlichman go free. That is the decision that we are going to ultimately come down to.

P. Well you will have to come into me with what you've got (inaudible) then there . . .

HP. I will.

P. and let me handle Haldeman and Ehrlichman.

HP. I will sir.

P. Did you get my point?

HP. Yes, sir.

P. If it comes down to that—I may have to move on Haldeman and Ehrlichman—then for example you come to me and say look here's what—Look I am not going to do anything to Haldeman and Ehrlichman just because of what Dean says—I can't do that. Its got to be corroborated.

HP. I agree with that.

P. Do you agree with that?

HP. Yes sir—I am not going to do anything with those two unless it is corroborated either.

P. Dean is—I find, has told two or three different stories. I didn't realize it until lately. I guess when a guy is scared he doesn't——

HP. He is a man under great pressure.

P. Sure, I feel for the poor——

HP. So do I. He took a lot—he knows

P. He is a fine lawyer.

HP. A thirty-four year old man with a bright future——

P. Sure, he's worked his — and (inaudible) everything—I understand it, but I cannot, for example, in good conscience and, you can't in good conscience say that you are going to send Haldeman and Ehrlichman—or anybody for that matter—or Colson—down the tube on the uncorroborated evidence of John Dean. You see—so basically what your problem is and the problem of the prosecutors is to find some corroboration for Dean.

HP. Precisely right.

P. If you come in to me with Dean plus corroboration and you tell me that—then we have a difficult decision on whether or not we want to immunize him.

HP. That the importance . .

P. . . or whether we have these fellows just leave

HP. That is the importance of Strachan.

P. It may be that in that instance—you see that is the other point—of course with Strachan you're (inaudible). Another way you can handle that—it occurs to me—is that—Haldeman and Ehrlichman—well let's take one, let's take Haldeman, for example, no—Ehrlichman—Ehrlichman is the best case—or Colson even, because they seem to be more tangential than Haldeman, right?

HP. Both are more tangential than Haldeman—yes, sir.

P. Right, let's take Ehrlichman—let's say that the only testimony we have is something about (inaudible)—and so for and so on—something about that Dean is supposed to have told him about the Liddy operation or something in March. All right—so is he a co-conspirator? Let's suppose you cannot get anybody to corroborate that—All right, then the question is, however, then that is one thing. If on the other hand—you wouldn't sack Ehrlichman for that?

HP. Mr. President, I wouldn't prosecute Ehrlichman for that.

P. But you might sack him?

HP. Yes sir.

P. Now the second point is, let us suppose . . .

HP. I mean if he were a junior partner in the Petersen-Nixon law firm out in Oskosh, I would not. But as senior advisor to the President of the United States I would. That is the difference.

P. Yeah. Now you come to the other point. Suppose you have Dean in a position of where he makes this charge against Ehrlichman—no, what I am getting at—no, no, no my point is where you come in and say look I've got this charge—wait a minute this is unsubstantiated—but let us suppose you have witnesses who give testimony—and credible witnesses—the other way? Then what would you do with Ehrlichman on that? You have heard—Colson apparently for example is supposed to know about that—and who else was there when they talked about the, the, ah?

HP. Clemency?

P. What? Pat Gray oh talked.

HP. About—Pat Gray?

P. Leaving the country and all that business—Colson?

HP. Liddy—

P. Was Liddy there?

HP. Liddy gets his instructions from Dean.

P. Yeah, All right, so Dean . . .

HP. Liddy passes the information on to Hunt.

P. Dean.

HP. Hunt tells us in the Grand Jury that Liddy said his principals said that I should do this.

P. Yeah.

HP. Hunt doesn't know who the principals are.

P. Right.

HP. . . . he says at this stage of the proceeding. Even if he does know,

P. Right.

HP. he knows only by hearsay.

P. Right.

HP. . . . and probably not going to be admissible.

P. This is where you're going to get the corroboration.

HP. I am not sure that we are. I am not sure that we are.

P. See that's where you give me the tough problem. But on the other hand it seems to me that on that basis the better way to handle it is for you to rather than immunizing Dean—you see if you immunize him for something that can't be corroborated, it's a straight deal between—you know what I mean. Well, I can see Mitchell saying—well John Dean was talking too much to Henry Petersen, and Peterson did this and Dean pulled the plug on him and he had no time to lie. You know?

HP. It's possible.

P. And it's a bad rap, but ah, I'm (inaudible).

HP. But we are not going to do that Mr. President—we are going to have . . will have corroborative witnesses all along the line.

P. Yes, sure.

HP. But I see the problem and I feel—I think we are looking at it a little bit differently—.

P. Sure.

HP. And I see the problem in two dimensions and, of course, I see it in this respect as a neophite. Obviously you and Bill Rogers are much more experienced in these affairs than I, but maybe because I am a neophite and one of the public I see it perhaps more clearly—at least from a different point of view. It seems to me.

P. It's the taint.

HP. That it's just the things that they have done impairs you.

P. I understand. Understand and I agree with you on that. My point though now is a different one—it is the question of the immunity. That worries hell out of me.

HP. Well that—

P. The immunity worries me for the reason that it just is . . I don't think it's good to give it. I don't think in view of the fact that we had this hell of a flap—you know that is the reason Gray wasn't confirmed—because of Dean.

HP. Well Mr. President—

P. We go in and give it. . .

HP. If I could only put your mind at ease—I have been arguing with those prosecutors for three days on this issue—

P. I think you've got to understand, I am not suggesting this about Strachan or a secretary or anybody else—no immunity all the way down the line, but it occurred to me that particularly in talking to Rogers said how in the hell can they give John Dean immunity after he's the guy that sunk Pat Gray.

HP. Well if I sound like a devil's advocate—I am. I have been saying the same to the prosecutors—how in the hell can I immunize John Dean?

P. That's the point. Well, I feel it strongly—I mean—just understand I am not trying to protect anybody—I want the damn facts if you can get the facts from Dean and I don't care whether—

HP. Mr. President, if I thought you were trying to protect somebody, I would have walked out.

P. If he doesn't testify in open court—or anything of that sort it doesn't make any difference—I am going to make my decision on the basis of what you tell me Dean has told you and—just a little feel of the whole thing. But I've got to do it my way.

HP. I know—no problem with that.

P. I've got to get (inaudible) handle on it

so what I am going to do is this—when charges are made—if your charge is made that certain co-conspirators, and so forth and so on—out!—even when they are unindicted—out, out—so that takes care of that. But that is the time to do it, and I am going to say that—oh, I am not going to use your technical terms—

HP. Well that is understandable.

P. But I am just going to indicate that there must be cooperation, that if there is any evidence to indict anybody on . . .

HP. Let me ask you this, Mr. President, what would you do if we filed indictment against Magruder, hypothetically, and

P. Yeah—Magruder or Dean?

HP. Magruder

P. Magruder—oh you have indicted him.

HP. To which he is going to plead, and we named as unindicted co-conspirators everybody but Haldeman and Ehrlichman—never mind that the variation improves between them for the moment—

P. That you would name Colson for example?

HP. Well I don't know about Colson—Colson is again peripheral, but Mitchell, LaRue, Mardian—what-have-you . . .

P. Colson was a big fish in my opinion.

HP. Yeah, and a

P. Would you name Dean for example?

HP. Oh yes.

P. Oh yes he was—

HP. And we name all of those people. We leave out Haldeman and Ehrlichman. Now one of the things we had thought about—

P. I get your point

HP. leaving them out was to give you time and room to maneuver with respect to the two of them.

P. Let me ask you—can I ask you—talking in the President's office

HP. Yes sir.

[Sets up appointment—had to take time out to sign some papers]

P. You see we've got to run the government too (inaudible).

P. You mean if Haldeman and Ehrlichman leave you will not indict them?

HP. No sir, I didn't say that.

P. That would be a strange (inaudible).

HP. No—it was not a question of that—it was a question of whether or not they were publicly identified in that pleading at that time.

P. Yeah.

HP. And, well, for example, as a scenario—that comes out and you say—

P. (inaudible)

HP. this is a shocking relevation—

P. Yeah.

HP. as a consequence of that I have consulted and I have just decided to clear out everybody here who might have had—and as a consequence Mr. Ehrlichman and Mr. Haldeman are going. Thereafter, we would proceed with the evidence wherever it took us. That is what we were thinking about to be perfectly honest with you.

P. Well you really ought to include them (inaudible) if you include the others.

HP. Well

P. Oh, you don't want names in the indictment of Magruder.

HP. That's right—unless we were able to go forward. Well, I don't want to belabor the point—I have made it clear that my view that I think they have made you very very vulnerable. I think they have made you wittingly or unwittingly very very vulnerable to rather severe criticism because of their actions. At least in public forums they eroded confidence in the office of the Presidency by their actions. Well you know it, I don't have to belabor it here—

P. Well, let's begin with this proposition. Let's not get in the wicket where we've got Dean in an immunity position. He'll talk. He'll talk.

HP. Well that's another thing. Have you decided to accept Dean's resignation?

P. No, I have decided I have to treat them all the same.

HP. I was going to say that would be terrible the effect is he would be out talking to the Press immediately.

P. Oh no, no, no—I told Dean I was going to handle them all the same (inaudible)—no that would be unfair.

HP. I agree.

P. Absolutely.

HP. I agree.

P. No, No, I talked to Dean about it—he said well he would do it if they did it too. He would like to do it if they did too, and I said well we are not going to do it on a conditional basis—I said stay on until we see what happens. No, I am not going to condemn Dean until he has a chance to present himeif. No he is in exactly the same position they are in.

HP. Alright, OK.

P. You see that's the point: see I put all three in the same bag.

HP. Very good.

P. How does that sound to you? Do you see what I mean?

HP. Yes, indeed.

P. So they have the same rule and if Strachan comes in, I am not going to throw Strachan out simply because he's been down before the Grand Jury.

HP. No—I agree with that.

P. If you put his name in that indictment, I'm going to throw him out.

HP. Well you know Strachan right at this point is debating whether he wants to be a potential defendant or a witness.

P. You've got him down there now haven't you?

HP Well, he's not down there now—his lawyer called around noon time and we told him go back and talk to your client and let us know one way or another.

P. Right. (pause) oh you mean you're not covering the immunity thing there?

HP. No—but we have to distinguish between variations of immunity.

P. What?

HP. In all probability there is not enough evidence to implicate Strachan as a—

P. Principal.

HP. principal. There may be some evidence to reflect some degree of culpability, but he is at least at this point in our judgment a fringe character. The type of person where we would not have to formally immunize him we would say look,

P. Yeah.

HP. You are a witness rather than a defendant—tell us what you know.

P. What you mean—you are telling him you will not prosecute him?

HP. That's right but it is distinguished from formal immunity which requires—

P. Oh, I see.

HP. a filing in court.

P. What you say—Look we are having you here as a witness and we want you to talk.

HP. That is described as immunity by estoppel.

P. I see, I see—that's fair enough.

HP. That is really the prosecutor's bargain.

P. That is much better basically than immunity—let me say I am not, I guess my point on Dean is a matter of principle—it is a question of the fact that I am not trying to do Dean in—I would like to see him save himself but I think find a way to do it without—if you go the immunity route I think we are going to catch holy hell for it.

HP. Scares hell out of me.

P. Rogers says (expletive removed) he says "tell Peterson (expletive removed) if you give them immunity here—he sees (inaudible) the Gray thing and all the rest—Dean is." Whatever area we think Dean is in, in the public mind, he is a big shot. Ervin thinks he is a big shot, the whole Senate Judiciary Committee—Dean is the guy that the whole Executive Privilege thing is about. So we give him immunity? I hadn't thought about it when you first talked about it.

HP. Sounds. . .

P. But you must have thought about it.

HP. I have—indeed. It is the toughest decision I have facing me.

P. Well what the hell—he can talk without any immunity can't he? Oh I guess if he is a defendant he wouldn't talk to you.

HP. That's right.

P. (inaudible) of course he wouldn't (inaudible). Is that your problem?

HP. You know if I get—yes—of course even if I come up with a lesser charge that damn Sirica is just liable to blast hell out of all of us to prevent him to plead even to a lesser charge. The ideal position would be the same as Magruder—you plead to one count felony indictment—take your chances.

P. That is what Magruder agreed to plead to?

HP. That's right.

P. To one count felony indictment.

HP. And that's what we are trying to work out with Dean and that's where the . . .

P. (inaudible)

HP. Five years—max.

P. Five years—Out in two years?

HP. Probably.

P. That's the way it works, isn't it?

HP. Yes Sir.

P. Dean's lawyers say (inaudible)

HP. Dean's lawyers say we will try this whole damn Administration.

P. Huh?

HP. They say we'll try this whole Administration.

P. Yeah, I know. I heard that. So that puts you in a hard spot.

HP. That's right. I don't know, I am just aghast at the whole damn thing and you must be too. Because I see no rhyme, reason—

P. Slightly.

HP. anything to . . .

P. Yeah—for all this treatment—for this?

HP. And you know, I look at John Mitchell and I have admired him—and

P. Yeah—I know—good man.

HP. and I'm just shocked.

P. But what happened we know is this: These jackasses got off . . . see this Liddy is crazy and Hunt and that whole bunch conducted this (inaudible) Mitchell wasn't minding the store and Magruder is a weak fellow—and the damn thing—and then afterwards they compounded it by what happened afterwards.

HP. That's right.

P. They were caught in it and they said—Oh we can't—and basically they were trying to protect Mitchell—let's face it. You know that.

HP. Well, you know LaRue broke down and cried like a baby yesterday.

P. He did? That's too bad.

HP. He was not so bad on admitting the obstruction of justice and subornation. Resigned, said he'd probably plead—said he didn't even think it worthwhile to bring a lawyer with him—ah,

P. He had (inaudible)

HP. Not fully—he broke down but when it came to testifying about John Mitchell he just broke down and started to cry. It is a terrible thing . . .

P. (inaudible) as we all do, but we are going to do the right thing. Don't you worry about that. I am just trying to do the right thing in the way that is . . .

HP. Mr. President, if I didn't have confidence in you—I wouldn't be here.

P. Yeah.

HP. You know—

P. Yeah.

P. Did we do any good on the Liddy call?

HP. I don't know—Maroulis.

P. (inaudible).

HP. His lawyer, flew down—

P. (inaudible).

HP. And we had Liddy brought over to a cell block of DC Court and made him available—and that was yesterday and of course I am sure Liddy is thinking it over—but—we'll see. That man is a mental case . . . (inaudible).

HP. I guess Bill Rogers was shocked too? (Pause) God Almighty.

P. Bill—I think everybody is shocked, but we are in it. So what do you do? In this thing—in these things—you've got them, you handle them and go on to something else—that's what we are going to do.

HP. Damn, I admire your strength. I tell you.

P. Well, that's what we are here for.

HP. Well I know but I've been around government long enough . . .

P. Frankly, the Dean thing troubles the hell out of me—I would like in one sense I would like to see the poor bastard you know, out of it and in another sense I think the immunity thing scares me to death.

HP. Well it does me too. I agree.

P. How shall we leave that? You will go back and—you haven't made a decision then?

HP. Well we're still negotiating.

P. You are going to try to see if you can get it another way—

HP. That's right—that solves the problem for me—and if . . .

P. But you may not be able to and then we will have to get Dean. He is the only one, so—otherwise you go the other way.

HP. Yeah. Incidentally, I talked with Pat Gray again—

P. Yeah.

HP. I went back again today.

P. Do you think you can put that piece together?

HP. Yes sir—I'll tell you what happened. He said he met with Ehrlichman—in Ehrlichman's office—Dean was there and they told him they had some stuff in Hunt's office that was utterly unrelated to the Watergate Case. They gave him two manila envelopes that were sealed. He took them. He says, they said get rid of them. Dean doesn't say that. Dean says I didn't want to get rid of them so I gave them to Gray. But in any event, Gray took them back, and I said Pat where are they, and he said I burned them. And I said—

P. He burned them?

HP. I said that's terrible.

P. Unrelated—only thing he can say was—he did it because it was political stuff I suppose?

HP. Well, you know, the cynics are not going to believe it was unrelated.

P. Oh yes of course.

HP. I said, did you read it?

P. Who handed it to him, Dean? Who knows the contents?

HP. Dean and Erhlichman. Dean—Gray says he never looked at it—never read it.

P. Did Dean?—did we ask Dean what the contents were?

HP. I didn't ask Dean because he said it was—

P. Did anybody?

HP. Not at this point. We'll have get to that obviously.

P. Sure. Dumb damn thing to do.

HP. I think it is incredible and I just—

P. Why didn't he just put it (inaudible).

HP. I said Pat why did you do it.

P. Pat's naive.

HP. He said—well, I suppose because I took them at their word.

(Apparently someone brought in a statement).

P. (Inaudible) Oh this is a (inaudible) Senate Select Committee. Let me read it to you if you can (inaudible) it for me a little. "For several weeks Senator Ervin and Senator Baker and their counsel have been in contact with White House representatives, Mr. Ehrlichman and Mr. Garment. They have been talking about ground rules to preserve the separation of powers without stressing facts. I believe that the Committee ground rules that have been adopted totally preserve the doctrine. They provided the . . . appearance by a witness named—in the first instance to be in executive session if appropriate. Second, the executive privilege would be expressly preserved (inaudible) proceeding would be televised (inaudible) . . . that has never been a central issue especially since the separation of powers problem is otherwise solved." (inaudible) Does that sound right to you?

HP. Yes sir.

P. Forthcoming and so forth, and so forth? All White House staff will appear and testify under oath and (inaudible) all proper questions fully as far as I am concerned.

Second announcement—"When the Watergate Case (inaudible) several weeks ago, I began to look into this matter as a result of printed stories in the press and private information which had come to me—private information?

HP. I don't think that ought to be there.

P. Basically it was the LaRue thing—not the LaRue—but the McCord thing that really set my invest . . . that is when I started to work with my . . .

HP. I don't see how you can say private information that came to you without

P. Yeah

HP. Almost becoming personally involved—at least as a result of a witness . . .

P. As a result of some very serious charges that were

HP. Yes, I think that has to be modified. (noise of paper being moved around—obviously the President was working on the statement)

P. We could say that I—what was the term we used?—this says real progress has been made—that isn't very good—what is the term that we wanted to say about significant developments?

HP. Significant developments is a term—

P. Any person in the Executive Branch who is indicted by the Grand Jury my policy would be to immediately suspend him. If he is convicted he would be automatically discharged. No person in past or present positions of importance can (inaudible) the prosecution.

HP. I don't think you ought to say that Mr. President. I mean, I think that is fine for you and I to share your concerns on that, but to state that publicly seems to me will have tendency to prevent people from coming in. In effect, we will be right back to where we were without the immunity statute—where the Fifth Amendment is a complete bar. Now even if we never utilize immunity the fact that it is there and can be used to strip them of the Fifth Amendment rights is a terrible important tactic to have available. That phrase in there takes that tactic away from us.

P. The tactic of?

HP. Of immunity

P. This doesn't refer to . . .

HP. For example, we might want to immunize Strachan.

P. Well no, no—

HP. Well then you get into a question of who is a person of importance—Washington Post may very well think that Strachan is a person of importance. Anybody who works at the White House is a person of importance as distinguished from—minor underlings so far as you are concerned.

P. Should we say major government employees? Government employees holding major positions—how is that?

HP. I would prefer that we not say it.

P. Well I am just trying to cover my tracks on the Dean thing—that is all.

HP. Yes.

P. And if he is—then that is the U.S. Attorney's job.

HP. But that is a sophisticated point isn't it?

P. Yeah. Sure, we could say that Dean was let off? Oooh.

HP. Oh, it is a sophisticated point after the fact but at this point in time in conjunction with this statement it is going to take a rather astute reporter to raise it. Is immunity going to be utilized?—the question is easily defended—you know—that is a prosecutorial tactic and that will be handled by the prosecutors if and when it is necessary.

P. Right.

HP. You could say I would hope—

P. Yeah.

HP. That no significant figures would be immunized.

P. I express my—I want to put something—many of you know—I would hope—what could I say? I would hope any major—any official holding a major position, ah.

HP. I have expressed my concern.

P. My—I express my view.

HP. To the Department of Justice.

P. To the department of justice that no person, that it is my expressed view to the Dept. that no persons should be immunized.

HP. No—that is too strong.

P. Huh?

HP. That is too strong. That's a double entendre if you like—

P. Alright—what would you say then?

HP. In effect that says that you are taking away a prosecutorial tool from them.

P. I express my view to the appropriate authorities—shall we say—

HP. That would weaken it.

P. To the appropriate authorities that I do not favor—

HP. I have expressed my hope to the appropriate authorities that it would not be necessary to immunize any major official in order to develop a prosecutable case.

P. OK—I've got it Henry—otherwise it is nothing new—(inaudible) through the appropriate ways—that all White House especially are expected to cooperate fully—we said that—with the U.S. Dept.

HP. With the prosecution.

P. With the prosecution.

HP. With the prosecution team.

P. With the prosecution team. It says I have (inaudible) an occasion to attempt to pass the word to others who might be able to help to (inaudible) cooperation. I don't think that means anything.

HP. I don't think that means anything and I think it says too much.

P. Yes.

P. Yeah—well what you are in effect saying to me—as I say—I want to be very clear on the Haldeman/Ehrlichman thing. That if they were left out of the non-indicable list it gives me a little running room. I want to be very clear—that understood?

HP. That's right, that's right.

P. It doesn't mean that they aren't eventually be indicated if you get the facts.

HP. That's right.

P. But it does mean that they have an oppor . . . they aren't canned as a result of the fact—that is what we are really getting down to isn't it—you would have to put Dean on tha list wouldn't you?

HP. Yes Sir.

P. I guess you would have to with everything with him because basically Magruder is going to name him.

HP. That's right.

P. Hmp.

HP. And, if we get down to . . .

P. Magruder is not naming Haldeman and Ehrlichman though. That is the problem is it?

HP. Yes but he does—but not in firsthand sense—

P. Only by hearsay.

HP. But you see—if he makes that statement in open court—

P. Yeah, I get it.

HP. It means to me it makes your practical difficulties just as severe as if we had named him in the first place.

P. Well I am glad to get this kind of stuff so I get a clear view of everything—what the options are—

HP. And if we frankly—if we think that Sirica is going to elicit that kind of statement we will include him in the charge to the extent that we can.

P. Yeah—sure you don't want to . . .

HP. Subject only to the fact that we can corroborate it later on.

P. Timing now. What about Magruder—you don't expect him tomorrow?

HP. Well I told them . . . Probably not today, but I guarantee you at least twelve hours notice.

P. Can you give me that much?

HP. I will guarantee you that. I will hold it up to make certain you get it.

P. Yeah. The only—Yeah. On the other hand I suppose you should say (inaudible) story—it got a hell of a big play.

HP. I didn't see it.

P. And other stories that are not so likely to (inaudible) could, could—everything is likely to blow around here. But at least you give met the—there is nothing in this that we irritate the fact that do we (inaudible) til down there in that court we know this damn (inaudible).

HP. That's right

P. So basically we are in a pretty good position to say—that except as I said I don't want the Washington Post to break this case.

HP. That's right. We don't either.

P. I want the Department of Justice—and, frankly, the White House—because as you can see we'll cooperate (inaudible).

P. OK—I can see what you mean. You would anticipate then that if you didn't include Haldeman and Ehrlichman in your general thing that Sirica will question the defendant—Magruder—and he then will bring in—

HP. If he brings that out—if we think that is a real possibility then we will have to decide whether or not as a matter of conscience and professional ethics we can put them in. If we can answer that yes—then we will put them in. If on the other hand, we think there is no basis for it—even if Sirica does bring out the hearsay—we will just have to take the knuckle for it.

P. Sure—which is basically what Sirica wants. Colson—I think we should know about him too.

HP. Well,

P. Not yet, huh?

HP. Well, Bittman went to Colson to urge leniency—Colson then got in touch with Ehrlichman and Dean. Ehrlichman is alleged to have said—

P. Make no commitments

HP. we'll do the best we can—make no commitments. Then thereafter you know apparently money flows—or so we are told—whether there is any relevancy or relationship remains to be determined.

P. What did Bittman want?

HP. Well apparently the funds, but that remains to be developed—ah, Dorothy Hunt was, according to McCord, the intermediary the leniency thing (inaudible)

P. Right.

HP. And another intermediary was LaRue and LaRue used the alias of Baker—two aliases—one was Baker and I have forgotten the other one, for the transmittal of money. One of the things that concerns me in this area and you know again an area in which I may have made a mistake earlier in the game was with respect to Kalmbach. Now I understand he is your personal lawyer—is that a fact?

P. Yes, yes—very capable guy. (Inaudible)—as I understand—they called and said raise some money for the (inaudible) and so forth. I am sure he was no damn co-conspirator. (Inaudible)after the campaign.

HP. Here's one thing—in the earlier stages of the proceedings when they had Segretti in the Grand Jury—

P. Yeah.

HP. I told Silbert—now—damn it Silbert keep your eye on the mark—we are investigating Watergate—we are not investigating the whole damn realm of politics and I don't want you questioning him about the President's lawyer.

P. Right.

HP. Well, he didn't. Well now Kalmbach comes up and you heard on the news I am sure today—he apparently is going to be called by the Senate Committee—but he also comes up in this investigation with respect to actually Kalmbach raising money—or passing on money at Mitchell's direction for the co-conspirators—So we are going—

P. Sure.

HP. To have Kalmbach back into the Grand Jury.

P. Well in that instance, I suppose there you've got to prove what he thought he was raising it for.

HP. Well, even if he didn't know or he was misled—the fact that he

P. (Inaudible.)

HP. did at the time we may very well end up with him being a witness.

P. Damn right—oh I know that. I would seriously—I mean. And again on that particular count—I guess you were the one, I think who said the question is motive—what they raised the money for

HP. That's right.

P. If you are trying to help them out with their defense—that is one thing—but if you are helping them out to keep them quiet that is a hell of (inaudible)—that is an obstruction job.

HP. That's right—you know if you are acting out of Christian charity—

P. Right.

HP. That is fine.

P. That would be Mitchell's defense on that.

HP. Of course all the inferences run the other way and that is a hell of a defense to have to put to the Jury.

P. Well I gness you have given me enough to chew on here—whether I get something out today and we'll know how—about it tonight—I'll see—I may have a little bit of time. You don't think that you are going to indict sometime today.

HP. I will be glad to give you twelve hours notice. Nothing is going to happen today I am certain—even if we get an agreement today—you know I can still hold it off a day.

P. Yeah—you might hold it off even tomorrow, huh?

HP. That's right. If we have to go see Ervin and Sirica—both of them—it may very well take a full day before we can get both things accomplished.

P. I've got to accept a big huge schedule tomorrow—energy message, and so forth, and so forth, and I don't want to tell you to hold it off except apparently it is going to take you some time anyway—I mean there is always a change of leaks—leaks aren't going to mean much—

HP. There are so many i's to dot and t's to cross on this thing—when you talk about holding off a day or two it doesn't make that much difference.

P. Except leaks—what do you think on (inaudible)?

HP. I think it is terribly important—

P. Get out front?

HP. for you to get out front on this thing—irrespective of

P. Even with a statement like this that doesn't say much. Well cooperating with Ervin but that's

HP. It says that—that is significant news. I think it is significant that it reflects that you are taking a personal interest in it—I think it is significant that you say there are significant developments which means you are personally informed and not only have endorsed what the prosecution is doing. It certainly is not significant in terms of evidentiary facts but we are never going to be in a position to do that anyway—unless the public exposure in the court. You know there is another dimension, Mr. President. These fellows Magruder, Dean have talked to us—they'd be less than human if they didn't watch to see if the system was surviving the test—so there is another reason for their delay. Conceivably they say well this may be too strong for the Department of Justice or the President—or the people at the White House—they're not going to have the courage to face up to this—let's wait and see what happens and if we don't see some movement then our bargaining position will become increasingly tougher day by day by day.

P. Yeah. (inaudible)—keep in my mind—(inaudible) get the damn thing over with—and I know the trials of Mitchell and all these people will take a long time—(inaudible)—Mitchell will never plead guilty, never. Fight it all the way down the line, (inaudible). What would you do if you were Mitchell?

HP. I think I would probably go to Saudi Arabia to tell you the truth.

P. Poison.

HP. When I think the former Attorney General of the United States being subject to criminal trial is just—

P. For obstruction of justice—not the bugging—the obstruction of justice.

HP. It is just terrible.

P. OK—alright—thanks for your help. I'll see if I can work something out today and if I don't, maybe tomorrow. We'll see about it.

HP. Thank you. Have a good day Mr. President.

P. Yep—we'll try.

Appendix 42. Meeting: The President, Haldeman, Ziegler and Ehrlichman, Oval Office, April 17, 1973. (3:50–4:35 p.m.)

E. This is John Ehrlichman for Bill Timmons.

E. Ah, I'm in the President's office Bill, can you call—get the first page, first two lines of the second page (unintelligible). Pardon me? No, just tell him that's the statement. Bill, just go ahead and do it. Thanks.

P. I completed the round with Petersen and he said he completely agreed with me, that he's been arguing that with the U.S. Attorneys. He says the problem—

E. He's in total control.

P. He said the problem is (unintelligible). I said, "Well you're going to corroborate it, aren't you?" "Yes, of course." But I put it bluntly. No individual—

Z. Ya, I just want to check. Are we already to go?

P. I don't know if I can really make it. How late can I go? About 4:30. OK. Don't tell anybody yet. Thank you. I'll let you know.

P. Quickly. The new evidence, new leaks. First, I said, I said Rogers and I talked about it and Rogers thought it was totally wrong to immunize the President's counsel. Rogers did say that. However, I talked about the leaks in the Grand Jury (unintelligible) Mitchell, Dean. I said I just want you to know that you are vulnerable. He said, "Well I never gave them substance, I just gave them (unintelligible) on how they did and so forth and so forth." He says, "After all, it's my responsibility." But anyway, I don't know. I didn't get far with that (unintelligible). He talked to Pat Gray and Pat Gray has now told him that he destroyed the packet. He just shakes his head.

H. Why would Gray do that?

P. Gray was told it was political, was told to destroy. I don't know Gray was told it was material, actually nothing to do with Watergate. He was told to destroy it, but

Petersen says that's that. Here's the situation, basically, (unintelligible). They're going to haul him in court, have him plead guilty, put a statement out because Sirica always questions the witnesses who plead guilty. They are going to make it as broad as they can and as narrow as they can at the same time. By being as broad as they can, they are going to say that he has named certain people and they are going to name a group of people that is non-indictable co-*conspirators*. They're going to include everybody on that list. I said, "Is Dean going to be on that list?" He said, "Yes." He said, "Frankly (unintelligible) not include Haldeman and Ehrlichman, which gives you an option." I said, Are you telling me that if Haldeman and Ehrlichman decide to take leave, that you will not then proceed with the prosecution. "No," he said, "I don't mean that." He said, "What I mean is that they are not going to appear on that list and that (unintelligible) Grand Jury and make case there (unintelligible). So there's the—

E. Well, whether we take leave or not doesn't effect the list that they read off.

P. Yes. Yes.

E. Oh, it does? Yes, it does. They will put us on the list if we don't take leave?

P. Yes, because otherwise, he says, he says Sirica is going to question Magruder and he's going to question (unintelligible) and it appears (unintelligible). If he does that, then it will appear that the Justice Department again is covering up. Two questions: One, should we go forward with an announcement today or not, or should—

E. Well, from your standpoint, you must. Even so. This thing will get away from you otherwise.

P. Well, the real question, I suppose, John is (unintelligible). I don't think we can—here's the whole point, in effect—if the—your names will probably be on the list. That's what he's saying unless you decide not to, decide that your not (unintelligible).

H. It isn't that (unintelligible), we have to resign. The (unintelligible) doesn't accomplish anything.

P. (unintelligible)

H. What does he mean from that? I don't understand?

E. The guy to gain from that is Dean.

H. Ya, they're putting us in the same bag with him.

E. Ya.

P. (unintelligible) he said Dean's lawyers say Dean is going to make a case against this Administration. They're going to try this Administration. That's what he said. So, I guess that's where we stand with Dean.

E. Well, it's as broad as it is long as far as I'm concerned. If I'm to take leave—you think I should—that is or has the same effect as being—

P. As resigning? (unintelligible) taking leave you couldn't come back.

E. Ya, I'll never come back.

P. Of course not. I understand that.

E. On the other hand, if I'm indicted and take leave, and then I'm acquitted, I could come back. But to take leave and then not appear on the Magruder list, it's a confession.

P. That's right. So I think their (unintelligible) approach just doesn't work.

H. Well, then you look worse by that than you do the other way. You look better to have us on the list, than to have us take leave and then not be on the list.

E. Cause that looks like you're covering up, that it hasn't come out.

P. I think so, too.

H. If we're going to be on the list, so be it!

P. That's right. I think you're right.

H. I think we're in a terrible—these guys are working in a most bloodthirsty way. They've lied to Strachan. They've told him they had all this stuff. They've not told him what his rights are properly. I'm sure his lawyer has gotten it straightened out, but it's really something.

E. They're trying to get him.

H. Trying to get him to take a cop-out and they won't make a deal. They told Strachan if he covered everything that he had, everybody he knows, they assured him they already had it anyway—

P. That's a tactic.

H. They said you, Strachan, have a chance of getting out because you'll become a witness and not a defendant, but they will not give him immunity.

P. That is immunity, however.

H. Well, unless—it keeps their options open and his closed.

P. Strachan is (unintelligible).

H. (expletive removed), I hope so. And the (expletive removed) you know Strachan made that mistake on the 350, called Silbert the next day and said, "I would like to correct that. I made a mistake." They said, "Fine, come up in the morning and we'll straighten it out." He went up Monday morning, and they laughed at him and said we're not going to put you before the Grand Jury. See that's when they kicked him around, yesterday morning. Then today when he went in they said, "We will not let you correct your statement on the 350, we've got you on a perjury count.

P. That's not true.

H. That's what they told him.

E. It certainly is not fair.

H. Well, apparently by the law.

P. I think under the law if you go forth and volunteer something—

H. But they wouldn't let him go in, so he didn't volunteer, but he sure did it constructively as far as—

P. Well, shall we get to work? Shall I just go out and read it.

E. I think so. I'm having Timmons just read this first part to Ervin.

P. All members of the White House staff will appear (unintelligible) when requested by the Committee and will testify under oath and answer all proper—Are you getting all this or should I get a girl in?

E. Voluntarily, when requested by the Committee—O.K.

P. The next part is what I'm concerned about. "I began new inquiries," shall we say?

E. Well, I don't know.

P. "I began new inquiries into this matter as a result of serious charges which were reported publicly and privately." Should we say that?

E. Publicly, comma "which in some cases were reported publicly."

P. "Four weeks ago we," Why don't we say, shall we set a date? That sounds a hell of a lot stronger if we set a date.

E. All right.

P. "On March 21, I began new inquiries," Strike that. "I ordered an investigation, new inquiries throughout the government—"

E. How about saying, "On March 21 as a result of serious charges which were reported publicly and"—

P. "Some of which were reported publicly and some of which were reported privately to me"

E. "Some of which I subsequently"

P. "As a result of serious charges reported publicly and privately"—

E. "Some of which were reported publicly"—and then not say about the result of them. I—

P. In other words, "On March 21 we started an investigation because of the public hearings."

E. That's right.

P. "As a result of serious charges reported publicly—publicly reported—"I began intensive new inquiries into this whole matter." I think we better get Petersen back in here.

E. Name him.

P. Ya. After all, this Kleindienst thing is very general (unintelligible)

E. "And Assistant Attorney General Petersen."

P. "Assistant Attorney General Petersen have met to review the facts at length in my investigation and the progress of the Department of Justice investigation." How's that? "I can report today that there have been major new developments in the case." Right? That sound right?

E. How about just saying, "Have been major developments in the case concerning which I should not be more specific now, except to say that real progress has been made."

P. "Major developments in the case, concerning which—specific—which would be improper for me to be more specific now except to say that real progress has been made in getting to the bottom." What do you say, "in getting to the bottom of this matter?"

E. "Has been made in exposing the truth."

P. "In finding the truth."

E. All right.

P. "In this whole matter."

E. Well, we've already said matter.

P. Well.

E. "I can report today that major developments in the case, concerning which it would be improper to be more specific now, except to say that real progress has been made in finding the truth."

P. "Real progress has been made in finding the truth."

And then you go on to the (unintelligible).

E. If you don't mind.

P. I don't want to put the immunity thing in. I don't think there's a hell of a lot gained by saying it publicly.

E. Except—

P. All right. "If any person in the Executive Branch is indicted by the Grand Jury, my policy will be to immediately suspend"—Shall we (unintelligible) of what we know is going to happen? Should we say "indicted"? Why don't we just leave it "indicted" and not indicate what charges are made? Don't you agree?

E. I think so. I think "indicted" ought to be the test.

P. "Indicted by the Grand Jury. My policy would be, "If he is convicted," and then I would say, "If he is convicted, he would be automatically discharged." And then, the way I could put it, "I expressed to the appropriate authorities my view that no individual holding a position of major importance should be given immunity from prosecution. That means that no person can expect"—

E. Yep, this is fine.

P. I don't think I want to say "lead to believe." Do we have to say that?

E. No, I was just trying to get you off the hook, and say, you know, well, this—How about going on with the next sentence?

P. "The judicial process is moving to get all the facts." Or, "Moving—"

E. "moving ahead as it should."

P. "Moving ahead as it should. As I have said before, all government employees, especially members of the White House staff, are to fully cooperate with the Grand Jury." Or do we want to say "Grand Jury"?

E. How about "fully cooperate"—period.

P. "Fully cooperate in this investigation." "to fully cooperate with law enforcement authorities." How's that?

E. Ervin and Baker are out of pocket.

P. I don't want to use the next sentence, John.

E. All right.

P. Then I think the last sentence should be—I think if he puts that in there we're going to have a hell of a tough time. (unintelligible)

H. I think if he'll cover the truth—

P. Yep.

H. That's what he's got to do. Answer their questions truthfully.

P. Why didn't he say, "Sure I'll be a witness." Why didn't he just say that, take their offer? Maybe that's what he said. "I'll take your offer."

H. I think that's what we want him to do.

P. I think what you should do is say, "I don't have anything to hide. I'll take your offer," and just make the point.

H. Given that offer, he doesn't have to volunteer anything. All he has to do is answer their questions.

P. That's right Bob, he should just take their offer. Believe me, we don't have to have (unintelligible). He isn't trying to hide anything.

H. I'd feel fine with his doing that, cause—so he says some things that are damaging. They are only slightly damaging, and we've had plenty of damaging things already.

P. That's right. Bob, just tell him to take it. All right? Tell him to take it but tell them the mere truth. You see, they think it is worse than it is. They think he is covering up and they are wrong. That's what it really gets down to.

H. They are trying to confuse him. That's what has him bothered. The poor guy. What's really worried him is that he's covered everything with Dean, every step of the way. Everything he has done, he's talked with Dean about it over the last year and he's scared to death Dean will make up something or take something that is partly right and twist it, which is what Dean is doing, and hang him on it. And I think what he's got to do is just go with what he believes is correct and hang with it.

P. Don't you think we are right (unintelligible) tell the U.S. Attorney, "Fine. You want to name Haldeman and Ehrlichman. You just (unintelligible) they put you on as unindictable co-conspirators, then they've got a case to prove. Now they aren't going to do that unless they figure they can prove the case, so that would give them the problem. I think his argument is, and I must say, I don't know what to hell Petersen is up to (unintelligible) I think, on the other hand, it looks like. Let's look at that.

H. That makes his case for him. That makes his case for him

P. Maybe you're right. I was going to suggest that we would get back, call you, and we get Rogers over here. And I think in this instance, you and Ehrlichman with Rogers can just sit down and talk about this?

H. I think so. Yes.

P. You don't have any other lawyer? Would you mind getting him over at 5:00 p.m.

H. We're meeting with our lawyer at 4:30 to 5:30, which is the only time we could get him. Would you want me to get him in at 5:30?

P. Sure, Bob, my time is your time.

H. Well, I don't want to screw up your time.

P. You're not.

H. That was the only time he could take us. He's taking time out of a deposition.

P. I understand, but hope he can learn from it in that time.

H. Well, we'll give him a quick fill and get him started on it. That's all we can do now, but we need to get started on it.

P. I guess (unintelligible) may resign.

H. That would be a very foolish thing for him to do.

P. Hmm?

H. That would be a very foolish thing for him to do.

P. He didn't say that. But, I mean, you know how strongly he feels. He's wrong. He's wrong, Bob. Look, the point is, (unintelligible) throwing you to the wolves with Dean. What does that accomplish? I don't know what it accomplishes. Except the President learns the facts and as a result of learning the facts (unintelligible). I say, "Fellas, you've been charged and I know that Dean has made some charges." Right?

H. There's another way you could do it. John won't buy this if I don't. I won't do it if John won't. We've got to do it together. Either one of us has to hang together playing this game. But, maybe we request of you a leave of absence on the basis of the information you have, which we have, because we've been involved in the investigation too. Now if we're going to be on that list, we're going to have to ask for a leave of absence anyway, if he puts the list out, and has us on it.

P. It's going to be out. And I don't know that you'll be on it. That's the point. We've got to see. Nevertheless, you will be called. But we've always talked about being called to the Grand Jury.

P. That's right.

H. And said that we would appear. You made a statement weeks ago saying that anybody in the White House would welcome the opportunity to testify before the Grand Jury. Ah. Do you automatically suspend any witness whose called before a Grand Jury? Of course not.

P. Well, now, if you come on that list, the only problem here is that (unintelligible).

E. Oops.

P. The problem we have here, John, as I was just saying (unintelligible) Dean's lawyers, are they going to try this Administration?

E. Believe me, everybody is going to try this Administration regardless of what (unintelligible). Ervin's going to try this Administration.

H. We went through your statements. Why don't we go see the lawyers? Why don't we re-group at 5:30 and decide then?

E. You have the first page intact?

P. Did she use the speech typewriter? I don't want to go through this.

E. Take this back and put in on the speech typewriter.

She's running it off on the typewriter now.

P. Well, maybe it's too soon for Rogers. Well, I guess we just let Dean go ahead and try the Administration.

E. He's going to do his work anyway, with or without immunity. Ervin is going to get him up there if he has immunity or not and will take him over the jumps. What you've done here is to lay a ground rule for Ervin on immunity which is going to be very tough for him to live with if there are Ervin hearings. But eventually there will be Ervin hearings. I don't think there's much (unintelligible). The more—

P. There will be Ervin hearings, Bob.

E. The more battles the President wins, like the economical stabilization performance, the more urgent the Ervin hearings become. It's the only thing they have left, now. You're winning all the big ones.

H. We better leave now. It's 4:30.

E. Yep, ya.

H. If you want to see Bill at 5:00 p.m. ahead of us, we can join you at 5:30.

P. You may not be ready by then.

E. He can only stay an hour.

P. Fine. I'll see him at 5:00. And the situation that you have here is a (unintelligible). Dean (unintelligible) Administration if I'm wrong? Damn, no, it can't.

E. I'll tell you as we lay this out, and I'll be anxious to see what his lawyer has to say, Dean's testimony may not be admissible.

P. On what grounds?

E. That his communication to us was a communication to you, and vice versa. As an alter ego to the President.

P. I don't have any separate existence.

E. But you have to assert privilege, in a sense, but I don't know what kind of political problems that make (unintelligible) Solicitor General, as a disability, strictly from that standpoint (unintelligible).

P. Would you discuss with your lawyer the legal (unintelligible) and let's think about this business, about whether—Ron?

Z. Ya.

P. Come on in.

Z. Len needs the ground rules before he calls, and he's in my office. Could you fill him in?

E. All he has to do is read that to them. Period. He doesn't have any comment, he doesn't have any reflection. O.K.?

P. Who is this?

E. Len Garment. He's going to call back. He's just reading the first page since we can't get Ervin. Look, I don't want him to get into an argument with him.

Z. O.K. All right, fine. Then John, afterwards when they ask me what the ground rules are, I'll just say—

E. Up to the Committee (unintelligible).

Z. We have plenty of video tape recorders, so there's no film problem.

P. They got it yet? Bring it in.

Z. Ya. Did John raise with you the couple of questions in terms of the next day or so? And afterwards just say, "Is Dean still in charge of the investigation?" We ought to just say, "No."

P. Just say that the President—that we discussed and that, "No," that the President is dealing with that the Assistant Attorney General, Mr. Petersen, is in charge of the investigation.

Z. Then, secondly, they will say does the President stand by the August 29 statement that no one presently employed in the White House had knowledge and so forth? There, I think, I suggested to John, that this is an operative statement—position as it stands.

P. You could say that the August 29 statement—that was the report that was made to the President by White House Counsel at that time—and the facts will determine whether that statement is correct, and now it would be interfering with the judicial process to comment further.

Z. I will just say that this is the operative statement.

P. You're not going to answer questions today are you?

Z. No, no. But I mean if I walk into the Press Room they'll be pounding on my door.

P. Of course, Ron. Go ahead. Don't (expletive removed) on Dean.

Z. No, I'm not going to.

P. He is, just say he—

Z. I'll try to avoid it altogether, but I just want to get guidance. Then I could give the wires some background on how aggressively and how much time you've spent on this the past three weeks and so forth. Should I do a little of that?

Appendix 43. Statement: The President, April 17, 1973, (4:42–4:45 p.m.):

The PRESIDENT: Be seated, please:

Ladies and gentlemen:

I have two announcements to make. Because of their technical nature, I shall read both of the announcements to the members of the press corps.

The first announcement relates to the appearance of White House people before the Senate Select Committee, better known as the Ervin Committee.

For several weeks, Senator Ervin and Senator Baker and their counsel have been in contact with White House representatives John Ehrlichman and Leonard Garment. They have been talking about ground rules which would preserve the separation of powers without suppressing the facts.

I believe now an agreement has been reached which is satisfactory to both sides. The committee ground rules as adopted, totally preserve the doctrine of separation of powers. They provide that the appearance by a witness may, in the first instance, be in Excutive session, if appropriate.

Second, Executive privilege is expressly

reserved and may be asserted during the course of the questioning as to any question.

Now, much has been made of the issue as to whether the proceedings could be televised. To me, this has never been a central issue, especially if the separation of powers problem is otherwise solved, as I now think it is.

All members of the White House staff will appear voluntarily when requested by the committee. They will testify under oath and they will answer fully all proper questions.

I should point out that this arrangement is one that covers this hearing only in which wrongdoing has been charged. This kind or arrangement, of course, would not apply to other hearings. Each of them will be considered on its merits.

My second announcement concerns the Watergate case directly.

On March 21st, as a result of serious charges which came to my attention, some of which were publicly reported, I began intensive new inquiries into this whole matter.

Last Sunday afternoon, the Attorney General, Assistant Attorney General Petersen and I met at length in the EOB to review the facts which had come to me in my investigation and also to review the progress of the Department of Justice investigation.

I can report today that there have been major developments in the case concerning which it would be improper to be more specific now, except to say that real progress has been made in finding the truth.

If any person in the Executive Branch or in the government is indicted by the Grand Jury, my policy will be to immediately suspend him. If he is convicted, he will, of course, be automatically discharged.

I have expressed to the appropriate authorities my view that no individual holding, in the past or at present, a position of major importance in the Administration should be given immunity from prosecution.

The judicial process is moving ahead as it should; and I shall aid it in all appropriate ways and have so informed the appropriate authorities.

As I have said before and I have said throughout this entire matter, all government employees and especially White House staff employees are expected fully to cooperate in this matter. I condemn any attempts to cover up in this case, no matter who is involved.

Thank you.

End (At 4:45 P.M. EST).

Appendix 44. Meeting: The President, Rogers, Haldeman and Ehrlichman, EOB Office, April 17, 1973. (5:20–7:14 p.m.):

P. Come in.

R. Mr. President

P. Well.

R. Well, did you make the announcement?

P. Yeah.

R. Sounds good, I hope.

P. See if I—

R. See I heard it when you did it.

P. Won't hurt anything. I think it was the right move.

R. Yeah—right.

P. After our talk yesterday, I referred to—I was aiming at the Ervin Committee—managed to get that one over (unintelligible) terms we discussed. Figures though—I mean—Len Garment is pretty good. Talked to Petersen again today—he was down here at the White House. And (unintelligible) charged with "got to resign." Just figures you can't keep them. Walked out in the sun and frankly put them ahead of Mitchell. But I just don't think—you have any different views today?

R. No, I don't.

P. You think this is the right step to go?

R. I do.

P. It can occur—it's going to be—it's going to be bloody.

R. I think that.

P. Believe me.

R. That the top people in government deserve the same consideration as anybody else.

P. Damn right.

R. The idea that a top person in government is, you know—it isn't the question beyond reproach, you know. A person could be beyond reproach. Take me—I should have been fired many times because I've been so heavily criticized in the press, many of those were things I didn't do. You remember.

R. Well, as a matter of fact, it's a little bit the same attitude that Lucius Clay had about you and the fund.

P. Right.

R. That there's Mr. Eisenhower and you should get off. Well, that wasn't really what he said.

P. I think the people will probably—they will have a view that—the *New York Times* will have a view in an editorial tomorrow that the President should fire the whole White House staff.

R. Oh well, that isn't—

P. Anybody who did it. But I think the people—I don't know. Correct me if I am wrong. I think they like a man who stands up to them—not to condemn people before they're proven. I don't know.

R. Well, I think that—what did Petersen say on Ehrlichman? Does he have any other evidence except what's in that piece of paper because if he doesn't there wasn't anything in there.

P. Nope—nope. Well, it's hardly anything. Except that Pat Gray now recollects he did get the damn piece of paper and he destroyed it, because he was told it was political material, had nothing to do with Watergate. We'll take him on on this—this has destroyed him. There's no place in the FBI to (unintelligible) it—it's an unbelievable story.

R. Well, now Ehrlichman didn't tell him to destroy it?

P. Hell no. Gray went back—Dean did give it to him. It was in Ehrlichman's office. And, incidentally, I put it hard to Petersen. I'll tell you about that point. I even used your name. I said, "I talked to Bill Rogers about it yesterday and I had a very (unintelligible)." I said, "He looked over this and he said, 'You don't have much of a case on Ehrlichman.'" That problem—and he said—

R. That piece of paper didn't have anything on Ehrlichman.

P. They'll pound on that. They're trying like hell to just frighten people to death. They're going to send 'em to jail and so forth. Strachan—they're trying to break him. I don't understand. Hell, he can either be a witness or a defendant. So—well, the other thing—and I told Haldeman, I said, "Tell him to be a witness."

R. What's happened to Dean?

P. They made a deal with him. And that's why I put in that statement, I hope—that's the point.

P. I said, "Look, I talked to Rogers." I said, "We think we have a grave problem in giving immunity to the President's Counsel." He said, "But, suppose that it's Dean's testimony that we need to get Haldeman and Ehrlichman. Then should we give him immunity—shouldn't we give him immunity?" I said, "No—not unless you have corroboration."

R. Well, well, what you do, Mr. President, on things like that is you say to a fellow, "Well, you've got to—you violated the law. You've got to be indicted. We'll consider the help you've given us when it comes to the question of sentence." In other words, you—

P. Yeah.

R. Hold out the prospect to him.

P. But, how could you give John Dean, the President's Counsel, total immunity when he's involved? He admits involvement throughout.

R. Of course, if you gave him immunity—

P. But, I—

R. You—you get.

P. I said no. I said, by no means, I'd get the rack.

R. They'd say that you worked it out so Dean—

P. Well, they're going to. Then the other way—the way Dean's appeal is the U.S. Attorney's people. Well, Petersen said he agreed with that. He was trying to convince the U.S. Attorneys of that, but they are hot on trying to give him immunity and they're going to. And they want to (unintelligible) Haldeman and Ehrlichman. Frankly, that's it. And then they said—and that it's a cop out (unintelligible). Why do you think they should go? On what basis? Here's what we have in mind. I'll tell you what this statement was on. They're going to have Magruder in open court eventually. Haven't made the deal with him yet either, but they will. (Unintelligible) questions (unintelligible) they're going to put out this statement in which they will name other what they call non-indicted co-conspirators. I keep hearing about the names of people that he must charge. That's all (unintelligible). He said Sirica, otherwise, will ask him questions and he's going to testify publicly in open court about other people. I think that is a hell of a prejudicial thing to do—the rights of an individual—but I don't know how—have you ever heard of that? And I said—and then they said, "Haldeman and Ehrlichman will not be on that list if they take a leave—if you fire them." I said, "Are you telling me if I fire them, you won't prosecute them?" "Oh, no, no, but I mean won't be on that list." "But you—have you said if they're on that list they'll have to take 'em?" And then they said—I said, "Well, what are you saying?" He said, "Well, we just felt we were giving you an option, that you could move ahead of the herd basically by just letting them go." But on the other hand, Bill, I think—I think that whether they're on the list—if I let 'em go they're on the list anyway. It appears that I just—I heard they were going to be on the list and I fired them and they were on it. Then it looks as if we're not prosecuting. That's my problem. We're not prosecuting my two top people and I let them go. I don't think that makes sense at all or do you agree? Am I missing something here?

R. You don't seem to.

P. Well, tell me that. Well, wouldn't it look bad? Bad?

R. Oh, sure. From your standpoint. Yeah.

P. If I let Haldeman and Ehrlichman go and they didn't have them on the list, they will call them before the Grand Jury and then indict them if they get information.

R. Well you see, Mr. President, the only reason a judge questions a defendant when there's a plea of guilty—

P. Yeah.

R. Is to make sure that he's pleading voluntarily and that he knows the nature of his pleading.

P. Yeah. But right. Right. But Sirica has exceeded that hasn't he, Bill? That's the point.

R. Well.

P. He's asking now who else was involved. See that's what he's going to ask. "Was he involved?"

R. It seems to me that if he's doing that—

P. I think he'll act like he did over McCord.

R. Well, if he does that, that's a perversion of the Grand Jury process. The whole idea of the Grand Jury process is to protect people—

P. Yeah.

R. Until they are indicted. And once they are indicted, then they are presumed to be innocent until we go to trial. One of the reasons you have a Grand Jury proceeding is so you don't have innocent names and then (unintelligible) to the public.

P. Well, I'll tell you. Let me put it this way. (Unintelligible) Haldeman and Ehrlichman, on a thing like this—Ehrlichman—frankly, I think he's going to beat it. I don't

think it's going to help him, if by letting him go, I know that he's gone to the prosecution. I told him—

R. You shouldn't—you shouldn't be faced with those problems.

P. I know I don't have any (unintelligible). Don't you agree with me that that was—you know I am concerned about my people. I know that Haldeman and Ehrlichman are not guilty of a damn thing. You know what I mean. It's only tangential on that, Bill—tangential. Sure they knew we were raising money for these damn defendants, but they were (unintelligible) in the campaign. I mean, I mean (unintelligible) Dean at the meeting, wasn't he?

R. Yeah.

P. Ehrlichman was handling the whole domestic thing and Haldeman was working with me at the time. They didn't work in the campaign. It was all over with Mitchell. Mitchell was—in this whole thing—and frankly, Dean was handling it for the White House. (unintelligible). Our people were aware that he was. We were aware about that.

R. How did you leave it with Petersen? I don't know whether—I think from now on you better let him go into the brawl. I don't know.

P. I have. I left it with Petersen. He's going to report to me and I said, "If you get any corroborating testimony. I'd like to know." I think that's better.

P. And if I get some corroborative testimony, I said, "I'd like to be warned and I can call in my people and say, 'Look, I found this out and I've got information and you—Therefore, you ought to consider whether you shouldn't resign.'" That's all I told him. Well, I'm not going to talk to him any more about that. After all, I'm the President of the country—and I'm going to get on with it and meet Italians and Germans and all these others. You know, really—

R. Oh, you do that. I think you, I think that—

P. I've been living with this for (unintelligible) that's all I've been doing for half the time now. And having all these (unintelligible) that I had trust in. What trust. I trust Ehrlichman. I had him working. I must say he completed the job. He got to the bottom of the thing. Had a meeting with Mitchell and questioned (unintelligible). This was before Magruder went to the (unintelligible). And he said, "There is a possible, possible situation of the act of—What do you call it?

R. (Unintelligible).

P. If the individuals knew that the purpose was to keep people from talking in court. In court, not openly. Apparently, it's—You might keep 'em from it—but he said, "Anyway, that's the problem." So, I don't know. I still don't know if it is a problem. I don't—see, I'm thinking of Haldeman and his kids, Ehrlichman and Dean and his. You know what I mean. I'm thinking of the possibility of their mocking a great career. Their service has been efficient—marvelously (unintelligible). It's been all over (unintelligible). I'll tell you, if they aren't convicted, Bill, they'll come out. You know what I mean. (Unintelligible) charge, and everybody's going to understand. This'll be in better perspective in a year, I think.

R. I think so. I think once that the—well, the first blush will be—

P. Terrible.

R. It'll be terrible.

P. Yes, sir.

R. No doubt about that.

P. Oh, yes!

R. And it will—it has so many little ramifications that you—

P. Yeah.

R. To this story.

P. Right-right.

R. But when it's all over—finished—

P. The Watergate mess.

R. When it's finished—

P. I'll be here, all along, Bill. The Jury indicts, moves. We're going to get on with this country. A lot of people in the country, we may find, they feel the President is doing the best he can in the damn thing. If I had wanted to cover-up—they probably think the President can cover-up. If I wanted to, I sure haven't done it very well, have I?

R. See, you only got what your—what the press will do to your own people. Press will persecute people.

P. They prosecuted Mitchell.

R. Did Dean at any time give you any indication of what he's going to do?

P. Make a deal. Both—make a deal with Dean. Make a deal. I would think that Dean would just say, "Look son, if you're indicted, I'm coming (unintelligible). Gee, fellows, what the hell is (unintelligible)" and any of the others. But he's going to try this whole Administration I would expect. And my view on that is let him try the whole Administration. Ron Ziegler has an interesting point. He said, "Dean had in February, had said, 'I, for nine months conducted this investigation.' Now he comes in and charges inaction." Dammit, why didn't he come in earlier, and tell me these things, Bill? Why didn't he do it? If he knew, I would think that—

R. It's one of those things that I just—(unintelligible) Mitchell.

P. Oh.

R. Well, these things happened.

P. And once it did happen, not cutting off right then—stepping forward and saying, "I (unintelligible) this. These kids shouldn't have done this and that's my (unintelligible) best judgment." Well, I think I know. They just thought that might hurt the election.

R. Same thing is true in Vesco. That case he's involved in.

P. Belongs to the courts. I'd rather have it there than in the Committee.

R. Oh, sure.

P. Wouldn't you? At least the court doesn't try—

R. Well, that's the way it's supposed to be. That's the system. The system is—

P. It sure shows the system works, though, doen't it? And I get amused. I had (unintelligible) in all Sunday, had 'em in Monday, I had him in here today. I fired out my statement, and I said—

R. What'd he say about your statement?

P. Petersen? Oh, he thought it was fine. I got to thank him for it.

R. Is he going to (unintelligible) accuse other people in open court?

P. That's just like Sirica (unintelligible).

R. Well, I can see, I can see—Sirica was, he was suspicious there was a cover-up.

P. That's right.

R. He was trying to, he was trying to put pressure on the ones who knew so he could—

P. Not only to confess about themselves, but about other ones. That point, of course, they'd say that Magruder has acknowledged, Magruder has confessed—but what about others? What about (unintelligible)?

R. What I mean is here you've got a willing witness. Before he was doing it to reluctant defendants. Here you got a willing, as I understand it, a willing one.

P. Who will testify?

R. Who will testify, has been working with the prosecutor and who's going to, will be called before the Grand Jury. Why the hell he's—that (unintelligible) open court. That's the—that's what the Grand Jury's for. Makes a nice little backdrop for your Italian dinner.

P. Oh, it'll be all right. They'll have a fine dinner and wine.

They just heard the story. "Thank God, the President's finally said something about Watergate." That, I think, is going to be the partial reaction.

R. I do too.

P. I don't know. I'm not taking any—

R. No. I don't either.

P. Comfort out of it, because for a period of time it's going to be painful. When Mitchell gets indicted, and when possibly Haldeman and Ehrlichman get—

R. (Unintelligible).

P. They're talking to them now. I've asked them both to come over here for a minute when they get (unintelligible). I feel frankly that we should. And a question that he makes now which is still open, you see, he still left it open. They, they'll leave if evidence (unintelligible) brought to my attention.

R. Yeah.

P. (unintelligible) Approach that I have my sources. Now, if he doesn't have enough to sink 'em, but he makes these, he's doing enough to sink them—where are you getting (unintelligible) on the other story? Whether or not Haldeman and Ehrlichman ought to wait until their names are publicly brought into this. Magruder shouldn't. He said he'd give me twelve hours' notice on that, but I—I think that probably it's going to (unintelligible).

R. I think John and Bob ought to resign, but talk to their lawyer first (unintelligible) but I don't think—

P. Your immediate reaction though is—

R. My reaction is I don't understand.

P. What should I do?

R. What the hell they're going to. What Magruder's going to do. I don't know. It seems to me if Dean has mentioned them that way that they ought to then take a leave of absence.

P. Yeah.

R. I don't see how—

P. But you would wait until their names were mentioned? That's the whole point.

R. Yeah. I don't see on what basis you need to do it. Now in the case of—

P. Well, on this basis now, let's say that the President had knowledge from the U.S. Attorney that charges had been made against them. Let me emphasize, I nailed him hard. I said, "now let's—" I said, "Rogers and I read this whole thing over. But it's uncorroborated." He says, "I agree."

P. But he wants me to sack 'em.

R. He can't corroborate it?

P. And I have a feeling for a guy that's supposed to uphold the rights of innocent before (unintelligible) are guilty or not. Well, let me say this. I've got to live with myself. I don't want to do it in that (unintelligible). That isn't fair. On the other hand, I'm trying to think of their standpoint. If they're going to get—if they could get some advantage, either—any advantage by not thereby being named in this statement and then, of course, not even being indicted, maybe that's something. But they're going—

R. (unintelligible) specifically almost have to point out—

P. They, they, on the other hand, they're going to be called. They'll be indicted and (unintelligible) Although, I guess appearing as non-indicted co-conspirators—what the hell do you say to that? I mean (unintelligible).

R. When you have a case that's serious and when you have people who are on the periphery and you want to name them in order to have them available as witness, you name them as a co-conspirator without indicting them. Well, the problem first—

P. These guys are available.

R. The problem first—that's just as bad as being indicted, especially when you know somebody was (unintelligible) lying. So you're named, but you can't clear your name.

P. That's right.

R. But in case you're indicted, then you have the opportunity to clear the record. Little trial, then acquittal, then you—this is as if it didn't happen. If you're named as

a co-conspirator and forced to resign, then you're convicted without a trial.

R. In that case I'm no really—you got to protect them because I don't—I think probably in the final analysis they—I'm afraid Bob is probably in—

P. Going to be indicted?

R. Trouble. But—

P. I'm not sure he'll be indicted.

R. I'm not sure he'll be indicted but—

P. Well, staying too close to the money. He never can explain that. In terms of legal involvement though but he could never explain to the people and you (unintelligible) some of that damn money back there for 'em. Testified by Mitchell, by, by Dean. Was it a (unintelligible) of the defense?

R. Why don't we do this? (unintelligible)—or, they're just talking to lawyers. You don't have a chance to assimilate it. But don't let them (unintelligible).

P. Well.

R. And you're going to have twelve hours.

P. Yeah—twelve. I would like for you to put your mind to the problem, if you would, because I really think we've got to start *helping 'em*. Help advise them. They're in the eye of the hurricane.

R. All right. It gives us a little time to see how your, how your statement plays.

P. Always had a (unintelligible) had (unintelligible) I really did think—

R. Oh.

P. But that he probably didn't know about—know what I mean? My feeling was that Mitchell—basically always thought Magruder knew the damn thing. Mitchell just wasn't tending the ship. That's what I understand.

R. I'm surprised about Dean. I thought—I thought. Well from the beginning, I thought Magruder lied and I thought Mitchell probably—he may well have given the go ahead and said, "Oh, yeah, to hell with this," and the damn thing was then approved.

P. Yeah. "Don't tell me about it."

R. "Go ahead. Don't tell me. Go ahead and do it. Well I'm surprised about Dean because I didn't think—Now Dean claims that he didn't have anything to do with having them go ahead. Understand that. After that Dean came in in terms of the obstruction of justice. There's where he's vulnerable. That's all. He's not vulnerable on the first part in my opinion. I think he—

R. From the same position if he's gotten two people he's trying to bargain with—Dean and Magruder—and he—did he say he got *written statements* from both of them?

P. I don't know—I think what they've done is just sat down and debriefed. That's what they call it. It's all (unintelligible) with an agreement certainly, though. Where Dean is concerned nothing they can do to shake him. On that one he stands firm.

R. I would think that the one fellow that had to know about this and should just take a leave of absence is Dean.

P. (unintelligible) what about this—who the hell wants to (unintelligible)? It looks like this might (unintelligible) of course, set him off.

R. We don't.

P. Worse than he is.

R. Well I think your point is true enough. He appears beyond the thing, although he—

P. He was the one.

R. Pretty hard. Pretty hard to say, "The lawyers—"

P. Well he was—he was not. Not in this matter, I can assure you. He handled the whole thing. He was depending upon—regarding the fact—when I started my investigation on the 21st of March. I saw Dean at least (unintelligible) times. At Camp David, he was to write the (expletive deleted) up so we could put out a statement. He said, "I really can't write a statement that you can put out." So I must say, I've done everything I can to get to the bottom, Bill, as you can see. I said, "John, you got to let it all hang out—now find out—you got to tell me what the hell the score is so we'll know how to deal with this. We're not going to be nibbled to death by a thousand hurts." That's exactly what we've done. So we've got just (unintelligible) The time when McCord, which I—I don't know what he's talking about. There are—at least, he's made a lot of allegations that he can't prove. But there's enough there that would put anybody on notice that without a doubt there's something wrong.

R. Yeah.

P. That's why I had to move and I have—at least I produced—good. I thought the statement should reveal that I have been working on the (expletive deleted) since the twenty-first of March.

R. (unintelligible) why don't we—why don't we try it again tomorrow night and then—

P. Right.

R. why don't you get—still in the—in the—in a real sense, it's up to the—it's up to John and Bob.

P. Yeah.

R. It's damn difficult for anybody else who doesn't know what the hell he's talking about. For example, I don't really know—you know—what the facts are.

P. Yeah.

R. I.—

P. I'm not sure that I know.

R. You don't either. So it's very difficult for others. Your judgment tends to be superficial. Although a sophisticated fellow John, after all, is a lawyer so he claims that he's (unintelligible). Thoughtful kind of a fellow, and if he isn't shaken now, this is a fellow that's not just a rambling idiot.

P. Yeah—he's taking (unintelligible). Had everybody over this morning. "Going to fight, discredit Dean—discredit the prosecutor." You know—"going to fight." That'll be one hell of a big fight but (unintelligible) the Administration (unintelligible).

R. (Unintelligible).

P. Dean's (unintelligible).

R. You don't expect the head of the FBI to pick up and burn the damn stuff. You can always put it in your safe and say it is unrelated to the investigation. But, burn it? Makes you look like a common crook.

P. We're working as hard as we can. The guy we're thinking of Bill (unintelligible) frankly (unintelligible) a Democrat, Irish, Catholic, bachelor, forty-two years of age. He's finishing the Ellsberg case and received plaudits for being just as fair as he can. Thank God there's a jurist of that kind. And based on (unintelligible) sense of (unintelligible). And I feel I think he'd get a hundred percent because he has the best investigative experience. A great man for the job (unintelligible).

P. He will get a hundred votes in the Senate. I think (unintelligible). Why did you burn it? Wouldn't you say, "There's no place in the FBI. We have nothing to do with politics. This is political material. Turned it over to us, showed it to us because they wanted to be sure they weren't suppressing anything and it did not involve the Watergate. (Unintelligible) thought the best thing to do was the FBI."

H. Do you want us or not?

P. Oh sure, come on in.

R. I was just saying to the President maybe we ought to wait until overnight. The two of you buzzed or just not feeling well—

E. We talked to your Mr. Wilson.

P. Was he lying down? Wilson? An old-timer?

H. Nothing like—contrary to your feeling that we wouldn't want to work with him, I think we'll find him very good and tough.

E. He's very knowledgeable.

H. Nothing like—contrary to your feeling that we wouldn't want to work with him, I think we'll find him very good and tough.

E. He's very knowledgeable.

H. Sharp as hell. Technically, he's too old, but mentally he's very bright.

P. Just let me say, I'm so glad that you have him, somebody, to talk to. I definitely—

R. My only reservation would be—(inintelligible).

H. Well, that's a problem. If we go to trial, he's got a heart problem and all that so you can't—

P. You don't need a trial lawyer—

H. We need brains right now.

P. What you need is brains, judgment.

H. He's got that.

E. Well, he knows the cast of characters. He knows Petersen. He knows Glanzer. He knows all those people and he despises them.

R. All the people we don't like.

H. Maybe he started out that way before we said anything.

R. Well, I'm glad because I was worried about his condition.

P. Bill brought—incidentally, I asked him about it again, how he liked the Garment approach. And he said, "No problem." We should go with him. I told him this is the only question you see, I don't have anybody to talk to. I never talk to Petersen any more. That's done, except—except for all the information I want. You know what I mean.

E. Wilson said to us, "Beware of Petersen. He talks." He said, he cited a case that he had that Petersen was involved in—

H. And he said that one problem in dealing with him was that every point he makes is accompanied by a story, and that latter is so.

P. He probably foxed him. Well, then maybe all I'll do with Petersen—he said that he'd give me 12 hours notice with regard to the Magruder thing and I think I want that.

H. Yeah.

P. Bill doesn't know how the hell that procedure works—

E. Let me tell you what that procedure is. Wilson explained that to us too. He said that where a man goes in on an information and pleads guilty in this District, it is customary for the judge to interrogate if he wishes to. And also for there to be filed a statement of the case—ah—in the nature of information. Now the information which they will file instead of indictment names the co-conspirators in the conspiracy charge who are not indicted.

E. That does not mean that you won't be indicted later. It means for the purpose of that information which is then filed, you are not indicted. And so this is a list of people who in a description of a conspiracy pattern are co-conspirators. His analysis of the pros and cons of this are that for the prosecutor to come forward and say, "If you will suspend these birds, I will name them in the list of co-conspirators," gets the prosecutor off a difficult political hook because when the judge asks, "Were there any other co-conspirators and so on?" He says, "Well, they have already been suspended—ah, and may be indicted." We reserve the right to indict them but we are going to have them before the Grand Jury.

R. So, are they going to help a bit?

E. Well, it doesn't help us. It helps the prosecutor with his problem. On the other hand, he says, there is a certain negative in it. From a political standpoint for the Administration in that the question will arise, "Well, why weren't their names on there if they're co-conspirators?"

P. Right.

E. Somebody's covered up.

R. Yes.

H. That's worse than putting them on the list.

E. Yeah, and so, he said—

R. I don't know, John. And let me go back for just a moment on this procedure. The information is filed by the prosecutor himself, without a Grand Jury action?

H. Yeah.

R. If the prosecutor names, for all practical purposes, the fact—

P. In the public mind—

R. Particularly that you are going to leave public service—

E. That's what Wilson said.

H. That's what Wilson said.

P. If they are indicted.

R. Well. You've been indicted.

P. That's right. Let's face it.

R. The indictment, Bob, is a charge—

P. It doesn't convict anybody.

R. What the Constitution provides is that before charged, a group of citizens to view the evidence—

E. In secret—

R. In secret, to see if there is sufficient evidence to make a public charge against them. That's the protection that everybody has. If there is an exception and I guess there is in this case, the lesser crime would result. But in this case the gravity is such that it is all baloney. That's all right if somebody is accused of stealing an automobile from the sidewalk or something. You know, people in government positions are entitled to the protection of the Grand Jury because if they want to make a public charge against an individual then present it to the Grand Jury. That's what you have. But here you have a perversion of the system.

E. Sure.

R. Being compelled to leave the government "Hell, as far as the public is concerned, you are already indicted.

E. Really, the job—they have this capacity by using that process. They could ruin you and never give you a day in court.

R. Of course.

E. They could list you as a co-conspirator, don't call you to the Grand Jury, don't take an indictment against you—

H. Force the President to suspend you and—

E. You are cooked forever. You are a conspirator in the Watergate case.

R. As far as the public is concerned, you are indicted even if they don't call it that.

E. That's right.

R. That's what it is nowadays. The President has been forced to have you leave.

E. It's non-actionable. It's privileged. You can't sue for slander.

H. We do have a public record in that regard in that we have a public position that commands substantial attention.

R. See, Bob, the protection of the Grand Jury gives a citizen is that first the charge is heard in public.

H. That's right. To turn this around.

R. Then the charge—then everybody shuts up. The evidence is not disclosed. Nobody says a word and the Judge cautions everybody to take the oath not to repeat the evidence and then you go to trial. And everything is then controlled by the rules of evidence. Then the Jury makes a decision based on that evidence. That's the system. Now if you do it the other way, you don't get the trial. You both would be indicted and convicted by the public beforehand.

E. That's a tough political call—that we were framed up there. In this conversation, we don't need to decide here beyond mentioning it, but its something that will have to be decided. Our relationship to Dean—probably was client to attorney. Because we were already noted and present in all these transactions. What I said to Dean and what Dean said to me is private conversation with no third party present. It could be a question of privilege. The question is, if requested by the prosecutor, to waive the privilege. It is that Dean conversation where he says he came and told me that Liddy had confessed.

P. But he did it in California, didn't he?

E. Well, the only reason to tell me was not for me as me but because I was one of two conduits that he had to the Boss. He didn't have, I mean, the organizational set-up was that way.

H. The President's log is very interesting. I don't know if you've gotten through all of this, but from the time of the Watergate break-in until the end of August when he signed your votes in the office, you never saw John Dean.

P. That's of course—

H. During July and August the President had no communication with Dean at all.

E. Now, he gave a lot of legal advice about this case. A lot of traffic and all that, but there's also developed a poor relationship and sooner or later the President is going to have to decide whether he wants to consider privilege—if Dean becomes—

P. My privilege? Lawyer-client privilege?

E. Yes. In Dean's communications to me and my communications to him. And the same with Bob. I think. That's a tough problem. You probably won't want to reserve it.

P. I'll take a look. In fact I don't mean this politically. What do you think about that?

R. It is really ticklish.

E. Probably the first time it's come up in this generation. Mr. Wilson would like to do a lot of erudite thinking about that for a while.

P. Great old man.

E. He was at the White House once before.

P. I remember. It's almost a year now.

E. Dixon-Yates thing.

H. He was offered the Budget thing. He refused.

E. Canal is open.

H. He stayed at the White House for several months.

R. My only thought on (unintelligible) maybe he is looking out to not hurt himself at all.

P. Like what?

R. Well, what it really means is—it is hard to understand he was Counsel to you as well as to the President.

E. I appreciate what you are saying and that is important, and I understand.

R. How did he contact the President?

H. Dean? He dealt with one of us.

E. In our capacity to make decisions. He was really an advisor in that situation. Not a (unintelligible) and sometimes he followed and sometimes he didn't.

P. That's common. Everyone wants to carve his place.

H. Yeah.

R. Problem is, what do other people say about him?

E. He's a jerk. Sure, that's right.

P. And I deferred to him in his damned investigation. Remember you said, "I think you ought to talk to John Dean." Remember. And I called him in there. And, —, I listened ad infinitum and carted him off to Camp David.

H. (unintelligible) I deferred to him on most occasions.

R. Well, why don't we think it over?

P. Well, let's start with one thing. I don't see anything to be gained by the procedure of Haldeman and Ehrlichman. You see, here's the problem. Kleindienst, Bill, on Sunday—they both came in and said, "Because of Haldeman and Ehrlichman—just the fact that both of these clowns had implicated them and they ought to resign. They haven't served you well, Mr. President," and all that sort of thing.

R. I think that's——

P. They said, "Make them resign, resign, resign." I said, "Well, Damn it, I can't do it on un-corroborated testimony." The point is—I think—a moment of truth for them when they come in—and say they've got corroborative testimony. Do I have to examine the damned testimony? I say, "Look, fellows, I think under these circumstances, you had better voluntarily—" say—See what I mean? That's what, my concern—Bill has made the point that a person in public office should have no more and no less rights than a person out of public office. That's my theory. Right, Bill?

H. Well, there is a good counter argument which is that a person in public office has a higher obligation than a person not in public office. This is one of their points.

R. I think though, that is for the individual to decide. That in effect has to be done. It hasn't been done.

E. I think that if we turned up in this crazy information—junk—even though we are not charged with a crime, in the ultimate sense—I could write you a letter and say that due to these charges, that obviously I don't want to impair your situation and I am going to take a leave.

P. You could say I have asked you to put me on leave until the charges are cleared up.

E. Sure, and I think that is the direction from which it ought to come.

P. I personally think that is really the course of action we should take and let them put it out if they want to that way. And if they do and if you are named you can immediately say, "I am confident that these charges will not stand up and that I, that I, and so forth"—and, "My usefulness, of course, will be seriously impaired and I therefore request a leave until the matter is cleared up." I think that's, I think we can all agree on that without an indictment. I might put a P.S. on there and say, "I am shocked with the procedure followed and when I am reinstated I am going to see to it that the Justice Department changes its procedure."

R. If the prosecutor came to the President and advanced sufficient evidence for you to ask them to resign, and he looks at that evidence and says, "I agree." That's your decision. But in this kind of a case, normally, that kind of a judgment wouldn't mean indictment—that's all we have (unintelligible) but under these circumstances (unintelligible) in effect, Dean would be doing a greater disservice to you than a bona fide Grand Jury indictment.

P. That's right, he would.

R. He's working for and already decided before the Attorney General could come on the case.

P. I think that, I think that before you have your day in Court. That really means something to me.

R. Well, if you were to consult aside from the Attorney General, that's a different matter. I don't—the thing I think—based on what Petersen gave to the President, which I looked at, I don't think there's sufficient there. There may be something I don't know about.

E. Well, I put those to Wilson and he said, "Well, I'll have to—take it with my bed crumbs tonight." You know, his reaction was . . .

P. What are we going to do to—go ahead . . .

R. The STAR Newspaper said that you had meetings in June or something.

P. Say it again. That's what Dean's saying.

E. And even then, after that.

P. That cannot be proper, Bill.

R. But even supposing you had said that. Suppose you said that. Then there was, then it isn't what you say, it's what you did.

P. Yeah.

R. So, what did they do? They turned all. Everything in the safe over to the FBI. They turned over the materials dealing with the Watergate to the agents that were investigating it, they turned over other material not related to Watergate and was not under investigation to the head of the FBI. Now how in hell can you say, "That is obstruction of justice to turn over all the evidence to the FBI?"

P. Except that, when Pat Gray burned it, it makes it look like it—

E. His wild geese—"Deep Six."

R. Pat Gray says, Pat Gray was told to do that. He said—

P. He was *not* told to do that.

E. On the other business, which is very suspicious, and that . . . the business of "should he leave the country," I've checked with everybody in that meeting and they don't remember anything like that. It turns out Dean called Liddy and told him to have Hunt leave the country. Colson recalls Dean mentioning this to him, not in my office, and Colson saying to Dean, "You stupid bastard. What a terrible mistake." Then it was countermanded so—

H. And he didn't leave the country.

E. And he didn't leave the country, so I suspect that Dean may have acted unilaterally on that.

P. Here again—

H. Colson brought him up short.

P. Here he is trying to pass this up to Ehrlichman, too.

E. Well, he has to have an explanation for why he did it.

P. And how is that going to come out from the others if they said, "He was told to leave the country"? Or has Hunt already said it?

E. Well, yeah. There is no question that he got orders from Liddy who said that, "my principals say—" And he said, "Who are your principals?" and he said, "John Dean."

P. John Dean said, "Oh no, it's Ehrlichman"?

E. Yeah. Get into one of these "he said", "I said" sort of thing, it's going to be miserable. But the probabilities against the surrounding circumstances at least as of now look good.

E. Now I have no illusions about this process, when you give it the test of credibility. Everybody gets used up. There is nothing left so you just have to expect that that's the end of the ball game.

P. Well, it is for this time, but now and then you have one fight and win the battle. The three, the three-fifty thing is the toughest thing, Bob, about this whole thing. Mainly, to me there's no question about it, just basically that they had knowledge that it was going to those defendants and so forth. They wanted it for that purpose. And the question is what you thought it was. And then again they'll say that they don't believe you. It'll get down to that.

R. Dash, etc.

P. There again, though, course they have a route to this. LaRue. He broke down and cried, I guess.

E. That's a-right. Are you going to have spaghetti tonight?

R. Spaghetti and sing Toscanini.

P. Well, Bill. You go ahead. I'll—let them go home. it's possible we may ask your advice tomorrow with all—

R. I have reason to feel good that you got John Wilson.

H. We sure appreciate your help.

R. Yeah.

E. He was enormously gratified to hear that you had recommended him.

H. We told him you had suggested him and it was the only name you could suggest and he said that, "Bill, and I have been on the same side and on opposite sides. He wouldn't speak to me on one matter."

E. It was on the Swiss deal—

H. Something he wouldn't speak to me—never (unintelligible) worked over here three days a week and never saw President Eisenhower. Never got an autographed picture and so we said, "Maybe in this case that could be arranged."

P. Provided he had nothing to do with Watergate!

E. He's very clean by the looks of it.

P. Well, so are you. Damn it!

R. OK. Good bye, Mr. President.

P. I'm glad he feels good about having him come over here.

H. Yeah. Well, I don't know about that. I don't know anything about lawyers. I never had one before so. For exactly reasons B thought we wouldn't like it—he's an old man and we won't like working—I do like him.

P. How old is he? Seventy?

H. Seventy-two. Well, he's well-preserved. He has some difficulties. But I'll tell you the guy has got—his mind isn't slow at all. He is right with us and then some. He's got an abundance of stories.

P. Sure.

H. Well, I feel pretty good about him.

P. Well, it's good to have him. Very good. It's a fight.

H. I need—a—he is so devoted to other things. He's just devoted to the cause.

H. He said, "It's a great honor to meet you men."

P. What is his reaction to the whole damned thing? Comic tragedy? Tragedy of errors?

H. He didn't characterize it. He didn't, ah——

P. Hello. Have you been busy? Yes. How did it go? I've heard that. Yeah. Yeah. Yeah, for later. That's right. Either way. That's right. Sure. Well, get a question about whether I talked to Mitchell. Huh? Yeah, Mitchell. But there was a time set. From this period on. From the 21st on, did you talk to Mitchell? Very good. (unintelligible) Very good. How are you? Good luck. (unintelligible) Well. I just feel that, I just went through that, now they may have told you that the basic heart of the matter——

E. Well, I tell you. I think you've put him in a box on that. They are going to have to have some damn good reason for that Sirica thing.

P. Dean's credibility is totally destroyed you know.

H. Dean (inaudible)

P. Sure, Dean was in charge of the investigation. Did they ask him that? Yes. I put it up to Ron and I made this point to Ron. "You know Dean somehow has sold out the White House, the Administration, etc."

H. That's a good statement. It is a good idea. It puts you exactly in the position that you should be in now.

P. We'll get kicked by the press on it.

H. For giving in on Ervin, etc.

P. Giving in on Ervin. Oh Ervin's great—Hell, that doesn't bother me a bit. I was always ready to give in on Ervin and I said, "This is very satisfactory now. We have now accomplished our purpose. This is a good deal. I said, "It not only applies to this case but it can apply to other things." I ad libbed that when I said it. I worked it in.

H. It was a very good answer.

P. No, I shouldn't pick on the press but, "why did the President act so late on this case? Why didn't he act earlier on this matter? He had the charges floating around." The answer is that they are charges that were just floating. I mean, I think *really*, that's true, newspaper charges and so forth.

E. They were all relying on Dean, frankly.

H. Well speed was not of the essence in this case. It wasn't a matter of where by moving quicky we would stop something. It was done. It was a matter now of doing it properly. Not quickly.

P. That's right, Bob. That's the point of the whole Garment thing. There is this tendency John, to talk, and basically I thought he was a (unintelligible) but he was totally non-plussed by that.

H. He said, "Where's the Attorney General?" He's taken himself out of it. Wilson said, "Where's the Deputy Attorney General?" He's not involved in it. Where's the Chief District Attorney? Where's Titus? Who should be on top of this? Why did Silbert call me instead of Titus? Silbert—he's an old boy from the Justice Department and they band together." He said, "Did John Dean ever work for the Justice Department?" He also said, "I bet you those lawyers that Dean has—and Magruder has—both were old Justice Department types." He says that Glanzer is a very bad operator. He knows him well. He doesn't know Silbert but he knows Glanzer very well. Says he's a bad guy. (Unintelligible.)

P. Well, don't you both agree though, John and Bob?

H. He did it. But I've heard he was the L.A. Times leak this morning.

P. I knew about the leak. It was going to come yesterday.

H. No, I don't think it was intended as that. And I don't—not because it triggered us, but because it set the stage.

H. It let out ahead of time that the White House was going to move on something. And then you did.

P. Well, did that story say the White House was going to move? Oh, oh, oh. Heads are going to roll. That probably came directly from Dean. I think Dean did that.

H. "White House likely to admit some Watergate responsibility—will have a dramatic admission of whether one or more high level officials bear responsibility." It doesn't say White House officials. Your action now saying something substantial will develop, and then when the Mitchell bomb breaks, that's all going to fit together rather, rather—

P. Yeah. Yeah (unintelligible) about that—Tell us about that ransacking and (unintelligible). It's been about two years ago. It's about not letting (unintelligible).

H. He said it was 22,000. Was the difference in money material? Can a case be made out of that? Did he keep the money or was there something about that?

P. He called the same day, too, didn't he?

H. No, he called the next day. He called within twenty-four hours. That was the next day. Testified on Thursday and called on Friday.

E. They are using every lever they can lay their hands on—these guys that say that.

H. I saw on ABC news tonight, which also fits into all this. It was in the last three weeks in the White House, Haldeman has been coming down very hard on everybody: "If you have anything to say to say it now. This was the message that was given to Mitchell Saturday at the White House. Haldeman evinced no protection and no apologies. Anyone and everything will be disclosed." It should have been Ehrlichman instead of Haldeman, or get out White House for cracking down hard on the Watergate. It's not bad. It's a damned good position to be in. And when Ziegler talked to him he said, "I can't give you anything official on that but off the record you are not going off base."

P. Was Bill Gill on that one?

H. Not tonight. Gill called and asked for confirmation and said he was going with the story and he wanted Ziegler's comment. Ziegler said, "I can't give you any comment."

P. The story probably isn't even out.

H. Well, that's what I said to Ron, "Hold the statement until tomorrow," and looked up my story (unintelligible) was on. No. It will be on. It's on. There's another item.

P. The right day too. We had to get it out. (Unintelligible.)

H. That's right. That's right. The POST won't put it in tomorrow. If the POST had something to go with tomorrow, I would say they wouldn't go. They'll hold up now and watch for something. They are playing the long game.

P. I get your point, John. On the (unintelligible), I think we, I think we have sped the process up. This kind of stuff, this kind of stuff here would have had stories for three of four months.

H. That's right.

P. That Ervin. Right. We get into the Grand Jury and then they get an indictment.

H. Well, there's no question that it's the best way compared to the Ervin process. It is essential to go this way.

P. That's right. If it weren't for the fact (unintelligible) possibility of (unintelligi-

ble). I (unintelligible) my theory to take this thing to the Grand Jury.

E. Yep.

H. We have to face the possibility of indictments and those would have to come anyway. They wouldn't have let you get away with it.

P. Well, I think what would happen for instance with Ervin's problem. They would be saying, "We refer this to the Grand Jury."

H. They would have murdered us. Something would be out every minute. Demanding that you fire everybody. Demanding that you do this and that.

E. Well, as a matter of fact, you might have turned the set up some day and watched your White House Counsel crap—for the glorious television. It would be at least surprising.

H. That's right.

P. Oh, it's done up there?

H. Sure, he pulls it up there.

P. Let's face it, up to this thing, Dean handled a lot of stuff well.

H. That's right. Yes.

E. I would hate to have you appear in the position of not, (unintelligible) sort of conditionally holding the job open much beyond the time that Dean is—

P. I'll say this. I think that one thing for sure John is—I think that I've got to play, I want to play, I know the Dean thing very well. We have played it fairly well. I think what we ought to do—make our deal or not with Dean within a week. I don't see how Dean can possibly miss being involved in whatever they put out on Magruder. He can't miss being—and the way this guy talks, I think all of you, all of you, everybody may get it.

He may get it. He's had (unintelligible) go around and talk with the U.S. Attorney types. I think we may have Wilson go over on the Hill (unintelligible) and say, "OK, you are about to ruin these guys. I just want you to know that they are going to have to go out and protect themselves." You are going to be in a knotty problem. (Unintelligible) I mean. He has quite a close relationship with Titus. He's not going to get much of a total on this. This statement, and he's going to make it, anything he can to press for, not immunity, but functional immunity, so-called where he doesn't need to make a side deal with the boys and they can grant immunity. And that would be my hunch.

P. Alright, we shall go over—Come in.

H. Hello, Mr. President.

P. Same old thing, huh?

E. I would force him to go to Sirica—

P. Put that in the library.

E. Showing the Judge what kind of a witness this is. Come on, get the Hill off the hook of the Executive Branch by having the Judge grant the immunity.

P. The Judge can attack that statement.

E. You are putting yourself with the angels on that.

P. I am just saying that immunity is not granted to any major—

E. I think that will be read as relating to Mitchell and three or four of that ilk as well.

P. Oh, sure.

H. They may decide not to do this.

P. That's the point.

H. Dean will be (unintelligible) or it could be done quickly.

P. But I have told the big five, I told the Assistant Attorney General, specifically, that nobody should be granted immunity in any case. Rogers agrees with this and—(unintelligible).

H. The other point that our attorney makes, which is significant: "That's right, the Judge can grant immunity, but that in the Executive, only the Attorney General can grant it." That holds somewhere else too.

P. Dean is the only one who can sink Haldeman or Ehrlichman.

H. How am I going to explain that, after putting out a statement?

E. What do you say, "Dean is some little clerk?" He's my Counsel.

P. That's right, he's involved in the Gray thing. They are not going to throw the whole thing in there. I am thinking whether to see Dean again unless its useful—I don't think you can control him, he's fanatic. If you feel it would be useful, let me know.

E. I will tell you what is lurking in the back of my mind is that, based on the chain of circumstances, Dean may be provoked to make a public statement which is slanderous and hostile.

P. Another thing. I would like the libel suits. I think both of you, and Bob particularly, you ought to get yourself a libel lawyer, Bob, and check the or have Wilson check and use the most vicious libel lawyer there is. I'd sue every (expletive deleted) (unintelligible). There have been stories over this period of time. That will make—that also helps with public opinion. Sue right down the line. It doesn't make any difference now about the taking depositions and the rest, does it? The important thing is the story's big and I think you ought to go out and sue people for libel.

H. Do you mean Senator Weicker?

P. He's covered.

E. Oh, he's not, not when he was on Issues and Answers.

H. (unintelligible) or using newspaper interviews.

E. That's right.

H. It was not on the Floor, he's too buzzy, stupid.

P. The point is the thing with Weicker (unintelligible) is whether he said—how did he say that? Was it libelous?

H. I think so. I better ask a lawyer.

P. Was he that specific?

H. He was damned specific.

P. That Haldeman knew?

H. Yes. "That Haldeman directed and Haldeman was in personal command of all personnel." I repeat, "all personnel at the Reelection Committee."

P. Good, sue him.

E. I think you should.

H. He said that I was in personal command of Liddy and Hunt.

P. I would sue.

H. And McCord (unintelligible) I have never met or heard of him.

P. John, this libel thing. You may as well get at the libel thing and have yourself a little fun.

E. Might make expenses.

H. Operating procedure-wise we've got to, or my recommendation would be that we should maintain a facade of normal operations as long as you have taken this position. I don't think we want to look like something is radically changed.

P. Nope.

H. Then I think we should come into the office at the normal time in the morning—and a—

P. Right. And have your staff meeting, plus you will be at the meeting tomorrow with the energy conference and you should be at the Quadriad meeting. You are right.

H. Go and go as we go along.

P. Unless and until something happens. Now the only exception here is Dean.

H. Dean should not, but nobody would know whether he does his normal job or not. But see that nobody gives a damn, he is not visible.

P. Well, the thing that—

H. And he has been out of here for a month anyway.

E. Any objection to going to Florida this weekend, if you go?

P. Would you like to go down?

E. Yes.

H. I don't expect to get much sunshine but—

E. It might help.

H. I think we should unless our lawyer keeps us here and he could.

P. Yeah.

H. We normally would and I think we should.

P. Oh, I think you should Bob. Right. now understand that if they crack this—

H. Oh well, then that would be a problem.

E. One concession that I would ask and that is that people on leave be considered for use of Camp David occasionally.

P. Let me say, what I had in mind. I want you to go forward and if this thing comes out which I can't believe, I want you to go forward at all costs to beat the damned rap. They'll have one hell of a time proving it. Yours is a little tougher I think Bob, and it shouldn't be—the 300. That's why I hope you could raise with the Judge and your attorney—that at least gave you the law on that point.

H. Yes, sir. On that point, yeah. We haven't gotten into (unintelligible) of the law at all on obstruction of justice.

E. He's briefing that tonight for us.

H. He says it's damn tough, loose.

E. He cites Glanzer as the leading authority on it. He uses it like a bludgeon.

P. Only if it's a (unintelligible).

E. Oh, he hasn't given us that yet.

H. He didn't give us the opinion. He just said, "I'll tell you on the top that it's very tough. It's Luke's law and cases go all ways."

P. I hope he has an opinion sometime on the case involving Dean to the effect (unintelligible) establishing—

H. Why the hell we didn't see then—

P. Remember I was a little suspicious of Chuck. I was not, after all, I said, "Damn it, what's he talking to these people for?" And remember the way I put it is, "He was saying, 'gee, I have talked to these guys and they're mind-picking.' "

H. Well, they're not in error.

P. And I said, "I think they are taken." Remember? I said that.

H. Yeah, sure did.

P. Well, I don't—I think he was being taken by the Senator.

E. Well, I think he figured rape was inevitable so he was going to enjoy it.

P. Bob, remember, I said, "I think they are taking Dean."

H. Sure do.

E. Well, as I said before. We beat the rap but we're damaged goods.

P. Right, you can't go back in the government, but I will tell you one thing, you are not damaged goods as far as I am concerned. It's one hell of a thing. The point is that let's wait and see what happens before we see where we are.

H. Sure.

P. We ought to expect the worst but I think that what I would like both of you to consider 50% of your time also for editing etc., and so on, with the Foundation. The Foundation is going to be a hell of a big thing, it's bound to be. These first four years are terribly important and so forth. I mean after all, you understand, that looking down the road, looking down the road, as far as—you say your Dad was good at looking down the road?

H. Yep.

P. If you are indicted and tried and found innocent, it washes away.

H. Well—

P. Agree? For government service, I mean.

E. Or for the practice of law.

P. I don't think so. Really?

E. Well, I think so. I think so. Jeanne is furious about it.

H. That isn't true John.

E. It depends on the circumstances. There

is nothing I can be discouraged about at this point. But I think we've just about had it. I think the odds are against it.

H. You can always handle traffic cases—

E. Well I am not too pleased with the traffic cases.

P. The hell with the traffic cases. Well, anyway—

H. Well there's all kinds of things we could do.

P. Well I have a Foundation. I just think it is fair, I don't know whether I can find anybody to do it. I don't know whether you would even do it. Incidentally, it is terribly important that poor Kalmbach get through this thing.

H. I think he is alright.

P. How could he learn? Did you talk to him there? Did Dean call him about the money?

H. Yes, Sir.

P. Does he say what said?

E. Dean told me that he told him what it was for. I don't believe him. Herb said that he just followed instructions, that he just went ahead and did it and sent the money back and—

P. They said they need it for?

E. I don't even know if they told him what for. It was an emergency and they needed this money and I don't know whether he can get away with that or if it's more specific than that.

P. You can corroborate then Herb on that one.

E. I can if Dean is the accuser. I can.

P. If Dean is the accuser, you can say that he told you on such and such a date that he did not tell Herb Kalmbach what the money was for.

E. That he has told me—that he has told me—

P. That's right—that's right.

H. If we have to get out of here, I think the Foundation funding—is one thing—but there is a lot of intrigue too—I hope to get funding for the ability to clear my name and spend the rest of my life destroying what some people like Dean and Magruder have done to the President.

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 30 minutes, with statements therein limited to 5 minutes.

Mr. ROBERT C. BYRD. 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. ROBERT C. BYRD. 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.

PRESENTATION OF A PETITION

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

A resolution of the General Assembly of the State of Rhode Island and Providence Plantations. Referred to the Committee on Government Operations:

"RESOLUTION

"Resolution memorializing Congress to institute a national inventory by appropriate Federal agencies to ascertain stocks of raw materials and commodities and to establish a clearing house for such information

"Whereas, the energy crisis we are currently experiencing seems to be having far reaching effects on the entire price structure in this country—whether real or imagined; and

"Whereas, Our citizens have almost hypnotically been conditioned to accept continually rising prices in all areas of our economy simply because the industry involved cries "shortage" of some ingredient used in the manufacture of its product; and

"Whereas, The time has come for the Federal Government to determine just what is in short supply and to what extent it should be allowed to affect the overburdened American consumer; and

"Whereas, The possibility of a "national inventory" conducted by appropriate departments of the Federal Government to ascertain the stocks of raw materials and commodities on hand now and in the future is essential; now, therefore, be it

"Resolved, That the members of congress of the United States be and they are hereby respectfully requested to institute a national inventory by appropriate Federal agencies to ascertain stocks of raw materials and commodities and to establish a clearing house for such information; and be it further

"Resolved, That the secretary of state be and he hereby is authorized and directed to transmit a duly certified copy of this resolution to the senators and representatives from Rhode Island in the congress of the United States."

REQUEST FOR PERMISSION TO FILE REPORT ON H.R. 11864

Mr. CRANSTON. Mr. President, I ask unanimous consent, and this has been cleared on all sides of the aisle, to file a report on H.R. 11864, the "Solar Heating and Cooling Demonstration Act of 1974", for the Committee on Banking, Housing and Urban Affairs and the Committee on Labor and Public Welfare, and that the Committee on Commerce and the Committee on Interior and Insular Affairs, which have expressed no objection, be considered as having been discharged from further consideration of this legislation.

The PRESIDING OFFICER. Is there objection?

Mr. GRIFFIN. Reserving the right to object, I do object.

Mr. CRANSTON subsequently said: Mr. President, I ask unanimous consent, and this has been cleared with the Senator from Michigan (Mr. GRIFFIN), who objected earlier, to file the report on H.R. 11864 for the Committee on Banking, Housing and Urban Affairs, and the Committee on Labor and Public Welfare, and that the Committee on Commerce and the Committee on Interior and Insular Affairs, having expressed no objection, be considered as having been discharged from further consideration of this legislation.

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

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CRANSTON, from the Committee on Banking, Housing and Urban Affairs, and the Committee on Labor and Public Welfare, with amendments:

H.R. 11864. An act to provide for the early commercial demonstration of the technology of solar heating by the National Aeronautics and Space Administration and the Department of Housing and Urban Development, in cooperation with the National Bureau of Standards, the National Science Foundation, the General Services Administration, and other Federal agencies, and for the early development and commercial demonstration of technology for combined solar heating and cooling (Rept. No. 93-847).

(The Committees on Commerce and Interior and Insular Affairs were discharged from further consideration of the bill.)

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. COOK:

S. 3488. A bill for the relief of William T. Owens. Referred to the Committee on Finance.

By Mr. HANSEN:

S. 3489. A bill to authorize exchange of lands adjacent to the Teton National Forest in Wyoming, and for other purposes. Referred to the Committee on Agriculture and Forestry.

By Mr. McCLURE:

S. 3490. A bill providing that funds apportioned for forest highways under section 202(a), title 23, United States Code, remain available until expended; and

S. 3491. A bill to declare Lake Coeur d'Alene, Lake Chatcolet, Hidden Lake, Round Lake and the lower reaches of the St. Joe River, in the State of Idaho, to be nonnavigable waters. Referred to the Committee on Public Works.

By Mr. BROCK:

S. 3492. A bill to prohibit discrimination on the basis of sex or marital status in the granting of credit. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. HATHAWAY (for himself and Mr. CHILES):

S. 3493. A bill to authorize the establishment of the Atlantic Wetlands Research Center. Referred to the Committee on Commerce.

By Mr. HARTKE:

S. 3494. A bill to amend the Internal Revenue Code of 1954 with respect to foreign tax credits, tax deferral, personal exemptions, and social security payroll taxes, and for other purposes. Referred to the Committee on Finance.

By Mr. CRANSTON (for himself and Mr. STAFFORD):

S. 3495. A bill to amend chapter 79 of title 10, United States Code, to make more feasible the personal appearance of a petitioner before a board authorized to correct discharges and dismissals from the Armed Forces by establishing regional boards of review, and to amend chapter 49 of such title to prohibit the inclusion of certain information on discharge certificates, and for other purposes. Referred to the Committee on Armed Services.

By Mr. BELLMON:

S. 3496. A bill to amend title 38 of the United States Code to provide for cost-of-living increases in educational benefits. Referred to the Committee on Veterans' Affairs.

By Mr. YOUNG:

S. 3497. A bill to amend the Internal Revenue Code of 1954 to allow a deduction for higher education expenses. Referred to the Committee on Finance.

By Mr. DOMENICI (for himself, Mr. EASTLAND, Mr. BAKER, Mr. COOK, and Mr. BURDICK):

S. 3498. A bill to amend section 5 of the Food Stamp Act of 1964 to broaden the authority of the Secretary of Agriculture with regard to providing emergency food assistance to victims of disasters. Referred to the Committee on Agriculture and Forestry.

By Mr. TAFT:

S. 3499. A bill to provide for continued monitoring of the economy to provide authority to enforce decontrol commitments, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HANSEN:

S. 3489. A bill to authorize exchange of lands adjacent to the Teton National Forest in Wyoming, and for other purposes. Referred to the Committee on Agriculture and Forestry.

Mr. HANSEN. Mr. President, I am introducing legislation today which would facilitate an exchange of land between the town of Jackson and the Forest Service.

The purpose of this exchange is to provide for the expansion of the town cemetery. There is little space remaining in the cemetery and there is no more private land available in the vicinity. Teton County is unique in that approximately 97 percent of the land is in Federal ownership.

The town of Jackson owns approximately 25 acres of land on the lower slopes of the Snow King Ski area which the Forest Service would favorably consider in exchange for its land which borders the cemetery. This land is bordered on the south and on the west by national forest. However, it is outside the present boundary of the Forest Service.

Under the general exchange authority of the Forest Service—title 16, United States Code, section 485—national forest lands may be exchanged for other lands if they are within national forest boundaries. No national forest can be created in the State of Wyoming except by an act of Congress—title 16, United States Code, section 471, 471a. Accordingly, to facilitate this exchange, it will be necessary for Congress to authorize the extension of the boundary of the forest so that this exchange may be appropriately pursued.

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

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

S. 3489

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the Act of March 20, 1922 (42 Stat. 465), as amended and supplemented by the Act of February 28, 1925 (43 Stat. 1090), and the Act of June 11, 1960 (74 Stat. 205), are hereby extended to the following described lands:

Township 41 north, range 116 west, sixth principal meridian

Section 34, northwest quarter, southwest quarter.

Lands conveyed to the United States under this Act shall, upon acceptance of title, become parts of the Teton National Forest and shall be subject to the laws, rules and regulations applicable thereto.

By Mr. McCLURE:

S. 3490. A bill providing that funds apportioned for forest highways under section 202(a), title 23, United States Code remain available until expended. Referred to the Committee on Public Works.

Mr. McCLURE. Mr. President, highway law provides that funds apportioned to States for Federal-aid highway programs shall remain available for 2 fiscal years after the year for which they were authorized. If, at the end of that period, a State for any reason has not obligated its apportioned share, it loses those funds. On July 1, 1974, 39 States stand to lose a total of $13,201,197 in forest highway funds, not because they were unable or unwilling to commit the full amounts apportioned, but because they have been held back by obligational limitations contained in appropriations acts since 1969.

In proposing legislation today I am not suggesting that there were not sound reasons for imposing obligational limits on the forest highway program in past years. I do not believe, however, that by enacting those limitations, Congress intended permanently to deny States the full amounts authorized.

My bill provides that funds authorized for fiscal year 1972, which will lapse on June 30, 1974, if no action is taken, shall remain available to the States until expended. The bill does not permanently exempt forest highway funds from the 2-year limitation imposed on other highways by title 23 of the United States Code but is simply remedial legislation to deal with a problem which, I believe, was not foreseen when Congress earlier enacted spending limitations.

Mr. President, I ask unanimous consent that a list of the States which stand to lose forest highway funds and the amounts which will lapse as of June 30, 1974, be printed at the conclusion of my remarks. Also, I request that the text of my proposed legislation be included.

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

(Fiscal year 1972 apportionment subject to lapse)

State:	
Alabama	$38,608
Alaska	1,225,446
Arizona	758,883
Arkansas	183,283
California	1,930,862
Colorado	$968,222
Florida	78,320
Georgia	47,500
Idaho	1,372,716
Illinois	15,539
Indiana	9,038
Kentucky	27,714
Louisiana	31,110
Maine	5,050
Michigan	144,674
Minnesota	186,454
Mississippi	63,601
Missouri	68,908
Montana	1,074,710
New Hampshire	72,047
New Mexico	540,473
North Carolina	84,473
North Dakota	48
Ohio	7,383
Oklahoma	9,299
Oregon	1,859,859
Pennsylvania	35,983
South Carolina	59,067
South Dakota	105,628
Tennessee	598
Texas	43,679
Utah	447,746
Vermont	24,123
Virginia	87,673
Washington	951,030
West Virginia	53,205
Wisconsin	75,398
Wyoming	575,136
Puerto Rico	3,802
Total	13,201,197

S. 3490

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Notwithstanding the provisions of section 118(b), title 23, United States Code, sums authorized for fiscal year 1972 and apportioned to States for forest highways under section 202(a), title 23, United States Code, shall remain available until expended.

By Mr. BROCK:

S. 3492. A bill to prohibit discrimination on the basis of sex or marital status in the granting of credit. Referred to the Committee on Banking, Housing and Urban Affairs.

EQUAL CREDIT OPPORTUNITY ACT

Mr. BROCK. Mr. President, today I would like to introduce the Equal Credit Opportunity Act to insure that the various institutions in the business of granting credit do so with fairness and impartiality to creditworthy persons without regard to sex or marital status.

I think it is fair to ask why I feel that the Senate need march up the hill again on this type of legislation. It is true that in July of 1973 the "Equal Credit Opportunity Act," title III of Senate bill 2101, passed the Senate by a 90 to 0 vote. That bill incorporated the main features of my original bill S. 1605, and Senator Williams' bill S. 867. S. 2101 was cosponsored by Senators HARRISON WILLIAMS, a Democrat, of New Jersey; and WILLIAM PROXMIRE, a Democrat, of Wisconsin; and myself, and had in addition 44 cosponsors. After passage by the Senate, the bill was moved to the House Banking Committee's Consumer Affairs Subcommittee. There it still remains, and I am concerned that nothing further will be done to promote this very much needed measure.

Instead I am told that there are plans to submit in the House a new equal credit bill which would prohibit credit discrim-

ination on the basis of race, creed, color, age, sex, or marital status. Such a definition would diffuse the effort and limit its effectiveness. No one can object to equal credit opportunity for all, but the purpose of the legislation before us is to help women obtain credit on an equal basis with men. That is where the problem lies. To confuse the issue with other elements is to evade the problem.

Thus, my reason for submitting this narrower, stronger legislation is to solve one unconscionable problem—that of credit discrimination on the basis of sex or marital status. To add other restrictions to the bill merely diffuses the primary purpose for such legislation.

In sum this bill is, I think, better legislation than that which we passed last year, and is far preferable to any alternative watered down version.

Rather than diluting the bill with an over abundance of directions, let us stick to priorities. The priority in this case is the problem of discrimination on the basis of sex or marital status in credit transactions for women. Let us keep our eyes directly focused on the point and do something definite about it.

It was in a desire to try one more time to achieve this very specific objective that I have introduced this particular bill today.

The Equal Credit Opportunity Act rightfully recognizes the importance of a largely overlooked segment of society: women. Not only do they constitute half the population, but they comprise an enormous portion of the working force. Yet, too often women are treated as second-class citizens in credit matters. Creditworthy women are excluded from credit transactions because of convention and medieval ideas of those who believe women are not as financially reliable as are men.

Credit should be available to every creditworthy applicant on a nondiscriminatory basis. Credit is not a universal right, but it is a privilege for the deserving. Every consumer should have an equal opportunity for access to the credit market and that credit should never be denied because of sex or any other factor not related to ability and willingness to repay the indebtedness.

Credit is central to our economic system. If women are denied the privilege of obtaining credit, they are deprived of the full enjoyment of the benefits of our economy.

Denying women credit standing sets off a drastic chain of events. For example, if a woman's salary is ignored when she and her husband apply for a mortgage, then they are forced to live in inferior housing—that is, inferior to that which they could afford in actuality.

The problems which women face in the extensions of credit have been vividly brought to my attention by the correspondence received from my constituents. My letters indicate that credit discrimination knows no geographic boundaries. Tennessee's female discrimination problem is no different from those encountered by women in other States.

As an example, I get many letters from women who have been refused credit, yet their husbands, who are in school or even unemployed, receive unrequested charge cards in the mail.

One married couple applied for a charge card at a department store. The wife was earning $6,000 and the husband, being a student, earned only $2,700 a year. When they applied for the charge, they stated correctly on the application that the wife was their main source of income. They were refused the charge account, told that company policy prohibited the granting of credit either in a woman's name or to couples where the wife carried the main financial responsibility. Thus, although together they earned $8,700, because the wife earned most of it, they were considered credit risks.

This same couple at the same time applied for another charge card—this time at another store and in the husband's name only—and received a charge card shortly thereafter.

Another outrageous example is that of a woman who, after her husband's death, continued using their charge card as if he were still alive. Because the card was registered in her husband's name, she continued signing his name on credit slips. And, until his death he had earned only $3,000 and she had earned $5,500. She had no trouble using it after his death, and had no problems meeting the payments. Yet, when the card expired and she reapplied for the same card in her name, she was refused. She had kept a perfect credit record, yet she was female, therefore a credit liability.

A woman wrote that she had an excellent credit rating as a single woman. Yet, when she married, she automatically lost her own rating and assumed her husband's. Her husband 1 year before the marriage had declared bankruptcy. Now she is also considered a credit risk—simply because she married him. As an unmarried consumer she had never been sued for payment on a charge account, bank loan, or any other form of credit. Yet, due to her husband's faulty record, she was denied credit on her own, even though her credit rating as a single woman had been faultless.

Another example of the lack of progress concerning women's rights is that of a single woman who 3 years ago was granted a mortgage from a credit company. She never missed a payment and maintained a perfect credit rating. Yet, when for convenience sake she applied for another loan at the same company but at a different branch near her home, she was quickly refused. Was this because she is a woman? Her credit rating certainly was not at fault, especially at that company. Her income had increased and she had not missed a payment. Upon investigation her difficulties were corrected and she received her loan.

One final example is that of a woman who, after getting divorced, discovered that she was responsible for bills incurred on the charge card when she was married. She and her husband had a charge registered in her husband's name. When they divorced, he was found legally bound to pay all their bills as a married couple. Yet, after the divorce he could not be found, so although she was not legally bound to do so, she was heartily encouraged to pay the bills. The various stores and credit companies hounded her ceaselessly until she felt compelled to pay, because her husband could not be found. So, although she was never able to have a charge card in her own name, she was entitled to pay the bills. Too many credit companies do not mind if women pay the bills. They object only if the woman applies for the credit rating for herself.

With a society as remarkably progressive in all other policies as ours, why are we still so backward on such an important issue? There is no excuse for our lackadaisical attitude toward women's rights. We, the Congress, are responsible for creating legislation to insure the well-being of all citizens. It is up to us to take immediate action in this pertinent area.

With the help of pressure from women's groups and a rash of State laws prohibiting discrimination, banks and credit companies have begun to eliminate some of the old credit rules and put women on an equal footing with men. But until Federal legislation is passed, discrimination will exist. While the principle of equal economic opportunity for women is sound and just, implementation is difficult without enforced rules. I believe it is time Congress took absolute action to stop this unfair practice.

Mr. President, I, therefore, would like to call for prompt and positive action on the part of Congress. Legislation dealing with this important subject has been kept waiting in the wings for too long. It is time Congress took a stand and moved on such a measure. I call for the House either to act immediately on Senate bill 2101 or for Congress to consider and pass my new "Equal Credit Opportunity Act." Something must be done.

For a subject as important as equal consumer credit for women, I find it hard to believe that Congress has done nothing to promote it. It is time we faced the problem and dealt with our responsibilities as servants of the people.

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

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

S. 3492

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 "Equal Credit Opportunity Act".

SEC. 2. FINDINGS AND PURPOSE. The Congress finds that there is a need to insure that the various financial institutions and other firms engaged in the extensions of credit exercise their responsibility to make credit available with fairness, impartiality, and without discrimination on the basis of sex or marital status. Economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of credit would be strengthened by an absence of discrimination on the basis of sex or marital status, as well as by the informed use of credit which Congress has heretofore sought to promote. It is the purpose of this Act to require that financial institutions and other firms engaged in the extension of

credit make that credit equally available to all creditworthy customers without regard to sex or marital status.

SEC. 3. The Consumer Credit Protection Act (P.L. 90-321), is amended by adding at the end thereof a new Title VII.

"Title VII.—EQUAL CREDIT OPPORTUNITY

"SEC. 701. PROHIBITED DISCRIMINATION.

(a) It shall be unlawful for any creditor to discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

(b) An inquiry of marital status shall not constitute discrimination for purposes of this title, provided that said inquiry is for the purpose of ascertaining the creditors' rights and remedies applicable to the particular extension of credit, and not to discriminate in a determination of creditworthiness.

"SEC. 702. DEFINITIONS.

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term "applicant" means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.

(c) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(d) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment or to purchase property or services and defer payment therefor, whether or not a finance charge or late payment charge is imposed.

(e) The term "creditor" means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew or continue credit.

(f) The term "discriminate" means to take any arbitrary action based on any characteristic attributable to the sex or marital status of an applicant.

(g) The term "person" means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

(h) Any reference to any requirement imposed under this title or any provision thereof includes reference to the regulations of the Board under this title or the provision thereof in question.

SEC. 703. REGULATIONS.

The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain such classifications, differentiations, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. Such regulations shall be prescribed as soon as possible after the date of enactment of this Act, but in no event later than the effective date of this Act.

SEC. 704. ADMINISTRATIVE ENFORCEMENT.

(a) Compliance with the requirements imposed under this title shall be enforced under:

(1) section 8 of the Federal Deposit Insurance Act, in the case of

(A) national banks, by the Comptroller of the Currency.

(B) member banks of the Federal Reserve System (other than national banks), by the Board.

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors ofthe Federal Deposit Insurance Corporation.

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.

(3) The Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal Credit Union.

(4) the Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts.

(5) the Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act.

(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law. The exercise of the authorities of any of the agencies referred to in subsection (a) for the purpose of enforcing compliance with any requirement imposed under this title shall in no way preclude the exercise of such authorities for the purpose of enforcing compliance with any other provision of law not relating to the prohibition of discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

(d) The authority of the Board to issue regulations under this title does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this title.

SEC. 705. RELATION TO STATE LAWS.

(a) A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, or waiving inchoate rights to property, shall not constitute discrimination under this title; provided however, that this provision shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant.

(b) Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this title. For the purposes of this subsection, only those State property laws in effect on the date of enactment of this Act shall be considered or applied: *Provided,* That said laws shall be considered or applied only so long as they are not made more discriminatory in nature by State action subsequent to the date of enactment of this Act.

(c) When both parties to a marriage separately and voluntarily apply for and obtain credit accounts with the same creditor, those accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges under the laws of any State.

(d) This title shall preempt any State law that prohibits the separate extension of credit to both parties to a marriage when each party voluntarily applies for separate credit from the same creditor and each party would be eligible for separate credit but for his or her marital status.

(e) Except as otherwise provided in this title, the applicant shall have the option of pursuing remedies under the provisions of this title in lieu of, but not in addition to, the remedies provided by the laws of any State or governmental subdivision relating to the prohibition of discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction.

SEC. 706. CIVIL LIABILITY.

(a) Any creditor who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant in an amount equal to the sum of any actual damages sustained by such applicant acting either in an individual capacity or as a representative of a class.

(b) Any creditor who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant for punitive damages in an amount not greater than $10,000, as determined by the court, in addition to any actual damages provided in section 706(a): *Provided, however,* That in pursuing the recovery allowed under this subsection, the applicant may proceed only in an individual capacity and not as a representative of a class.

(c) Section 706(b) notwithstanding, any creditor who fails to comply with any requirement imposed under this title may be liable for punitive damages in the case of a class action in such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not exceed $100,000. In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(d) When a creditor fails to comply with any requirement imposed under this title, an aggrieved applicant may institute a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other action.

(e) In the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court shall be added to any damages awarded by the court under the provisions of subsections (a), (b) and (c) of this section.

(f) No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended,

rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) Without regard to the amount in controversy, any action under this title may be brought in any United States District Court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

(h) An action brought under this section regardless of whether administrative remedies have been exhausted by the applicant bringing such action. The exhaustion of administrative remedies by an applicant shall not preclude such applicant from bringing an action under the provisions of this section.

(i) An action brought under this section shall not preclude the applicant in such action from bringing any action based on any provision of law not relating to the prohibition of discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction.

SEC. 707. EFFECTIVE DATE

This title takes effect upon the expiration of six months after the date of its enactment.

By Mr. HATHAWAY (for himself and Mr. CHILES):

S. 3493. A bill to authorize the establishment of the Atlantic Wetlands Research Center. Referred to the Committee on Commerce.

Mr. HATHAWAY. Mr. President, "wetlands" include ponds, small lakes, marshes, sloughs, bogs, swamps, and so forth, as well as shallow parts of coastal waters and large lakes. Millions of Americans rely on these wetlands to furnish them with healthful outdoor recreation in the form of hunting and bird-watching, and to observe unique aquatic situations. Wetlands are particularly important in maintaining the ecological balance necessary to sustain migratory waterfowl.

Over the years, however, wetland acreage has been steadily shrinking. Many of the swamps and marshes, which at first provided some of the basic necessities for life, have gradually disappeared through drainage and filling to provide for agriculture, mosquito control, highways, housing, and industry.

Since colonial times the wetland acreage in the Atlantic flyway has been reduced from 60 million acres to about one-half that.

Although many levels of government including Federal, interstate, State, county, and township have now legislated to preserve wetlands, wetland managers must develop new techniques for upgrading these remaining wetlands. What are these techniques and how can they be effectively applied? What is the present and potential production of wildlife from existing wetlands? What, for example, is the current production of black ducks, woodduck, and ring-neck ducks?

The answers to these and other fundamental questions can only be found through long-range scientific studies. No existing facility now exists, however, in the Atlantic flyway, either in the United States or Canada, which begins to provide the multitude of answers needed for effective wetlands preservation and management.

Mr. President, the purpose of this legislation is to create such a facility. After much consideration, it is recommended by the Atlantic Waterfowl Council that the principal physical location of the station be close to the home campus of the University of Maine at Orono. This site has many advantages. Officials of the University have expressed high enthusiasm for the station and have pledged their support in providing both temporary facilities and long-term essentials such as library services and technical knowledge from the areas of soil science, wildlife management, forestry, agriculture, animal diseases, hydrology, biology, biometrics, and data processing.

Of particular significance is the location of the New England-Atlantic Provinces-Quebec Center for Regional Studies at the University of Maine. This endowed center is designed to encourage graduate study and research in regional topics. It is open to Canadians and Americans in the fields of environmental ecology and offers another bridge for cooperative work on an international basis.

Mr. President, I hope the Senate will enact this important piece of environmental legislation. The proposed Atlantic Wetlands Resource Center would focus on the preservation and management of wetlands especially those of importance for waterfowl production. This includes portions of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida. The station would be indirectly concerned with a diversity of wetland habitats and would coordinate with agencies conducting studies outside the limits of the U.S. portion of the Atlantic Flyway.

If we are to preserve our wetlands, we must coordinate our efforts. This center would enable us to do that.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD at this point.

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

S. 3493

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of promoting responsible land use planning and the development of management criteria to protect, maintain, and increase the productivity of wetlands which are of particular importance in maintaining the Atlantic Flyway waterfowl population, the Secretary of the Interior is authorized and directed to establish an Atlantic Wetlands Research Center.

SEC. 2. In carrying out the purposes of this Act, the Secretary of the Interior shall establish, administer, and conduct such programs of investigation and research, and undertake such pilot projects for management of wetlands, and develop and demonstrate such techniques, as he determines necessary in order to maintain or increase the biological productivity of the principle migratory bird habitats of the Atlantic Flyway.

SEC. 3. In carrying out the purposes of this Act, the Secretary of the Interior may enter into cooperative agreements with State conservation agencies, land grant colleges, corporations, associations, other business entities, or individuals, and may acquire lands by donation or purchase with donated or appropriated funds, or by lease. The Secretary is authorized to accept donations to carry out the purposes of this Act.

SEC. 4. The Secretary of the Interior shall establish an Advisory Council of no more than seven members to represent the views of the principal agencies, organizations and institutions concerned with the preservation, perpetuation, and management of wetland resources for migratory birds in the Atlantic Flyway and to advise him with respect thereto. The Secretary shall appoint the members of the Council, of whom one member shall be a State Fish and Wildlife Agency Director or Commissioner to represent the Northeast Section of the Atlantic Flyway and one member shall be a State Fish and Wildlife Agency Director or Commissioner to represent the Southeast Section of the Atlantic Flyway. Members of the Council shall serve without compensation as such, but may be reimbursed for travel, subsistence, and related expenses incurred in carrying out their duties under this Act. The Secretary shall designate one of such members as Chairman.

SEC. 5. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

By Mr. HARTKE:

S. 3494. A bill to amend the Internal Revenue Code of 1954 with respect to foreign tax credits, tax deferral, personal exemptions, and social security payroll taxes, and for other purposes. Referred to the Committee on Finance.

Mr. HARTKE. Mr. President, today I am introducing legislation amending the Internal Revenue Code of 1954 relating to: First, foreign tax credits; second, tax deferrals; third, social security payroll taxes; and fourth, personal income tax exemptions.

The average American taxpayer—and there are 55,683,000 of them—needs relief from the staggering effect of inflation now. In order to counter the severe hardship of rapidly increasing prices, additional purchasing power must be put into the hands of those in the moderate, lower, as well as fixed-income groups. It is these people whose real incomes have been substantially reduced by the inflated costs of essentials like food, clothing, housing, health care, home heating oil, and gasoline.

These people would be helped most by a reduction in their already overburdened tax load. I propose tax relief for them in the form of an increase in the personal exemption on Federal tax returns from $750 to $1,000. The cost of living has risen 13 percent since Congress set the $750 level. An increase to $1,000 would not only keep pace with inflation, it would provide consumers with $8 billion in new purchasing power to help spur the economy and provide new jobs.

I also propose in this bill to lower the social security payroll tax for individuals with a Federal tax liability of $850 or less and provide partial financing of social security benefits from Federal general revenues. These revenues come from income taxes which are far more equitable than the payroll tax.

I believe that it is politically and financially irresponsible to pass an income tax cut and to lower the social security tax in the midst of a dangerous inflation without partially replacing these revenue

losses by enacting some long overdue tax reform.

Therefore, in this bill, I propose to plug two gaping tax lopholes: In order to regain much needed revenue, I would shift the foreign tax credit to a deduction and eliminate the deferral of U.S. taxes and make them payable on a current basis.

The foreign tax credit has long provided U.S. based multinational corporations with tremendous tax savings on their U.S. tax liabilities. The tax deferral of U.S. taxes owed by U.S. subsidiaries abroad delays the payment of needed revenues. Both of these items have provided incentives for American corporations to take their operations abroad, depriving American workers of much-needed jobs.

A study by the Joint Economic Committee indicates that a family with a budget of $12,614 had to pay an extra $1,168 just to maintain their 1972 living standards. If the American family ever needed help, this is the time. The legislation I introduce today will do just that.

PERSONAL EXEMPTION INCREASE TO $1,000

I first proposed an increase of the personal tax exemption to $1,000 in January of 1961; I believe it is all the more necessary today.

There is every indication that our economy is headed for a recession. Unemployment insurance claims rose from 251,000 in November to 303,000 in December. It is now at a 5.4-percent level and even administration economists are predicting a 6-percent rate later this year.

The Government's composite index of business statistics virtually stood still in December, growing only one-tenth of 1 percent in that month.

While this slowdown is taking place, inflation is on the march. Consumer prices as a whole went up 8.8 percent last year, with food increasing 20 percent, gasoline 19 percent, and coal and fuel oil 45 percent. Workers cannot keep pace with this steady increase in prices. What wage increases have taken place have only meant increased taxes, thus further limiting the ability of workers to spend money to stimulate the economy.

In fact, in 1973, real average weekly earnings—the amount of money workers actually get—were down 1.5 percent. That means that a worker who increased his salary by 7.2 percent—the national wage increase average—actually wound up in worse condition at the end of the year than at its beginning.

The most effective response we can make to this approaching inflationary recession is to provide tax relief which will put more money into use so that our economy can grow. An increase in the personal exemption will provide that relief. Raising the exemption level from $750 to $1,000 will provide $8.58 billion in new consumer purchasing power. Most of the benefits of this relief will be the families who will spend the money provided by my proposal rather than saving it.

Mr. President, I have a table prepared from data supplied by the Treasury Department which estimates the additional revenue which my proposal will pump into the economy at various levels of income, and I ask unanimous consent that the table be printed in the RECORD at this point.

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

REVENUE COST IF PERSONAL EXEMPTION IS RAISED FROM $750 to $1,000

[Based on 1972 income levels]

Adjusted gross income	Decrease in tax liability (millions)	Distribution of tax decrease	
		Percent	Cumulative percent
0 to $3,000	$95	1.1	1.1
$3,000 to $5,000	418	4.8	5.9
$5,000 to $7,000	717	8.3	14.2
$7,000 to $10,000	1,485	17.3	31.5
$10,000 to $15,000	2,608	30.4	61.9
$15,000 to $20,000	1,541	17.9	79.8
$20,000 to $50,000	1,440	16.8	96.6
$50,000 to $100,000	220	2.5	99.1
$100,000 and over	56	.7	99.8
Total	8,580	99.8	99.8

Mr. HARTKE. Mr. President, the table makes it clear that 60 percent of the dollar benefits which will accrue from my proposal go to those with less than $15,000 income. Much of this benefit will go into areas of the economy which are suffering from a slowdown caused by reduced consumer purchasing power.

The approach I am following here is supported by the Nobel-prize winning economists, Paul Samuelson, Arthur Okun, a senior fellow at the Brookings Institution, and Walter Heller.

It is the working man and woman in this country who is on the short end of the administration's economic stick. It is the worker who has to pay the grocery bills, the mortgage, and the college tuition bill with less money in 1974 than he had in 1973.

These people need tax relief now, and our economy needs a tax stimulus now.

Mr. President, the cost of living has risen 13 percent since the $750 exemption level was established. If we increase that level to $1,000—as I propose—we will be doing nothing more than keeping pace with inflation and the cost of living.

FOREIGN TAX CREDIT SHIFT TO A DEDUCTION

Mr. President, our tax laws provide that foreign subsidiaries of U.S. corporations may credit their foreign taxes paid against the income tax liability of the parent corporations on foreign source income. Such credits claimed in 1970, and they are far greater today, mounted to $4 billion. The case for crediting is that it secures tax neutrality with respect to the choice between domestic and foreign investment. Indeed, our crediting provisions far overshoot the mark because the foreign tax credit applies to local as well as central taxes, whereas State business income taxes in the United States may only be deducted.

Moreover, any excess foreign tax credits claimed may be carried forward for 5 years and back for 2 years.

What does this system look like in reality?

One of the main reasons that the United States is now dependent upon the Arab world for our supplies of oil and gas is due to the increased profits realizable only abroad by the use of the foreign tax credit and deferral.

The multinational oil companies earned $1,085,000,000 on mining and oil operations abroad in 1970, but because of their use of these tax loopholes, these firms paid not 1 cent in U.S. taxes on that income.

The Arabian American Oil Co. (ARAMCO), which is a huge oil-producing consortium consisting of Exxon, Texaco, Mobil, Standard Oil of California, and the Saudi Arabian Government, is the world's largest oil petroleum producer and the world's biggest moneymaker. In 1973, the company had profits after taxes of $3.25 billion. How much did the United States get from them in taxes? Not 1 penny of income tax and a meager $2.7 million in payroll taxes.

These are not exceptions, they are the rule. Manufacturing multinational corporations as well as the petroleum industry have benefited unfairly from the foreign tax credit. Direct U.S. foreign investments have a book value of over $90 billion. Profits thereon are $20 billion or some 20 percent of total profits of domestic corporations.

However, U.S. taxes paid on these foreign profits were only 5 percent or less than $1 billion. The output produced by U.S. affiliates abroad is about $200 billion with sales by manufacturing affiliates several times the level of U.S. manufactured exports.

Ownership of foreign affiliates, finally, is concentrated heavily in a small number of large corporations, the degree of concentration being higher even than for domestic production.

At present, our tax laws make an overseas investment more attractive than one in Indiana. For example, profits earned by a foreign subsidiary of an American firm are not taxed until they are repatriated. To the extent that the firm does pay taxes to a foreign government, these taxes count as a dollar-for-dollar credit against their Federal tax liability. Profits made in Indiana are taxed when earned. Taxes paid to the State of Indiana can only be taken as deductions against gross income rather than as a Federal tax credit.

My measure would plug this gaping loophole and save the U.S. Treasury almost $4 billion annually. The termination of the foreign tax credit would put domestic production in a more competitive position with foreign development and create jobs for American workers.

TAX DEFERRAL

Under sections 881–83 of the U.S. Tax Code, foreign source income earned by foreign based subsidiaries of U.S. based corporations is exempt from U.S. taxation unless distributed to shareholders who are U.S. nationals. The tax is deferred on profits earned by these subsidiaries until such time as they are remitted to the parent corporation.

The corporate subsidiaries abroad do not pay as the average U.S. citizen who earns a salary or wage must pay his taxes—on a current basis when earned. In many cases, the deferral of taxes permits these affiliates to keep the profits abroad and reinvest them abroad which

means less production in the United States and fewer jobs for our people.

If you build a textile plant in Japan, you do not have to pay taxes until you bring the profits home to the United States. But if you build that plant in Indiana or anywhere in America, you pay taxes in the year you earn the profits. Deferral is unfair and unequal and should be eliminated.

The deferral is, in effect, an interest-free loan to U.S. subsidiaries abroad which can be manipulated to the advantage of the parent company. The Treasury, because of the deferral mechanism, is losing over $1 billion in revenues annually. My proposal would put a stop to the loss in revenues and eliminate yet another incentive for American enterprise to invest abroad rather than at home where the capital is critically needed.

SOCIAL SECURITY PAYROLL TAX

Mr. President, the social security payroll tax is taking a large chunk out of the paychecks of working men and women. During the 14 years I have had the privilege of serving in the Senate, I have worked to expand the retirement and medical benefits under the social security program because I believe that retirement should not force a person to live in or near poverty. I still believe in the need to expand those benefits, but not at the expense of the current working generation.

Under present law, social security benefits are financed from contributions made by employers, employees, and the self-employed. In 1975, it is estimated that there will be more than $66 billion going into the retirement and disability trust funds with another $12.5 billion being paid into the hospital insurance trust fund. In terms of total Federal revenues, the payroll tax generates about one-fourth of all Federal revenues, whereas, in 1949, it brought in just 4 percent.

Mr. President, these are staggering amounts; but they mean even more to working Americans. At least one-half of all workers who file tax returns pay more social security tax than they do Federal income tax. For the worker with a small family and an income hovering near the poverty line, his effective social security tax rate is 5 times the rate paid by the same worker with a $24,000 income. Study after study has cited the regressive nature of this payroll tax. It hits the low- and moderate-income worker hardest.

The proposal which I offer today does two very basic things to correct this inequity.

First, it establishes a progressive payroll tax rate for low-income workers so that no worker pays more in payroll taxes than he does in Federal income taxes.

For instance, under my proposal, a worker with less than $50 in income tax liability pays only 15 percent of the normal payroll tax. This increases by 5 percent for every $50 of additional income liability until the $850 level—at which point the worker pays the full social security tax.

The loss of revenues to the social security trust fund from this reduction, which is estimated to be about $2.2 billion—will be replaced by general revenues.

Second, my proposal implements a recommendation made several times over the past four decades that general revenues be used to finance a portion of social security benefits.

Mr. President, it is a fact that the current working generation is paying in payroll taxes for the benefits of those now retired. From the early days of the social security program, it was realized that those now working would have to bear a major portion of the burden of paying for the benefits of retired workers, especially during the early years of the program.

Partial general revenue financing takes recognition of this fact, and it also provides a large measure of equity to working men and women because it uses funds from the more progressive income tax to supplement funds from the highly regressive payroll tax.

My proposal establishes a means of providing general revenue financing for one-fifth of retirement and disability benefits and one-third of health benefits under the medicare program. It also provides for a reduction in payroll taxes immediately from 5.85 percent to 5.75 percent, with further reductions to be made in succeeding years. These reductions reflect the income which the social security trust funds will receive from general revenues.

Mr. President, we have spent many years trying to reform the social security system with all too little effect. The basic injustices remain. In this time of inflation and recession, we must look to new means of providing immediate relief to workers and stimulating our economy. My proposals to change the social security tax rate and the method of financing the system will accomplish this objective.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD at this point.

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

S. 3494

A bill to amend the Internal Revenue Code of 1954 with respect to foreign tax credits, tax deferral, personal exemptions, and social security payroll taxes, and for other purposes

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

That the Internal Revenue Code of 1954 is amended as follows:

SEC. 1.—REPEAL OF FOREIGN TAX CREDIT ALLOWED CORPORATIONS—

(a) IN GENERAL.—Section 901 of the Internal Revenue Code of 1954 (relating to taxes of foreign countries and of possessions of the United States) is amended—

(1) by revising subsection (a) to read as follows:

"(a) ALLOWANCE OF CREDIT.—In the case of a taxpayer other than a corporation, who chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the applicable limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b). Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against the tax imposed by section 56 (relating to minimum tax for tax preferences).";

(2) by revising subsection (b)(1) to read as follows:

"(1) CITIZENS.—In the case of a citizen of the United States, the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and";

(3) by revising subsection (b)(4) to read as follows:

"(4) NONRESIDENT ALIEN INDIVIDUALS.—In the case of any nonresident alien individual not described in section 876, the amount determined pursuant to section 906; and"; and

(4) by striking out subsections (d) and (e).

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 78 is repealed.

(2) Section 535(b)(1) is amended by striking out "and income, war profits, and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a)(1) or 960(a)(1)(C) for the taxable year," and by inserting in lieu thereof "accrued during the taxable year,".

(3) Section 545(b)(1) is amended by striking out "and income, war profits, and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a)(1) or 960(a)(1)(C) for the taxable year," and by inserting in lieu thereof "accrued during the taxable year,".

(4) Section 841 is repealed.

(5) Section 882(c) is amended by striking out paragraph (3).

(6) Section 884 is amended by striking out paragraph (4).

(7) Section 902 is repealed.

(8) Section 906 is amended—

(A) by striking out "and foreign corporations" in the heading thereof;

(B) by striking out in subsection (a) "or a foreign corporation" and "or deemed, under section 902, paid or accrued during the taxable year)";

(C) by striking out in subsection (b)(3) "or 881 (relating to income of foreign corporations not connected with United States business)"; and

(D) by striking out subsection (b)(4).

(9) Section 904(g) is repealed.

(10) Section 960 is repealed.

(11) Section 1503 is amended to read as follows:

"SEC. 1503. COMPUTATION AND PAYMENT OF TAX.

"In any case in which a consolidated return is made or is required to be made, the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under section 1502 prescribed before the last day prescribed by law for the filing of such return."

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

SEC. 2. TAXATION OF EARNINGS AND PROFITS OF CONTROLLED FOREIGN CORPORATIONS.

(a) IN GENERAL.—Part III of subchapter N of chapter 1 (relating to income from sources without the United States) is amended by inserting after subpart H thereof the following:

"Subpart I—Controlled Foreign Corporations

"Sec. 983. Amounts included in gross income of United States shareholders.

"Sec. 984. Definitions.
"Sec. 985. Rules for determining stock ownership.
"Sec. 986. Exclusion from gross income of previously taxed earnings and profits.
"Sec. 987. Adjustments to basis of stock in controlled foreign corporations and of other property.
"Sec. 988. Records and accounts of United States shareholders.

"SEC. 983. AMOUNTS INCLUDED IN GROSS INCOME OF UNITED STATES SHAREHOLDERS.

"(a) AMOUNTS INCLUDED.—

"(1) IN GENERAL.—If a foreign corporation is a controlled foreign corporation for an uninterrupted period of 30 days or more during any taxable year, every United States shareholder of such corporation who owns (within the meaning of section 985(a)) stock in such corporation on the last day in such year on which such corporation is a controlled foreign corporation shall include in its gross income, for its taxable year in which or with which such taxable year of the corporation ends, its pro rata share of the corporation's earnings and profits for such year.

"(2) PRO RATA SHARE OF EARNINGS AND PROFITS.—A United States shareholder's pro rata share referred to in paragraph (1) is the amount—

"(A) which would have been distributed with respect to the stock which such shareholder owns (within the meaning of section 985(a)) in such corporation if on the last day, in its taxable year, on which the corporation is a controlled foreign corporation it had distributed pro rata to its shareholders an amount (i) which bears the same ratio to its earnings and profits for the taxable year, as (ii) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year, reduced by

"(B) an amount (i) which bears the same ratio to the earnings and profits of such corporation for the taxable year, as (ii) the part of such year described in subparagraph (A)(ii) during which such shareholder did not own (within the meaning of section 985(a)) such stock bears to the entire year.

"(b) EARNINGS AND PROFITS.—For purposes of this subpart, under regulations prescribed by the Secretary or his delegate, the earnings and profits of any foreign corporation, and the deficit in earnings and profits of any foreign corporation, for any taxable year—

"(1) except as provided in section 312(m)(3), shall be determined according to rules substantially similar to those applicable to domestic corporations,

"(2) shall be appropriately adjusted for deficits in earnings and profits of such corporation for any prior taxable year beginning on the date of the enactment of this Act.

"(3) shall not include any item of income which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States, and

"(4) shall not include any amount of earnings and profits which could not have been distributed by such corporation because of currency or other restrictions or limitations imposed under the laws of any foreign country.

"(c) COORDINATION WITH ELECTION OF A FOREIGN INVESTMENT COMPANY TO DISTRIBUTE INCOME.—A United States shareholder who, for his taxable year, is a qualified shareholder (within the meaning of section 1247 (c)) of a foreign investment company with respect to which an election under section 1247 is in effect shall not be required to include in gross income, for such taxable year, any amount under subsection (a) with respect to such company.

"(d) COORDINATION WITH FOREIGN PERSONAL HOLDING COMPANY PROVISIONS.—In the case of a United States shareholder who, for his taxable year, is subject to tax under section 551(b) (relating to foregin personal holding company income included in gross income of United States shareholders) on income of a controlled foreign corporation, the amount required to be included in gross income by such shareholder under subsection (a) with respect to such company shall be reduced by the amount included in gross income by such shareholder under section 551(b).

"SEC. 984. DEFINITIONS.

"(a) UNITED STATES SHAREHOLDER DEFINED.—For purposes of this subpart, the term 'United States shareholder' means, with respect to any foreign corporation, a domestic corporation which owns (within the meaning of section 985(a)), or is considered as owning by applying the rules of ownership of section 985(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

"(b) CONTROLLED FOREIGN CORPORATION DEFINED.—For purposes of this subpart, the term "controlled foreign corporation" means any foreign corporation of which more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned (within the meaning of section 985(a)), or is considered as owned by applying the rules of ownership of section 985(b), by United States shareholders on any day during the taxable year of such foreign corporation.

"SEC. 895. RULES FOR DETERMINING STOCK OWNERSHIP.

"(a) DIRECT AND INDIRECT OWNERSHIP.—

(1) GENERAL RULE.—For purposes of this subpart, stock owned means—

"(A) stock owned directly, and

"(B) stock owned with the application of paragraph (2).

"(2) STOCK OWNERSHIP THROUGH FOREIGN ENTITIES.—For purposes of subparagraph (B) of paragraph (1), stock owned, directly or indirectly, by or for a foreign corporation or foreign estate (within the meaning of section 7701(a)(31)) or by or for a partnership or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

"(b) "CONSTRUCTIVE OWNERSHIP.—For purposes of section 984, section 318(a) (relating to constructive ownership of stock) shall apply to the extent that the effect is to treat any domestic corporation as a United States shareholder within the meaning of section 984(a), or to treat a foreign corporation as a controlled foreign corporation under section 984(b), except that—

"(1) In applying subparagraphs (A), (B), and (C) of section 318(a)(2), if a partnership, estate, trust, or corporation owns, directly or indirectly, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of a corporation, it shall be considered as owning all of the stock entitled to vote.

"(2) In applying subparagraph (C) of section 318(a)(2), the phrase '10 percent' shall be substituted for the phrase '50 percent' used in subparagraph (C).

"SEC. 986. EXCLUSION FROM GROSS INCOME OF PREVIOUSLY TAXED EARNINGS AND PROFITS

"(a) EXCLUSION FROM GROSS INCOME.—For purposes of this chapter, the earnings and profits for a taxable year of a foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 983(a) shall not, when such amounts are distributed directly, or indirectly through a chain of ownership described under section 985(a), to—

"(1) such shareholder (or any domestic corporation which acquires from any person any portion of the interest of such United States shareholder in such foreign corporation, but only to the extent of such portion, and subject to such proof of the identity of such interest as the Secretary or his delegate may by regulations prescribe), or

"(2) a trust (other than a foreign trust) of which such shareholder is a beneficiary,

be again included in the gross income of such United States shareholder (or of such domestic corporation or of such trust).

"(b) EXCLUSION FROM GROSS INCOME OF CERTAIN FOREIGN SUBSIDIARIES.—For purposes of section 983(a), the earnings and profits for a taxable year of a controlled foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 983(a), shall not, when distributed through a chain of ownership described under section 985(a), be also included in the gross income of another controlled foreign corporation in such chain for purposes of the application of section 983(a) to such other controlled foreign corporation with respect to such United States shareholder (or to any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder in the controlled foreign corporation, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary or his delegate may prescribe by regulations).

"(c) ALLOCATION OF DISTRIBUTIONS.—For purposes of subsections (a) and (b), section 316(a) shall be applied by applying paragraph (2) thereof, and then paragraph (1) thereof—

"(1) first, to earnings and profits attributable to amounts included in gross income under section 983(a), and

"(2) then to other earnings and profits.

"(d) DISTRIBUTIONS EXCLUDED FROM GROSS INCOME NOT TO BE TREATED AS DIVIDENDS.—Any distribution excluded from gross income under subsection (a) shall be treated, for purposes of this chapter, as a distribution which is not a dividend.

"SEC. 987. ADJUSTMENTS TO BASIS OF STOCK IN CONTROLLED FOREIGN CORPORATIONS AND OF OTHER PROPERTY.

"(a) INCREASE IN BASIS.—Under regulations prescribed by the Secretary or his delegate the basis of a United States shareholder's stock in a controlled foreign corporation, and the basis of property of a United States shareholder by reason of which it is considered under section 985(a)(2) as owning stock of a controlled foreign corporation, shall be increased by the amount required to be included in its gross income under section 983(a) with respect to such stock or with respect to such property, as the case may be, but only to the extent to which such amount was included in the gross income of such United States shareholder.

"(b) REDUCTION IN BASIS.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary or his delegate, the adjusted basis of stock or other property with respect to which a United States shareholder or a United States person receives an amount which is excluded from gross income under section 986(a) shall be reduced by the amount so excluded.

"(2) AMOUNT IN EXCESS OF BASIS.—To the extent that an amount excluded from gross income under section 986(a) exceeds the adjusted basis of the stock or other property with respect to which it is received, the amount shall be treated as gain from the sale or exchange of property.

"SEC. 988. RECORDS AND ACCOUNTS OF UNITED STATES SHAREHOLDERS.

"(a) RECORDS AND ACCOUNTS TO BE MAINTAINED.—The Secretary or his delegate may by regulations require each person who is, or has been, a United States shareholder of a controlled foreign corporation to maintain such records and accounts as may be prescribed by such regulations as necessary to carry out the provisions of this subpart.

"(b) TWO OR MORE PERSONS REQUIRED TO MAINTAIN OR FURNISH THE SAME RECORDS AND ACCOUNTS WITH RESPECT TO THE SAME FOREIGN CORPORATION.—Where, but for this subsection, two or more persons would be required to maintain or furnish the same records and accounts as may by regulations be required under subsection (a) with respect to the same controlled foreign corporation for the same period, the Secretary or his delegate may by regulations provide that the maintenance or furnishing of such records and accounts by only one such person shall satisfy the requirements of subsection (a) for such other persons."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 864(c)(4)(D) is amended to read as follows:

"(D) No income from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States if it consists of dividends, interest, or royalties paid by a foreign corporation in which the taxpayer owns (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958 (b)), more than 50 percent of the total combined voting power of all classes of stock entitled to vote."

(2) Section 951 is amended by adding at the end thereof the following:

"(e) TAXABLE YEARS BEGINNING ON ENACTMENT OF THIS ACT.—No amount shall be required to be included in the gross income of a United States shareholder under subsection (a) (other than paragraph (1)(A)(ii) of such subsection) with respect to a taxable year of a controlled foreign corporation beginning on the date of the enactment of this Act.

(3) Section 1016(a)(20) is amended by striking out "section 961" and inserting in lieu thereof "sections 961 and 987".

(4) Section 1246(a)(2)(B) is amended by inserting "or 983" after "section 951" and by inserting "or 986" after "section 959".

(5) Section 1248 is amended—

(A) by striking out subsection (b);

(B) by revising subsection (d)(1) to read as follows:

"(1) AMOUNTS INCLUDED IN GROSS INCOME UNDER SECTION 951 OR 983.—Earnings and profits of the foreign corporation attributable to any amount previously included in the gross income of such person under section 951 or 983, with respect to the stock sold or exchanged, but only to the extent the inclusion of such amount did not result in an exclusion of an amount from gross income under section 959 or 986.";

(C) by striking out in subsection (d)(3) "section 902(d)" and inserting in lieu thereof "subsection (h)", and by adding at the end of such subsection "No amount shall be excluded from the earnings and profits of a foreign corporation under this paragraph with respect to any United States person which is a domestic corporation for any taxable year of such foreign corporation beginning on the date of enactment of this Act; and

(D) by adding at the end thereof the following:

"(h) LESS DEVELOPED COUNTRY CORPORATION DEFINED.—For purposes of this section, the term "less developed country corporation" means—

"(1) a foreign corporation which, for its taxable year, is a less developed country corporation within the meaning of section 955 (c)(1) or (2), and

"(2) a foreign corporation which owns 10 percent or more of the total combined voting power of all classes of stock entitled to vote of a foreign corporation which is a less developed country corporation within the meaning of section 955(c)(1), and—

"(A) 80 percent or more of the gross income of which for its taxable year meets the requirement of section 955(c)(1)(A); and

"(B) 80 percent or more in value of the assets of which on each day of such year consists of property described in section 955 (c)(1)(B)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years of foreign corporations beginning with the date of enactment of this Act, and to taxable years of United States shareholders which end within or with such taxable years of such foreign corporations.

SEC. 3. INCREASE IN PERSONAL EXEMPTION

(a) Effective with respect to taxable years beginning after December 31, 1974—

(1) section 151 of the Internal Revenue Code of 1954 (relating to allowance of personal exemptions) is amended by striking out "$750" wherever it appears therein and inserting in lieu thereof "($1,000)";

(2) section 6012(a)(1) of such Code (relating to persons required to make returns of income) is amended by—

(A) striking out "$750" wherever it appears therein and inserting in lieu thereof "$1,000";

(B) striking out "$2,050" wherever it appears therein and inserting in lieu thereof "$2,300"; and

(C) striking out "$2,800" wherever it appears therein and inserting in lieu thereof "$3,300"; and

(3) section 6013(b)(3)(A) of such Code (relating to assessment and collection in case of certain return of husband and wife) is amended by striking out "$750" wherever it appears therein and inserting in lieu thereof "$1,000", and by striking out "$1,500" wherever it appears therein and inserting in lieu thereof "$2,000".

(b) Effective with respect to wages paid after December 31, 1974, the table contained in section 3402(b)(1) of the Internal Revenue Code of 1954 is amended to read as follows:

"PERCENTAGE METHOD WITHHOLDING TABLE

"Payroll period:	*Amount of one withholding exemption*
Weekly	$19.20
Biweekly	38.50
Semimonthly	41,70
Monthly	83.30
Quarterly	250.00
Semiannually	500.00
Annually	1,000.00
Daily or miscellaneous (per day of such period)	2.70"

SEC. 4. PAYROLL TAX FOR LOW-INCOME INDIVIDUALS

(a)(1) Section 3101 of the Internal Revenue Code of 1954 (relating to tax on employees) is amended by adding at the end thereof the following new subsection:

"(c) ALTERNATE TAX ON LOW-INCOME INDIVIDUALS.—

"(1) IN GENERAL.—In the case of a taxpayer who is married (as determined under Section 143) whose adjusted social security income for the calendar year is less than $850, there is hereby imposed on the income of such individual (in lieu of the taxes imposed by subsection (a) and (b)) a tax determined under the following table:

PERCENTAGE OF TAXES IMPOSED BY SUBSECTIONS (A) AND (B)

"If the adjusted social security income is:

[In percent]

Less than $0	10
0 to $49	15
$50 to $99	20
$100 to $149	25
$150 to $199	30
$200 to $249	35
$250 to $299	40
$300 to $349	45
$350 to $399	50
$400 to $449	55
$450 to $499	60
$500 to $549	65
$550 to $599	70
$600 to $649	75
$650 to $699	80
$700 to $749	85
$750 to $799	90
$800 to $849	95

"(2) ADJUSTED SOCIAL SECURITY INCOME.—For purposes of this subsection, the adjusted social security income of an individual for any calendar year is his adjusted gross income for his taxable year beginning in such calendar year (determined under section 62), minus the sum of—

"(A) $1,300, and

"(B) the amount of personal exemptions to which he is entitled under section 151.

In the case of a married individual whose spouse receives wages or self-employment income during such year, his adjusted gross income and the number of exemptions to which he is entitled shall, for purposes of this paragraph, be determined as if he were not married."

(2) Section 3102 of such Code (relating to deduction of tax from wages) is amended by adding at the end thereof the following new subsection:

"(d) WITHHOLDING ON WAGES OF LOW-INCOME INDIVIDUALS.—"(1) IN GENERAL.—In the case of an individual whose adjusted wages are less than $850 (computed at an annual rate), the employer of such individual shall deduct from the wages paid (in lieu of the amount required to be deducted under subsection (a)) an amount of the tax imposed by section 3101 determined under the following table:

AMOUNT REQUIRED TO BE DEDUCTED UNDER SUBSECTION (A)

"If the adjusted wages (computed at an annual rate) are:

[In percent]

Less than 0	10
0 to $49	15
$50 to $99	20
$100 to $149	25
$150 to $199	30
$200 to $249	35
$250 to $299	40
$300 to $349	45
$350 to $399	50
$400 to $449	55
$450 to $499	60
$500 to $549	65
$550 to $599	70
$600 to $649	75
$650 to $699	80
$700 to $749	85
$750 to $799	90
$800 to $849	95

"(2) ADJUSTED WAGES.—For purposes of this subsection, the adjusted wages of an individual for any period is the amount of wages (adjusted to an annual rate), minus the sum of—

"(A) $1,300, and

"(B) the amount of personal exemptions to which he is entitled under section 151.

In the case of a married individual whose spouse receives wages during such period,

the number of exemptions to which he is entitled shall be determined as if he were not married.

"(3) CREDIT AGAINST TAX.—Amounts deducted from the wages of an employee under this subsection shall be allowed as a credit against the tax imposed on the employee under section 3101.

"(4) WITHHOLDING CERTIFICATES.—Each employee shall furnish his employer with a signed certificate setting forth such information as is necessary to enable the employer to determine whether this subsection is applicable to him, and the amount of tax to be deducted under this subsection. Such certificate shall be in such form, shall be furnished at such time or times, and shall remain in effect for such period as the Secretary or his delegate prescribes by regulations.

"(5) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and section 3101(c)."

(b) Section 1401 of the Internal Revenue Code of 1954 (relating to rate of tax on self-employment income) is amended by adding at the end thereof the following new subsection:

"(c) ALTERNATE TAX ON LOW-INCOME INDIVIDUALS.—

"(1) IN GENERAL.—In the case of an individual whose adjusted social security income for the taxable year is less than $850, there is hereby imposed on the self-employment income of such individual (in lieu of the taxes imposed by subsections (a) and (b)) a tax determined under the following table:

"PERCENTAGE OF TAXES IMPOSED BY SUBJECTIONS (A) AND (B)

"[In percent]

"If the adjusted social security income is:	
Less than 0	10
0 to $49	15
$50 to $99	20
$100 to $149	25
$150 to $199	30
$200 to $249	35
$250 to $299	40
$300 to $349	45
$350 to $399	50
$400 to $449	55
$450 to $499	60
$500 to $549	65
$550 to $599	70
$600 to $649	75
$650 to $699	80
$700 to $749	85
$750 to $799	90
$800 to $849	95

"(2) ADJUSTED SOCIAL SECURITY INCOME.—For purposes of this subsection, the adjusted social security income of an individual for any taxable year is his adjusted gross income for such year (determined under section 62), minus the sum of

"(A) $1,300, and

"(B) the amount of the personal exemptions to which he is entitled under section 151.

In the case of a married individual whose spouse receives wages or self-employment income during each year, his adjusted gross income and the number of exemptions to which he is entitled shall, for purposes of this paragraph, be determined as if he were not married."

(c) Section 31(b) of the Internal Revenue Code of 1954 (relating to credit for special refunds of social security tax) is amended by striking out the heading and paragraph (1) and inserting in lieu thereof the following:

"(b) CREDIT FOR EXCESS WITHHOLDING OF SOCIAL SECURITY TAX.—

"(1) IN GENERAL.—The Secretary or his delegate may prescribe regulations providing for the crediting against the tax imposed by this subtitle of amounts deducted under section 3102 from the wages paid to the taxpayer in excess of the tax imposed on such wages by section 3101, including the amount determined by the taxpayer or the Secretary or his delegate to be allowable under section 6413(c) as a special refund of such tax. The amount allowable as a credit under such regulations shall, for purposes of this subtitle, be considered an amount withheld at source as tax under section 3402."

(d) There is hereby appropriated, out of any monies in the Treasury not otherwise appropriated, to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Health Insurance Trust Fund amounts (as determined by the Secretary of the Treasury) equal to losses of revenues to such trust funds resulting from the application of section 3101(c) and 1401(c) of the Internal Revenue Code of 1954. The amounts appropriated by the preceding sentence shall be transferred from time to time from the general fund in the Treasury to the respective trust funds on the basis of estimates by the Secretary of the Treasury. Proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the amounts which should have been transferred.

PARTIAL GENERAL FINANCING OF RETIREMENT BENEFITS

SEC. 5. (a) In addition to any other funds appropriated or authorized to be appropriated pursuant to other provisions of law for any fiscal year to the Federal Old-Age and Survivors Insurance Trust Fund, and in addition to any other funds authorized by other provisions of law to be appropriated to or deposited in the Federal Disability Insurance Trust Fund for any fiscal year, there are authorized to be appropriated to each of such funds the following amounts:

(1) For the fiscal year ending June 30, 1975, an amount equal to one twenty-fifth of the expenditures from such fund for such year;

(2) For the fiscal year ending June 30, 1976, an amount equal to three-fiftieths of the expenditures from such fund for such year;

(3) For the fiscal year ending June 30, 1977, an amount equal to two twenty-fifths of the expenditures from such fund for such year;

(4) For the fiscal year ending June 30, 1978, an amount equal to one-tenth of the expenditures from such fund for such year;

(5) For the fiscal year ending June 30, 1979, an amount equal to three twenty-fifths of the expenditures from such fund for such year;

(6) For the fiscal year ending June 30, 1980, an amount equal to seven-fiftieths of the expenditures from such fund for such year;

(7) For the fiscal year ending June 30, 1981, an amount equal to four twenty-fifths of the expenditures from such funds for such year;

(8) For the fiscal year ending June 30, 1981, an amount equal to nine-fiftieths of the expenditures from such funds for such year; and

(9) For any fiscal year ending after June 30, 1982—an amount equal to one-fifth of the expenditures from such fund for such year.

(b)(1) Funds authorized to be appropriated under subsection (a) shall be appropriated for any fiscal year on the basis of estimates by the Congress of the amounts which will be expended for such year from the trust fund to which funds are being appropriated, reduced, or increased to the extent of any overappropriation or underappropriation under this section to such fund for any preceding year with respect to which adjustment has not already been made.

(2) The Secretary of Health, Education and Welfare shall furnish to the Congress such information, data, and actuarial studies as may be appropriate to enable the Congress to make the estimates referred to in paragraph (1).

PARTIAL FINANCING FROM GENERAL REVENUES OF COMBINED HOSPITAL AND MEDICAL INSURANCE PROGRAM UNDER TITLE XVIII

SEC. 6. (a) In addition to any other funds appropriated or authorized to be appropriated pursuant to other provisions of law for any fiscal year to the Federal Health Insurance Trust Fund (as redesignated by section 4(a) of this Act), there are authorized to be appropriated to such fund the following amounts:

(1) for the fiscal year ending June 30, 1975, an amount equal to one-fifth of the expenditures from such fund for such year;

(2) for the fiscal year ending June 30, 1976, an amount equal to one-fifth of the expenditures from such fund for such year;

(3) for the fiscal year ending June 30, 1977, an amount equal to one-fourth of the expenditures from such fund for such year; and

(4) for any fiscal year ending after June 30, 1977, an amount equal to one-third of the expenditures from such fund for such year.

(b)(1) Funds authorized to be appropriated under subsection (a) shall be appropriated for any fiscal year on the basis of estimates by the Congress of the amount which will be expended for such year from the Federal Health Insurance Trust Fund, reduced or increased to the extent of any overappropriation or underappropriation under this section to such fund with respect to which adjustment has not already been made.

(2) The Secretary of Health, Education, and Welfare shall furnish to the Congress such information, data, and actuarial studies as may be appropriate to enable the Congress to make the estimates referred to in paragraph (1).

CHANGES IN TAX SCHEDULE

SEC. 7. (a)(1) Section 3101(a) of the Internal Revenue Code of 1954 (relating to rate of tax on employees for purposes of old-age, survivors, and disability insurance) is amended by striking out paragraphs (5) and (6) and inserting in lieu thereof the following:

"(5) with respect to wages paid during the calendar years 1975 through 2019, the rate shall be 4.75 percent; and

"(6) with respect to wages paid after December 31, 2019, the rate shall be 5.4 percent."

(2) Section 3111(a) of the Internal Revenue Code of 1954 (relating to rate of tax on employers for purposes of old-age, survivors, and disability insurance) is amended by striking out paragraphs (1) through (6) and inserting in lieu of such paragraphs the following:

"(1) with respect to wages paid during the calendar years 1975 through 2019, the rate shall be 4.75 percent; and

"(2) with respect to wages paid after December 31, 2019, the rate shall be 5.4 percent."

(b)(1) Section 1401(b) of such Code (relating to rate of tax on self-employment income for purposes of hospital insurance) is amended—

(A) by striking out "and before January 1, 1978" in paragraph (3) and inserting in lieu thereof "and before January 1, 1975"; and

(B) by striking out paragraphs (4), (5), and (6) and inserting in lieu thereof the following:

"(4) in the case of any taxable year beginning after December 31, 1974, and before January 1, 1978, the tax shall be equal to .80 percent of the amount of the self-employment income for such taxable year;

"(5) in the case of any taxable year be-

ginning after December 31, 1977, and before January 1, 1981, the tax shall be equal to 1 percent of the amount of the self-employment income for such taxable year;

"(6) in the case of any taxable year beginning after December 31, 1980, and before January 1, 1986, the tax shall be equal to 1.25 percent of the amount of the self-employment income for such taxable year;

"(7) in the case of any taxable year beginning after December 31, 1985, the tax shall be equal to 1.35 percent of the amount of the self-employment income for such taxable year."

(3) Section 3101(b) of such Code (relating to rate of tax on employees for purposes of hospital insurance) is amended—

(A) by striking out "calendar years 1974 through 1977" in paragraph (3) and inserting in lieu thereof "calendar year 1974"; and

(B) by striking out paragraphs (4) through (6) and inserting in lieu thereof the following:

"(4) with respect to wages received during the calendar years 1975, 1976, and 1977, the rate shall be .80 percent;

"(5) with respect to wages received during the calendar years 1978, 1979, and 1980, the rate shall be 1.0 percent;

"(6) with respect to wages received during the calendar years 1980, 1981, 1982, 1983, 1984, and 1985, the rate shall be 1.25 percent;

"(7) with respect to wages received after December 31, 1985, the rate shall be 1.35 percent."

(4) Section 3111(b) of such Code (relating to rate of tax on employers for purposes of hospital insurance) is amended—

(A) by striking out "calendar years 1974 through 1977" in paragraph (3) and inserting in lieu thereof "calendar year 1974"; and

(B) by striking out paragraphs (4) through (6) and inserting in lieu thereof the following:

"(4) with respect to wages paid during the calendar years 1975, 1976, and 1977, the rate shall be .80 percent;

"(5) with respect to wages paid during the calendar years 1978, 1979, and 1980, the rate shall be 1.0 percent;

"(6) with respect to wages paid during the calendar years 1981 through 1985, the rate shall be 1.25 percent;

"(7) with respect to wages paid after December 31, 1985, the rate shall be 1.35 percent."

(c) The effective date of all amendments in this section shall be January 1, 1975.

SEC. 8. Effective June 1, 1975, the Secretary of Health, Education and Welfare shall prescribe and publish in the Federal Register such modifications and extensions of the table contained in section 215(a) of the Social Security Act (which shall be determined in the same manner as the revisions in such table provided for under section 215(1)(2)(D) of such Act, and shall be in lieu of any previously made modifications and extensions of such tables) as may be necessary to reflect the amendments made by this Act; and such modified and extended table shall be deemed to be the table appearing in such section 215(a).

By Mr. CRANSTON (for himself and Mr. STAFFORD):

S. 3495. A bill to amend chapter 79 of title 10, United States Code, to make more feasible the personal appearance of a petitioner before a board authorized to correct discharges and dismissals from the Armed Forces by establishing regional boards of review, and to amend chapter 49 of such title to prohibit the inclusion of certain information on discharge certificates, and for other purposes. Referred to the Committee on Armed Services.

S. 3495: LEGISLATION TO IMPROVE MILITARY DISCHARGE PROCEDURES

Mr. CRANSTON. Mr. President, I am introducing today, for appropriate reference, for myself and my distinguished colleague on the Veterans' Affairs Committee (Mr. STAFFORD), legislation to improve military discharge procedures by correcting what I believe to be two particularly unjust practices. The bill, entitled the "Armed Services Discharge Review Procedure Act of 1974," proposes to amend title 10, United States Code, to make more feasible the personal appearance of a petitioner before a board authorized to correct discharges and dismissals from the Armed Forces by establishing regional boards of review, and to amend chapter 49 of such title to prohibit the inclusion of certain information on discharge certificates, and for other purposes.

Mr. President, less than honorable discharges, discharge review procedures, and the separation program number—SPN—located on DD-214 discharge papers present very serious problems to many veterans in determining their eligibility for GI bill benefits, medical care, and job opportunities.

PREJUDICIAL IMPACT OF SPN CODES ON DISCHARGE PAPERS

Since May 1951, the Armed Forces had followed a practice of printing SPN codes on a serviceman's report of separation from active duty, DD-214. These numbers reflected anything from drug abuse or homosexuality to a bad attitude or bed wetting. The interpretation of these numbers was widely known—particularly by large companies—and often a veteran with a discharge under honorable conditions, but a SPN code indicating a bad attitude or homosexuality, for example, would not receive a particular job.

The use of these numbers represented a serious violation of personal rights and privacy already far too prevalent in our society. Millions of former servicemen—9 million in the last decade alone—have had these prejudicial code numbers printed on their discharge papers. Finally, on Friday, March 22, 1974, the Secretary of Defense announced that SPN codes will no longer be used on an individual's DD-214 report of separation from active duty. DOD has already begun to implement this new policy, which is retroactive to any veteran who applies for a new, clean discharge certificate.

SUMMARY OF S. 3495 SPN CODE PROVISIONS

In order to prevent this procedure from being reactivated, we already have legislation pending—S. 1716—prohibiting the appearance of SPN codes, or any other such indicator of reason for discharge, on a discharge certificate.

The legislation I am introducing today, however, in addition to reiterating that prohibition will also require the Department of Defense, to the maximum extent feasible, to issue by mail, without waiting for applications, clean discharge certificates to any veteran who, prior to the March 22, 1974, DOD policy change was issued a discharge certificate with a SPN code.

In recognition that it will be difficult to contact many veterans by mail, this legislation will require the Department of Defense to develop and carry out a substantial program of publicity and outreach, in order to contact the maximum number of veterans with SPN code discharges. To achieve that, the Secretary of Defense would be directed to submit to Congress, within 60 days of enactment, a plan for such a nationwide outreach and information program.

My bill also proposes a number of changes in the procedures for review of military discharges.

DISCRIMINATORY DISCHARGE REVIEW PROCEDURES

Mr. President, all Vietnam-era veterans are faced with unique readjustment problems. Limited job opportunities, inadequate educational assistance benefits, insensitive medical care, and public indifference to their needs plague most returning veterans and their families. The approximately 460,000 Vietnam-era veterans who received other-than-honorable discharges, however, are as handicapped in many respects as those veterans who returned with physical or mental injuries. For them, job opportunities and the possibility of receiving educational assistance are questionable, if not entirely nonexistent.

The handicap of an other-than-honorable discharge, unlike many physical or mental injuries, can be removed for many of the veterans. There are three categories of less-than-honorable discharge for which a veteran is entitled to a discharge review. General discharges, undesirable discharges, and bad-conduct by special courts-martial discharges can be upgraded upon appeal and favorable review by a military discharge review board. Such discharges are given administratively, and most are not the result of a serious crime. Those bad-conduct discharges which are issued by a general court-martial, and dishonorable discharges, on the other hand, are in most cases given to servicemen who have committed more serious offenses.

But statistics indicate the process for obtaining upgrading of less-than-honorable discharges is a reality for very few who are eligible to benefit from it.

MORE LIMITED JOB OPPORTUNITIES AND PLACEMENT HELP

Mr. President, the unemployment rate for honorably discharged young Vietnam veterans aged 20 to 24 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. Since most employers request information concerning military service, I think we can safely assume that those veterans with other-than-honorable discharges are having even more difficulty in finding jobs.

A veteran with an other-than-honorable discharge may apply for an exemplary rehabilitation certificate which, according to the Department of Labor:

Is tangible evidence to show employers that you've made good, that you are now among those whose conduct as a civilian is "exemplary."

This certificate indicates the Secretary of Labor's satisfaction that a person has rehabilitated himself, that his character is good, and that his conduct, activities and habits since he was discharged or dismissed have been exemplary for a reasonable period of time, but not less than 3 years.

The certificate entitles individuals to special job-counseling and job-placement services at the local office of the State Employment Service as coordinated by the Veterans Employment Service in the Department of Labor. In order to apply for such a certificate, however, the veteran must have a statement from the chief law enforcement officer of his city, town, or county; statements from at least five people who have known him for 3 years or more; and a statement from an employer for whom the veteran has worked since his discharge. The Secretary will then assess these statements and the veteran's work record, and make a determination as to whether or not the veteran has earned an exemplary rehabilitation certificate.

This procedure is not widely used for a number of reasons, principally because most veterans are not aware of it. The procedure also requires a veteran to have been employed since his discharge, which is most likely the veteran's reason for needing the certificate to begin with—he or she cannot get a job. We thus have a classic "Catch 22" situation.

The real value of these certificates to the veteran is questionable, indeed. In the past 3 calendar years, there have been about 1,000 "requests" for applications for these certificates each year. Of these requests for applications, only 145 actually submitted applications in 1971, 188 in 1972, and 143 in 1973. And of those who did, in fact, apply, only 70 received certificates in 1971, 82 in 1972, and 73 in 1973.

UNAVAILABILITY OF VA EDUCATIONAL ASSISTANCE AND OTHER VA BENEFITS

[GI BILL MOST OFTEN UNAVAILABLE]

A veteran with an other-than-honorable discharge faces equally frustrating difficulties in attempting to obtain educational or training assistance under the GI bill. Although the Veterans' Administration can adjudicate individual cases in favor of veterans with these discharges—by finding that the discharge was actually "under honorable conditions"—chances are slim that educational assistance benefits will be awarded.

A 5-month survey conducted by the VA in 1972 showed that of approximately 1,300 veterans with less-than-honorable discharges who applied for educational assistance, about 900 were denied.

ELIGIBILITY FOR OTHER VA BENEFITS

The possibilities for a veteran with an other-than-honorable discharge to obtain other VA benefits, such as compensation, pension, or a home loan, are equally slim. The main eligibility requirement for these benefits is that a person be a "veteran." Section 101(2), title 38, United States Code, defines "veteran" as "a person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable." Veterans with honorable and general discharges are automatically eligible for VA benefits, and veterans with dishonorable discharges or bad-conduct discharges by general court-martial are not eligible. Veterans with undesirable discharges or bad-conduct discharges by special court-martial may apply to the VA to have their cases adjudicated so that they may receive benefits.

Eligibility for disability compensation carries the further requirement that, in addition to the disability being service-connected, it must not be the result of the veteran's own willful misconduct. In order to obtain VA pension benefits, a veteran with an undesirable discharge or a bad-conduct discharge by special court-martial must apply to have his or her case reviewed. This review will determine whether or not the veteran receives a VA pension.

For the purpose of obtaining a home loan through the VA, an honorable discharge is considered to be a certificate of eligibility for application for a guaranteed loan. A veteran who received a discharge other than honorable, but not by a general court-martial, may apply to the Administrator for a certificate of eligibility. Here again, the Veterans' Administration can adjudicate individual cases in favor of veterans with these discharges by finding that the discharge was actually "under honorable conditions".

The VA is also responsible for determining whether or not a veteran with an other-than-honorable discharge will receive unemployment compensation through the Department of Labor. A VA representative estimates that of 1,000 to 1,200 applications for VA benefits and Department of Labor unemployment compensation each month, the VA finds favorably in approximately 4 percent of the cases for unemployment compensation and about 7 percent for VA benefits.

INELIGIBILITY FOR VA MEDICAL CARE

Veterans with less-than-honorable or general discharges are presently not eligible for the very broad range of medical care, in- and out-patient, available to most veterans for injuries or illnesses. This ineligibility even extends—most unfairly, I believe—to treatment for disabilities actually incurred in battle or otherwise in the line of duty or during service. The largest category deprived of such care is those with undesirable discharges—and some with bad conduct discharges issued by special court-martial proceedings—which are issued administratively, with far less than due process protections. Few service men or women realize that they are probably forfeiting rights to VA medical care for service-connected conditions—let alone GI bill benefits and employment assistance—at the time they "accept" such an administrative discharge.

What happens now when such a veteran seeks VA medical care for a service-connected condition is that he or she is found not eligible and has to wait at least 6 months to get the VA to decide whether the discharge was or was not "under honorable conditions"—the magic words for determination of eligibility for care—or wait even longer to get a full review in order to upgrade the discharge in an appeal to a military discharge review board.

As chairman of the Health and Hospitals Subcommittee of the Committee on Veterans' Affairs, I have sought to remedy this inequitable situation as to treatment for service-connected disabilities. On March 6, 1973, the Senate unanimously passed my Veterans Drug and Alcohol Treatment and Rehabilitation Act of 1973, S. 284.

A virtually identical bill was passed in 1972, S. 2108, but died in the House with the close of the 92d Congress. This Senate-passed measure, on which I have been assured hearings will begin shortly in the House Veterans' Affairs Committee, includes a provision designed to remedy part of the problem I have outlined for veterans with those types of discharges less than general or honorable which are not the result of general court-martial proceedings—generally veterans with undesirable discharges. Section 2 of S. 284 would make a veteran with such a discharge—although not a veteran with a dishonorable discharge—eligible for full VA medical care for his or her service-connected disabilities.

However, Mr. President, even if this provision in S. 284 is enacted into law, the veterans made eligible thereby will still need the benefits of the bill we are introducing today to acquire an honorable or general discharge which would make them eligible for VA medical care for their non-service-connected disabilities if they are unable to afford private care, and, of course, to acquire eligibility for employment assistance, G.I. bill benefits, and other VA programs.

LOW PERCENTAGE OF DISCHARGES NOW UPGRADED

Mr. President, it seems clear that a veteran with an other-than-honorable discharge will carry a stigma for life, a stigma which will have far-reaching effects on almost everything he or she attempts to do. Many veterans took a less-than-honorable discharge by administrative procedures in order to get out of the service in a hurry. In many cases they were informed, or they assumed there would be no difficulty in having the discharge upgraded once they were out. But judging from the number of cases reviewed and upgraded in fiscal year 1973, for example, this is clearly not the case.

Approximately 70,000 former servicemen were given other-than-honorable discharges, but only 8,911 veterans even applied for review. Approximately 42,000 cases were eligible for review by the Army, but only 4,474 cases were actually reviewed and only 478 were upgraded. The Navy and Marine Corps reviewed 3,167 cases and upgraded 926 of a total of about 20,000 cases eligible for review. The Air Force favorably reviewed 314 out of 1,270 cases submitted, although there were almost 7,000 former members of the Air Force who could have applied for a review.

In 1973, alone, the rate of successful

appeals ranged from 11 percent by the Army to 25 percent by the Air Force, and 29 percent by the Navy and Marine Corps. Since 1967, the Air Force discharge review board has processed 8,565 applications, and approved 3,235 or 38 percent. The Navy and Marine Corps have processed 11,552 applications since 1967, and approved 3,451 or 30 percent. The Army, however, which processed the largest number of applications since 1967 favorably reviewed the fewest. Only 2,176 out of a total of 16,747 applications—just 13 percent—were upgraded.

The stigma associated with less-than-honorable discharges is often undeserved as well. Most veterans with these discharges have not committed serious crimes, but got into trouble, often because of drugs or alcohol, boredom, family pressures leading to repeated AWOL's, or the inability to cope with the demands of a combat situation. The problem may simply be one of immaturity. Some young men of 18 to 19 years of age may lack the patience and endurance needed for many of the situations confronted in the service. Last year alone 484 veterans who initially had received bad conduct, undesirable, or general discharges were granted honorable discharges after getting their cases reviewed.

POOR HARDEST HIT

Further, Mr. President, it has been suggested that a disproportionate number of veterans with less-than-honorable discharges are poor, and educationally disadvantaged. Department of Defense statistics show that nonwhites receive a high percentage of these discharges. In fiscal year 1972, for example, 32.6 percent of the dishonorable discharges issued by the Army went to Blacks. I think it is not just a coincidence that in the first quarter of 1974, the unemployment rate for young, black veterans was 18.9 percent.

For far too many veterans, this type of discharge irrevocably relegates them to a lower economic status in society—often a situation they may very well have been seeking to abandon when they entered military service.

INEQUITIES IN DISCHARGE REVIEW PROCEDURES

Mr. President, the inequity of this situation is further compounded by the present procedure for seeking to obtain an upgrading of a military discharge. A veteran with a less than honorable discharge who appears personally at his discharge review hearing stands a far better chance of having his discharge upgraded than a veteran who does not appear in person. Significantly, of 1,270 cases reviewed by the Air Force, only 142 former servicemen appeared in person. Of those 142, 72 cases were upgraded, or 51 percent. Of the remaining 1,128 cases, only 242, or 21 percent, were favorably adjudicated.

Although the Army, and the Navy/Marine Corps do not keep records of the number of veterans whose discharges were upgraded and who appeared personally, it is noteworthy that out of 4,474 cases reviewed by the Army, only 273 veterans appeared in person, and of 3,167 cases reviewed by the Navy/Marine Corps, only 312 veterans made personal appearances.

Mr. President, since at present Washington, D.C., is the only location for such a review, it is virtually impossible for large numbers of veterans to have their cases considered in the most favorable light. It is, therefore, even more difficult for veterans with less-than-honorable discharges who are poor, and educationally disadvantaged—as veterans with these discharges often are—to upgrade their discharge.

The legislation which I am introducing today attempts to correct this totally unjust and discriminatory situation.

SUMMARY OF S. 3495 DISCHARGE REVIEW PROVISIONS

S. 3495 would:

First, increase the number of discharge review boards to at least 10 centers, geographically dispersed in such a manner—probably in the 10 Federal Government regions—as to be reasonably accessible to veterans living in all parts of the country;

Second, permit the Secretary of Defense—to promote economical operations—to consolidate the various services into one discharge review board, comprised of no less than one member of each service, or, if a civilian, one recommended by each service; although I would contemplate that one board exclusively from each service would remain available—probably in Washington—for the veteran who wished such a review by his or her service alone.

Third, in cases of demonstrated hardship, pay the cost of a veteran's transportation and expenses should he or she wish to make a personal appearance at the regional review board; as an alternative for purposes of economy, the board could be authorized to travel temporarily to a particular location where a number of cases are aggregated; and

Fourth, insure that each military service makes available to each prospective petitioner military counsel to assist him in presenting his case, and advises him in writing of the availability of such assistance and of the right of personal appearance and the opportunity to apply for transportation and per diem costs in hardship cases.

Mr. President, I ask that the full text of this bill be printed in the RECORD at this point, followed by the applicable present provisions of title 10 of the United States Code, and an April 3, 1974, letter on this subject from the American Veterans Committee to the Secretary of Defense.

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

S. 3495

A bill to amend chapter 79 of title 10, United States Code, to make more feasible the personal appearance of a petitioner before a board authorized to correct discharges and dismissals from the armed forces by establishing regional boards of review, and to amend chapter 49 of such title to prohibit the inclusion of certain information on discharge certificates, and for other purposes

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 "Armed Services Discharge Review Procedure Act of 1974".

SEC. 2. Section 1553 of title 10, United States Code, is amended to read as follows:

"§ 1553. Review of discharge or dismissal

"(a) The Secretary of Defense shall, after consultation with the Administrator of Veterans' Affairs, provide for the establishment of regional boards of review throughout the United States to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force upon motion by any such board or upon request of the former member or, if deceased, the surviving spouse, next of kin, or legal representative of such former member. A motion or request for review must be made within 15 years after the date of the discharge or dismissal.

"(b) (1) Subject to the provisions of paragraph (2), the Secretary concerned shall appoint a board of review for each region of the United States to review cases within such region of former members of an armed force under the jurisdiction of his department. Each such board shall consist of five members.

"(2) The Secretary of Defense, if he determines that such action is in the best interests of efficiency and economy and will not adversely affect the interests of former members of the armed forces whose discharges or dismissals are reviewed under this section, may provide for the establishment of a single board of review for any one or more regions. Any such board of review established for any region shall be composed of five members, one from or recommended by each of the armed forces, shall be appointed and serve for such period of time as the Secretary of Defense shall prescribe by regulation, and shall have jurisdiction to review the discharge or dismissal of any former member of an armed force, subject to the limitations in subsection (a).

"(c) Any board established under this section may, subject to the review of the Secretary of the armed force of which the person whose discharge or dismissal is being reviewed was a member, change the discharge or dismissal or issue a new discharge to reflect its findings.

"(d) A review by a board established under this section shall be based on the records of the armed force concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Administrator of Veterans' Affairs under chapter 59 of title 38. Upon request, the Judge Advocate General of the armed force of which a person was a former member shall appoint a judge advocate to represent such person before the board. A person who requests a review under this section shall be promptly advised in writing, upon filing his application, of his right to make a personal appearance before the board and of his right to be represented by counsel of his own choosing or appointed by such Judge Advocate, or by an accredited representative.

"(e) As used in this section, the term 'region' means any one of not less than ten geographical areas of the United States delineated by the Secreary of Defense for purposes of this section. In dividing the United States into regions for purposes of this section the Secretary of Defense shall consider, among other factors, the number of former members of the armed forces residing in the proposed region and the travel distances that may be involved in order for former mem-

bers to reach the regional board's headquarters within any such proposed region.

"(f) In accordance with such regulations as the Secretary of Defense shall prescribe, the Secretary concerned shall pay the reasonable travel expenses in the case of any person described in subsection (a) who wishes to make a personal appearance before a board of review in connection with such person's petition to the board to change a discharge or dismissal if such person is unable to bear such travel expenses or to do so would result in financial hardship. As used in this subsection, the term 'reasonable travel expenses' includes round trip transportation expenses and per diem allowance not in excess of amount that would be authorized for persons employed by the United States traveling on official business."

SEC. 2. (a) Chapter 49 of title 10, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 975. Prohibition against certain information appearing on discharge certificates

"(a) No information (in code or otherwise) shall be included on any discharge certificate by any military department if such information in any way indicates the attitude, opinion, or decision of the military department concerned with respect to whether the person to whom such certificate was issued should be accepted for reenlistment in the armed forces. All such information shall be treated as strictly confidential and may be released to another department or agency of the government only on a need-to-know basis."

(b) The table of sections at the beginning of chapter 49, of title 10, United States Code, is amended by adding at the end thereof a new item as follows:

"975. Prohibition against certain information appearing on discharge certificates."

(c) The amendment made by subsection (a) of this section shall be applicable to all discharges issued by the armed forces of the United States on and after the date of enactment of this Act.

(d)(1) The Secretary of each military department (and the Secretary of Transportation with respect to the Coast Guard) shall, to the maximum extent practicable, issue new discharge certificates to all former members of such department whose last discharge certificate contains any information (in code or otherwise) described in section 975 of title 10, United States Code, as added by subsection (a) of this section.

(2) The Secretary of Defense shall, within 60 days after the date of enactment of this Act initiate and carry out a comprehensive nationwide program designed to contact and inform all former members of the armed forces who have been issued discharge certificates with the type of information thereon described in section 975 of title 10, United States Code (as added by subsection (a) of this section) and who have not been contacted and issued new discharge certificates as provided in paragraph (1). The Secretary shall consult with the Administrator of Veterans' Affairs in carrying out such program, and the Administrator shall utilize the full services and facilities of the Veteran's Administration to assist in contacting such former members. Any action taken by the Administrator of Veterans' Affairs shall be in addition to, and not in lieu of, action to be taken by the Secretary of Defense. Not later than 60 days after the date of enactment of this Act the Secretary of Defense shall submit a written report to the Congress disclosing the plan to be carried out by him under this paragraph.

CHAPTER 79

Section 1553. Review of discharge or dismissal.

(a) The Secretary concerned shall, after consulting the Administrator of Veterans' Affairs, establish a board of review, consisting of five members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal.

(b) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(c) A review by a board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Administrator of Veterans' Affairs under chapter 59 of title 38. (Added Pub. L. 85-857. § 13(v)(2), Sept. 2, 1958, 72 Stat. 1267, and amended Pub. L. 87-651, title I, § 110(a), Sept. 7, 1962, 76 Stat. 509.)

CHAPTER 49.—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec. 971. Service credit: officers may not count enlisted service performed while serving as cadet or midshipman.

Sec. 972. Enlisted members: required to make up time lost.

Sec. 973. Duties: Regular officers; performance of civil functions restricted.

Sec. 974. Civilian employment: enlisted members.

AMENDMENTS

1968—Pub. L. 90-235, §§ 4(a)(5)(B), 6(a)(6)(B), Jan. 2, 1968, 81 Stat. 759, 762, added items 973 and 974.

1958—Pub. L. 85-861. § 1 (20), Sept. 2, 1958, 72 Stat. 1442, added items 971 and 972.

§ 971. Service credit: officers may not count enlisted service performed while serviing as cadet or midshipman.

(a) The period of service under an enlistment or period of obligated service while also serving as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, or in the Naval Reserve, under an appointment accepted after June 25, 1956, may not be counted in computing, for any purpose, the length of service of an officer of an armed force.

(b) In computing length of service for any purpose—

(1) no officer of the Navy or Marine Corps may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy, if he was appointed as a midshipman or cadet after March 4, 1913; and

(2) no commissioned officer of the Army or Air Force may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy, if he was appointed as a midshipman or cadet after August 24, 1912.

(Added Pub. L. 85-861, § 1(20), Sept. 2, 1958, 72 Stat. 1442 and amended Pub. L. 90-235, § 6(a)(1), Jan. 2, 1968, 81 Stat. 761.)

HISTORICAL AND REVISION NOTES

Revised section, 971. Source (U.S. Code), 50: 1414. Source (Statutes at Large), June 25, 1956, ch. 439, § 4, 70 Stat. 333.

AMENDMENTS

1968—Pub. L. 90-235 designated existing provisions as subsec. (a) and added subsec. (b).

§ 972. Enlisted members: required to make up time lost.

An enlisted member of an armed force who—

(1) deserts;

(2) is absent from his organization, station, or duty for more than one day without proper authority, as determined by competent authority;

(3) is confined for more than one day while awaiting trial and disposition of his case, and whose conviction has become final;

(4) is confined for more than one day under a sentence that has become final; or

(5) is unable for more than one day, as determined by competent authority, to perform his duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from his misconduct;

is liable, after his return to full duty, to serve for a period that, when added to the period that he served before his absence from duty, amounts to the term for which he was enlisted or inducted. (Added Pub. L. 85-861, § 1 (20), Sept. 2, 1958, 72 Stat. 1443.)

HISTORICAL AND REVISION NOTES

Revised section, 972. Source (U.S. Code), 10 App.: 629a, 34 App.: 183b. Source (Statutes at Large), July 24, 1956, ch. 692, § 1, 70 Stat. 631.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 507, 3985, 8925 of this title.

§ 973. Duties: regular officers; performance of civil functions restricted.

(a) No officer on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard may accept employment if that employment requires him to be separated from his organization, branch, or unit, or interferes with the performance of his military duties.

(b) Except as otherwise provided by law, no officer on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard may hold a civil office by election or appointment, whether under the United States, a Territory or possession, or a State. The acceptance of such a civil office or the exercise of its functions by such an officer terminates his military appointment. (Added Pub. L. 90-235, § 4(a)(5)(A), Jan. 2, 1968, 81 Stat. 759.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3017, 5036, 8017 of this title.

§ 974. Civilian employment: enlisted members.

Except as provided in section 6223 of this title no enlisted member of an armed force on active duty may be ordered or permitted to leave his post to engage in a civilian pursuit or business, or a performance in civil life, for emolument, hire, or otherwise, if the pursuit, business, or performance interferes with the customary or regular employment of local civilians in their art, trade, or profession. (Added Pub. L. 90-235, § 6(a)(6)(A), Jan. 2, 1968, 81 Stat. 762.)

AMERICAN VETERANS COMMITTEE,
Washington, D.C., April 3, 1974.

Hon. JAMES R. SCHLESINGER,
Secretary of Defense, Department of Defense, Washington, D.C.

DEAR MR. SCHLESINGER: We were pleased to note the news release of the Department of Defense issued March 22 that Separation Program Numbers (SPNs) will no longer be used on an individual's separation paper, the DD 214. The American Veterans Committee commends you for this action. We have

urged the deletion of "Reason and Authority" on the DD 214 for a number of years, and are gratified that you have initiated this important first step in ending the harmful effects of SPN codes.

We are concerned that those veterans who are designed to benefit from this policy will never be aware of it if the primary means of publicizing it are the issuance of press releases. As you undoubtedly realize, many papers will not carry the story, and those which do may bury it in a small column in the middle of the paper. Moreover, our work with veterans with less-than-honorable discharges—which comprises the bulk of those persons who received stigmatizing SPNs—indicates that most of them have limited education and are from the lower socio-economic strata of society. Few of us have the luxury of reading the entire newspaper every day. Yet, if the Department of Defense is relying on the news media to disseminate the new SPN policy, it will require that a veteran not generally inclined to read newspapers on a regular basis read the appropriate page of a particular newspaper on a specific day. Such a combination of events, I *think* you will agree, is highly unlikely.

We respectfully submit that if the policy is to be a meaningful one, the Department of Defense should send a new DD 214 to all persons who have received stigmatizing SPNs. Recognizing that there will be some technical difficulties in reaching the veterans, we think that the Department of Defense can distribute these new DD 214s to the great majority. We hope you will take immediate steps to issue and distribute the new DD 214s.

This situation is similar to the one which existed when the Department of Defense announced its intent to review for recharacterization all discharges imposed on the basis of the use or possession for personal use of drugs. Our response to that policy was that although it was a desirable one, it would have little practical benefit for veterans since no one would know about it because the Department of Defense relied on press releases and the Veterans Administration as methods of dissemination. A federal district court apparently agreed, for on November 13, 1973, Judge June L. Green ordered in *American Veterans Committee* vs. *Schlesinger*, Civil Action No. 2311–72, that the Department of Defense provide individual notification to certain veterans entitled to benefit from the policy.

Would you kindly provide us with the following information regarding the issuance of future DD 214s? Will Box 11(c) "Reason and Authority" be eliminated? Will the military departments keep their own record of a serviceman's "reason and authority" for discharge? If this is the case, if a veteran requested that information, would he be given it? Would an employer, if he requested it, be given that information? Would anyone else be given access to those records?

We hope that you will respond to these matters as promptly as possible.

Sincerely yours,

JUNE A. WILLENZ,
Executive Director.

By Mr. BELLMON:

S. 3496. A bill to amend title 38 of the United States Code to provide for cost-of-living increases in educational benefits. Referred to the Committee on Veterans' Affairs.

Mr. BELLMON. Mr. President, today, I am introducing legislation which will guarantee that veterans' educational benefits keep pace with the rising "cost of living."

Due to the rate of inflation, increase in tuition and other educationally related expenses, Congress has been required to continuously review and provide significant readjustments in the years 1967, 1970, and 1972 in the benefit levels for the current GI bill, the Veterans Benefits Act of 1966.

This year, Congress has once again been called upon to reexamine the GI bill. On February 19, by a unanimous vote, the House passed H.R. 12628 which provides a 13.6 percent increase in educational benefits. This means that a veteran with no dependents will receive $250 per month instead of the existing $220. The Senate will soon consider S. 2784 which provides an even greater increase in educational benefits. It is my hope that during consideration of this measure by the Senate Committee on Veterans' Affairs, my proposal to provide an automatic annual "cost of living" increase will be included as a part of this bill. If not, I intend to offer this proposal as an amendment when S. 2784 is considered on the Senate floor.

The need for an annual automatic "cost of living" provision in the GI bill has been well documented. According to figures released by the Department of Veterans' Benefits on January 11, 1974, it can reasonably be concluded that the Vietnam era veteran is not treated nearly as fair in terms of educational benefits as were the veterans of World War II. Let me illustrate. A single World War II veteran received approximately $3,804 per year in educational benefits whereas in terms of yearly buying power, the Vietnam era veteran receives only $1,980 per year—a difference of $1,824 per year.

I ask unanimous consent that a chart showing this disparity be inserted in the RECORD at this point.

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

APPENDIX G

CURRENT BUYING POWER OF THE VIETNAM ERA GI BILL COMPARED TO THE WORLD WAR II GI BILL[1]

	World War II GI bill (1948)				Vietnam era GI bill (1974)				Difference in buying power			
	Monthly SA[2]	Period of entitlement (months)	Tuition	Yearly buying power	Monthly SA[2]	Period of entitlement (months)	Tuition	Yearly buying power	World War II GI bill	Vietnam GI bill	Yearly difference	Monthly difference
No dependents	$143	9	+$2,517	$3,804	$220	9	+0	$1,980	$3,804	$1,980	$1,824	$203
1 dependent	200	9	+2,517	4,317	261	9	+0	2,349	4,317	2,349	1,968	219
2 dependents	229	9	+2,517	4,578	298	9	+0	2,682	4,578	2,682	1,896	211

[1] Per 9-month school year.
[2] Subsistence allowance.

Conclusion: The Vietnam era veteran actually has $1,896 a year, or $210 a month, less than did his World War II veteran counterpart.

Note: Figures taken from Veterans Adminis.ration statistics, Department of Veterans Benefits, *Jan. 11, 1974.*

Mr. BELLMON. The cost of living has increased 200 percent since World War II and the enactment of the first GI bill. Quite simply, benefit levels have not kept pace with this inflationary spiral.

The Congress must guarantee that adequate educational benefits will be provided not only now, but in the future. An automatic escalator clause gives this assurance and will undoubtedly encourage more of our Vietnam era veterans to take advantage of the benefits which are offered in the GI bill.

I ask unanimous consent that the text of this bill be printed in the RECORD at this point.

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

S. 3496

A bill to amend title 38 of the United States Code to provide for cost-of-living increases in educational benefits

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 36 of title 38, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 1796. Cost-of-living increases for educational benefits

"(a) As soon as possible after the beginning of each calendar quarter, the Administrator shall determine the extent by which the price index in the preceding calendar quarter was higher than the price index in the applicable base period (as those terms are defined in subsection (e)). If he determines that the price index had risen by a percentage (of its level in the base period) equal to 3 per centum or more, the amount of each benefit otherwise payable under chapters 31, 34, 35, and this chapter shall be increased by the same percentage (adjusted to the nearest one-tenth of 1 per centum), effective with respect to benefits for months after the quarter in which the determination is made.

"(b) In the case of any individual who first becomes entitled to a benefit in or after the month in which an increase becomes effective under subsection (a), the amount of the benefit payable to or with respect to him on the basis of such entitlement shall be determined by applying such increase (or, if more than one increase has become effective under subsection (a), by applying all such increases successively) to the amount of the benefit which would be payable under chapters 31, 34, 35 and this chapter without regard to this section.

"(c) Any increase under subsection (a) shall apply with respect to all benefits pay-

able under chapters 31, 34, 35 and this chapter during the period in which such increase is effective regardless of the provisions under which such benefits are payable or the manner in which the amounts payable are determined, but shall be applied with respect to the benefit payable to or with respect to any particular individual only after all of the other provisions of chapters 31, 34, 35 and this chapter which relate to eligibility for and the amount of such benefit, and all prior increases made in such benefit under this section, have been applied.

"(d) If the amount of the increase in any benefit under subsection (a) is not a multiple of $0.10 it shall be raised to the next higher multiple of $0.10 in the case of a multiple of $0.05 or adjusted to the nearest multiple of $0.10 in any other case.

"(e) For purposes of this section—

"(1) the term 'price index' means the Consumer Price Index (all items, United States city average) published monthly by the Bureau of Labor Statistics; and the average level of the price index for the three months in any calendar quarter shall be deemed to be the level of the price index in such quarter; and

"(2) the term 'base period' means—

"(A) the calendar quarter commencing January 1, 1974, with respect to the increase under subsection (a), and

"(B) the calendar quarter immediately preceding the quarter in which the determination constituting the basis of the most recent increase under subsection (a) was made, with respect to any increase under subsection (a) after the first such increase.

"(3) the term 'benefit' means any benefit payable under chapters 31, 34, 35, or this chapter.

(b) The table of sections at the beginning of chapter 36 of title 38, United States Code, is amended by adding at the end thereof the following:

"1796. Cost-of-living increases for educational benefits.".

SEC. 2. The amendments made by the first section of this Act shall apply only with respect to increases in benefits under chapters 31, 34, 35, and 36 of title 38, United States Code for months in and after the second calendar quarter beginning after the date of the enactment of this Act on the basis of determinations made (under section 1796 of such title, as added by the first section of this Act) in and after the first calendar quarter beginning after the date of the enactment of this Act.

By Mr. DOMENICI (for himself, Mr. EASTLAND, Mr. BAKER, Mr. COOK, and Mr. BURDICK):

S. 3498. A bill to amend section 5 of the Food Stamp Act of 1964 to broaden the authority of the Secretary of Agriculture with regard to providing emergency food assistance to victims of disasters. Referred to the Committee on Agriculture and Forestry.

Mr. DOMENICI. Mr. President, it has become increasingly evident that, while our present food stamp program administered by the U.S. Department of Agriculture serves its current purpose effectively in normal circumstances, there is a problem with its effectiveness in emergency situations. For this reason I send to the desk and request appropriate reference, a bill to amend section 5 of the Food Stamp Act of 1964 to broaden the authority of the Secretary of Agriculture to provide emergency food assistance to victims of disasters and other emergency situations. I am pleased to be joined in introducing this bill by the distinguished Senators from Mississippi (Mr. EASTLAND), Tennessee (Mr. BAKER), Kentucky (Mr. COOK), and North Dakota (Mr. BURDICK).

Under existing law, an individual must go through a lengthy certification procedure to become eligible to receive food stamps. Often a disaster, such as the floods and tornadoes recently experienced by so many Americans, throws an individual into a state of temporary unemployment and even disability. In those instances that person needs help immediately, and in most cases only temporarily, for the necessities of life—medical care, food, shelter, et cetera.

Immediate, temporary assistance in the form of an emergency issue of food stamps is not readily available under present law because the formal application process may take longer than the temporary need of that particular applicant. Meanwhile, the food stamp program is drawing criticism not only from applicants and local distributors, but also from other agencies and individuals who are working to alleviate as many problems as possible during emergency situations.

The amendments we suggest will provide the Secretary of Agriculture discretionary authority to establish temporary emergency standards of eligibility much more flexible than the criteria contained in the Food Stamp Act. The Secretary will be able to eliminate in emergency situations certain current requirements including work registration, income and resource verifications, unnecessary in these emergency situations which needlessly slow the process.

This is an illustration of a point I have tried to make several times when the subject has been disaster assistance. We simply cannot expect that Government programs which are designed to deliver services during normal conditions will be able to provide the same services in times of disaster or emergency. Neither is it realistic to expect the administrative agencies to "bend" the rules or "twist" programs to meet disaster and emergency requirements. This bill will provide the USDA with the flexibility to streamline emergency issuance of food stamps for the benefit of disaster affected Americans at the time of their urgent need.

Mr. President, I request unanimous consent that this bill be printed at this point in the RECORD for the consideration of all Members of this body and I urge that it be included in committee deliberations on Food Stamp Act amendments soon to be submitted by the administration.

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

S. 3498

A bill to amend section 5 of the Food Stamp Act of 1964 to broaden the authority of the Secretary of Agriculture with regard to providing emergency food assistance to victims of disasters

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) so much of the last sentence of section 5(b) of the Food Stamp Act of 1964 as precedes the colon is amended to read as follows: "The Secretary may also establish temporary emergency standards of eligibility for the duration of any emergency declared by the Secretary, with or without regard (as determined appropriate by the Secretary) to income and other financial resources, for households that are the victims of a disaster which disrupts the distribution of coupons, and for households that are victims of any disaster which disrupted commercial channels of food distribution when he determines that such households are in need of temporary food assistance and that commercial channels of food distribution have again become available to meet the temporary food needs of such households".

(b) Section 5(c) of such Act is amended by adding at the end thereof a new sentence as follows: "The Secretary is authorized to waive the application of this subsection in the case of households located in any area with respect to which the Secretary has established temporary emergency standards of eligibility under the last sentence of subsection (b) of this section, but no such waiver made on behalf of the household in any area may extend beyond the period during which the temporary emergency standards are in effect for such households."

By Mr. TAFT:

S. 3499. A bill to provide for continued monitoring of the economy to provide authority to enforce decontrol commitments, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. TAFT. Mr. President, today I am introducing the Inflation Restraint Act of 1974. This act would not provide authority to impose Government mandated wage and price controls after the Economic Stabilization Act expires on April 30, but it would provide continuing authority for a government agency to act as an anti-inflation watchdog and to work for voluntary efforts to reduce further inflation. It would also include authority for the agency to monitor and enforce the commitments to price restraint and to other anti-inflationary actions which the Cost of Living Council has already obtained from various industries. Thus it is similar to the approach of the Muskie amendment without authority for standby wage and price controls. I am introducing my own bill not just because of the differences between it and other legislative approaches which have been introduced, but also to indicate my dissatisfaction with the Senate's action last week and my belief in the continued need for this type of legislation. From the Senate's action it is impossible even to conclude with certainty whether the similar Muskie proposal was killed by virtue of its own content or parliamentary maneuvering and extraneous amendments. The only vote on the proposal for an economic monitoring agency and authority to enforce "decontrol commitments" was supportive of that proposal.

I indicated last February 11 that I believe that the general phaseout of wage and price controls was overdue. In their final months the controls were hurting as much as helping in most fields.

Nevertheless, the decision to kill any authority whatsoever must be questioned in this time of such crippling inflation. Despite the Senate's action last week, the problems the controls have caused and the high proportion of recent infla-

tion attributed to petroleum—which will remain under price controls—and the food sector—for which price controls are of extremely limited usefulness—I do not see how it can be in our best interests to eliminate even the minimal authority necessary to strengthen voluntary inflation restraint efforts and to give specific legal standing to the Government's own anti-inflation actions of the past several months.

While most of the debate on the similar Muskie proposal focused on the merits of the amendment at all, the authority to enforce "decontrol commitments" is also extremely important. I do not think that many Members of the Congress fully realize the number of voluntary commitments that were obtained from hundreds of firms in various industries by the Cost of Living Council during the decontrol process. In 17 sectors of our economy, the Council obtained voluntary commitments from the leading firms to take serious and constructive measures to alleviate various inflation-related problems existing in their industry. In all but two, fertilizer and zinc, the major firms committed themselves voluntarily to some degree of price and/or profit restraints.

Commitments to increase production and to expand capacity were agreed upon by firms producing fertilizer, cement, zinc, semiconductors, petrochemicals, tires and tubes, canned fruits and vegetables, and coal. Firms in industries such as fertilizer, petrochemicals, paper, and aluminum, made various commitments designed to limit exports or to maintain historic patterns of domestic sales. Improved price reporting to the Bureau of Labor Statistics was agreed upon by firms producing cement, semiconductors, and tires. Firms in the petrochemical sector committed themselves to preparing customer allocation plans, and to submit these plans to the Government.

I believe that for Congress not to provide the Government machinery to monitor and enforce these commitments is to weaken the fight against inflation and to undermine further the Government's credibility. The announcement by the Ford Motor Co. last week of price increases which could conceivably be in compliance with such a commitment only through an escape clause, with mere prior notice and alleged justification to the Government, should serve as an indication of the fragility of these commitments unless specific legislation is passed.

My bill would insure that these agreements with the Government are legally binding as they should be, particularly since they were made voluntarily in exchange for specific Government actions. It does so in a manner which takes into account objections expressed about *previous* proposals. While the MUSKIE amendment provided unlimited authority to reimpose controls on violators of decontrol commitments and thus spurred fears of irresponsibly punitive Government actions, my bill limits use of this remedy "to the extent necessary to apply appropriate corrective action" and requires a statement from the President explaining how he has complied with this requirement. In recognition of industry's arguments that major changes in the economic picture necessitate changes in the terms of various decontrol commitments, the President is given explicit authority to modify any commitment if he determines that modification is in the national interest and publishes the reasons for that determination in the Federal Register. However, although the President could receive advice on such matters from affected industries, the decision to modify a commitment would clearly be the Government's alone.

With these modifications I can see no further objections to the provisions allowing enforcement of decontrol commitments and I may offer them as separate legislation if necessary.

I should also like to emphasize the importance of the provisions to allow one Government agency to focus on inflation-related problems. Basically, those provisions would provide the authority necessary for an agency in the executive branch to monitor the economy as a whole, to recommend changes in the program and activities of the Government and the private sector, to review and work with industry and Government to encourage price restraint, to improve wage and price data bases and to review and make recommendations on economic concentration and anticompetitive practices. As an answer to the objections to the breadth of the information provisions in some previous versions of the monitoring agency bill, my bill provides a narrower but adequate authorization for the Government to obtain necessary information. More fundamentally, some have doubted that such an agency could be of much use in the fight against inflation. While this is the kind of argument which cannot be answered definitely unless the agency is actually tried, I believe there is enough of a probability that the agency could make a positive contribution to warrant the benefit of the doubt for the proposal, particularly in this time of rampant inflation.

The bill I originally drafted included provisions which the Senate passed last year to revamp and revitalize the Productivity Commission. The need to increase productivity, or output per man-hour, is at the very heart of the inflation problem because the rate of gains in the efficiency of our industries affects fundamentally the extent to which higher wages and salaries can be paid our workers without augmenting inflation. Yet, there is no part of the Government specifically charged with acting as a catalyst for increasing productivity and dealing with related problems. The provisions I mention would have filled this void, just as my bill would fill a similar void with respect to anti-inflation efforts which would occur if the Cost of Living Council were liquidated and not replaced.

I did not include these provisions in view of indications that the House would act soon on the Senate-passed bill, S. 1752. I am delighted to hear that the House has acted affirmatively on it today.

The bill I originally drafted, also included authority for the President to defer any wage or price increase for up to 30 days upon a finding that the increase appears to contribute significantly to increased inflation. Such a provision, which would allow further examination and discussion of this type of increase before it actually takes effect, has been recommended highly by Chairman Burns of the Federal Reserve Board. In recognition of the close votes last week and the additional hindrance to passage of my bill which this provision could cause, I have deleted it. However, I do believe it is a proposal which permits concentrated attention and further study by the Congress.

Mr. President, recent price statistics make it obvious that prices will continue to climb sharply for at least the next few months, regardless of the future of this bill or any similar bill. In view of that situation and our decision that the continuation of wage and price controls would be unwise, it is incumbent upon us at least to do better than our action of last week and instead to provide the Government with the minimal authority to restrain inflation directly without controls which is contained in my bill.

I ask unanimous consent that the bill be printed in the RECORD at this point, as well as a recent speech by the Chairman of the Cost of Living Council which outlines some possible anti-inflation actions short of imposing wage or price controls which a Government agency could take.

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

S. 3499

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Inflation Restraint Act of 1974."

FINDINGS AND PURPOSES

SEC. 2. The Congress finds that inflation threatens the economic well-being of the Nation, and that the Federal Government should have a continuing concern with the rate of inflation and the rate of increases in supply, industrial capacity, and productivity, as means of constraining domestic inflation. It is the purpose of this Act to contribute to the moderation of inflation without incurring the drawbacks of mandatory controls by authorizing a body within the executive branch to take appropriate actions to assure that the Government's direct impact on prices and wages is less inflationary, to encourage private parties and local and State governments to adjust their policies and practices to contribute to a less inflationary economy and to monitor and enforce commitments given in connection with decontrol under the Economic Stabilization Act of 1970, as amended.

PRESIDENTIAL AUTHORITY

SEC. 3. (a) To carry out the purpose of this Act, the President shall—

(1) review the programs and activities of Federal departments and agencies and the private sector which may cause increases in prices and make recommendations for changes in such programs and activities, to restrain prices by increasing supply and otherwise;

(2) review industrial capacity, demand, and supply in various sectors of the economy, working with the industrial groups concerned and appropriate governmental agencies to encourage price restraint;

(3) improve wage and price data bases for the various sectors of the economy to im-

prove collective bargaining and encourage price restraint;

(4) conduct public hearings when appropriate to provide for public scrutiny of inflationary problems in various sectors of the economy;

(5) focus attention on the need to increase productivity in both the public and private sectors of the economy;

6) monitor the economy as a whole, including such matters as wages, costs, productivity, prices, sales, profits, imports, and exports; and

(7) conduct a continuing review of the effect of economic concentration and anticompetitive practices on price and wage inflation and recommend legislation and other appropriate action to reduce the impact of such concentration or practices on inflation.

(b) Nothing in this Act authorizes the continuation, imposition, or reimposition of any mandatory economic controls with respect to prices, rents, wages, salaries, corporate dividends, interest rates, or any similar transfers, except as provided in sections 7 (relating to enforcement of decontrol commitments) and 213 (relating to continuation of authority under the Emergency Petroleum Allocation Act of 1973) of this Act.

RECORDS AND REPORTS

SEC. 4. (a) In exercising his authority under section 3, the President may, by order, regulation, or otherwise, require such maintenance of records and such making of reports as may be reasonably necessary to the exercise of such authority, except that he may not require records or reports to include any information which is a trade secret or which is a copy of a report or record to another department or agency and which may not be disclosed by such department or agency under subsection (b).

(b) The President may request economic information from any department or agency of the United States, and that department or agency shall provide such information to him, except—

(1) information the disclosure of which to another Federal agency is expressly prohibited by law; or

(2) trade secrets, commercial, financial, or demographic information which is privileged or confidential and obtained by an agency from a person for statistical or law enforcement purposes, the disclosure of which to another Federal agency would frustrate development of accurate statistics or proper law enforcement.

(c) For purposes of carrying out this Act, the President may request economic information from State and local governments, including agencies and instrumentalities thereof.

DELEGATION

SEC. 5. The President may delegate the performance of any function under this Act to such officers, departments, and agencies of the United States as he deems appropriate.

SUBPENA POWER

SEC. 6. The President or his delegate is authorized to sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant books, papers, and other documents, and to administer oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of refusal to obey a subpena served upon any person under the provisions of this section, the head of the agency authorizing the subpena, or his delegate, may request the Attorney General to seek the aid of the United States district court for any district in which such person is found to compel that person, after notice, to appear and give testimony, or to appear and produce documents before the agency.

ENFORCEMENT OF DECONTROL COMMITMENTS

SEC. 7. (a) Notwithstanding the expiration of the Economic Stabilization Act of 1970, as amended—

(1) any commitment made or given as a condition of, in connection with, in exchange for, or in the course of decontrol or the grant of other relief from or under such Act, prior to May 1, 1974, shall continue in full force and effect, and except that the President may modify any such commitment if he determines that modification would be in the national interest and publishes in the Federal Register the basis for such determination;

(2) the authority and provisions of sections 203 (relating to Presidential control authority), 208 (relating to sanctions), 209 (relating to injunctions and other relief), and 211 (relating to judicial review) of that Act (as in effect on April 30, 1974) may be invoked against, and shall apply to, any person who violates any commitment made or given as a condition of, in connection with, in exchange for, or in the course of decontrol or the grant of other relief to such person from or under such Act, prior to May 1, 1974, or any modification of any such commitment pursuant to the provisions of this subsection.

(b) The authority conferred by section 203 of the Economic Stabilization Act of 1970 shall be exercised with respect to the violation of a decontrol commitment only to the extent necessary to apply appropriate corrective action to the person who committed the violation, and any such exercise of authority shall be accompanied by a statement explaining the reason for such exercise of authority and the President's analysis of why such exercise of authority constitutes appropriate corrective action within the meaning of this subsection.

PERSONNEL

SEC. 8 (a) Any agency or officer of the Government carrying out functions under this Act is authorized to employ such personnel as the President deems necessary to carry out the purposes of this Act.

(b) The President may appoint five officers to be responsible for carrying out functions of this Act, one of whom shall be appointed by and with the advice and consent of the Senate and who shall be compensated at the rate prescribed for level II of the Executive Schedule (5 U.S.C. 5313), one of whom shall be compensated at the rate prescribed for level III of the Executive Schedule (5 U.S.C. 5314), and three of whom shall be compensated at the rate prescribed for level V of the Executive Schedule (5 U.S.C. 5316). Appropriate titles and the order of succession among such officers may be designated by the President.

(c) Any member of a board, commission, or similar entity established by the President pursuant to authority conferred by this Act who serves on less than a full-time basis shall receive compensation from the date of his appointment at the rate equal to the per diem equivalent of the rate prescribed for level IV of the Executive Schedule (5 U.S.C. 5315) when actually engaged in the performance of his duties as such member.

(d) (1) In addition to the number of positions which may be placed in GS–16, GS–17, and GS–18, under section 5108 of title 5, United States Code, not to exceed twenty positions may be placed in GS–16, GS–17, and GS–18, to carry out the functions under this Act.

(2) The authority under this subsection shall be subject to the procedures prescribed under section 5108 of title 5, United States Code, and shall continue only for the duration of the exercise of functions under this Act.

(e) The President may require the detail of employees from any executive agency to carry out the purposes of this Act.

(f) The President is authorized to appoint, without regard to the civil service laws, such advisory committees as he deems appropriate for the purpose of consultation with and advice to the President in the performance of his functions under this Act. Members of advisory committees, other than those regularly employed by the Federal Government, while attending meetings of such committees or while otherwise serving at the request of the President may be paid compensation at rates not exceeding those authorized for individuals under section 5332 of title 5, United States Code, and, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. Committees established under this Act which are composed of members representative of labor and management or labor, management, and the general public to provide advice on methods of improving labor-management relations on the collective-bargaining process or assuring wage and salary settlements consistent with gains in productivity and the goals of stabilizing the economy and facilitating development of the Nation's energy reserves are exempt from the provisions of section 10 of the Federal Advisory Committee Act.

(g) (1) Under such regulations as the President may prescribe, officers and employees of the Government who are appointed, without a break of service of one or more workdays, to any position for carrying out functions under this Act are entitled, upon separation from such position, to reemployment in the position occupied at the time of appointment or in a position of comparable grade and salary.

(2) An officer or employee who, at the time of his appointment under paragraph (1) of this subsection, is covered by section 8336 (c) of title 5, United States Code, shall continue to be covered thereunder while carrying out functions under this Act.

EXPERTS AND CONSULTANTS

SEC. 9. Experts and consultants may be employed, as authorized by section 3109 of title 5, United States Code, for the performance of functions under this Act, and individuals so employed may be compensated at rates not to exceed the per diem equivalent of the rate for grade 18 of the General Schedule established by section 5332 of title 5, United States Code. Such contracts may be renewed from time to time without limitation. Service of an individual as an expert or consultant under this section shall not be considered as employment or the holding of an office or position bringing such individual within the provisions of section 3323 (a) of title 5, United States Code, section 872 of the Foreign Service Act of 1946, or any other law limiting the reemployment of retired officers or employees.

REPORTS

SEC. 10. (a) In transmitting the Economic Report required under section 3(a) of the Employment Act of 1946 (15 U.S.C. 1022), the President shall include a section describing the actions taken under this Act during the preceding year and giving his assessment of the progress attained in achieving the purposes of this Act. The President shall also transmit quarterly reports to the Congress not later than thirty days after the close of each calendar quarter describing the actions taken under this Act during the preceding quarter and giving his assessment of the progress attained in achieving the purposes of this Act.

(b) In carrying out his authority under this Act, the President shall study and eval-

uate the relationship between profit records, the stabilization of the economy, and the creation of new jobs. The results of such study shall be incorporated in the reports referred to in subsection (a) of this section.

(c) The President shall review and appraise the programs and activities of the departments and agencies of the United States in light of the policies set forth in section 2 of this Act for the purpose of determining the extent to which those programs and activities contribute to the achievement of those policies and shall report his conclusions to the Congress in the reports required by subsection (a) of this section.

FUNDING

SEC. 11. (a) There are authorized to be appropriated to the President, to remain available until expended, such sums as may be necessary to carry out the provisions of this Act.

(b) The President may accept and use in furtherance of the purposes of this Act money, funds, property, and services of any kind made available for such purposes by gift, devise, bequest, grant, or otherwise.

EXPIRATION

SEC. 12. The authority under this Act (other than section 15) expires at midnight, April 30, 1975, but such expiration shall not affect any action or pending proceeding, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to May 1, 1975.

EFFECT ON PETROLEUM ALLOCATION ACT OF 1973

SEC. 13. For purposes of administering and enforcing the Emergency Petroleum Allocation Act of 1973, nothing in this Act alters the Economic Stabilization Act of 1970 as incorporated by reference in the Emergency Petroleum Allocation Act.

EFFECTIVE DATE

SEC. 14. This Act shall become effective upon enactment.

TOWARD A LESS INFLATIONARY ECONOMY

(By John T. Dunlop, Director, Cost of Living Council)

Although the economy is performing surprisingly well in real terms, everyone knows inflation is a baffling persistent problem. It appears to be intractable here and abroad. Our CPI was up 10.2 percent in the period March 1973 to March 1974. The GNP deflator was up at a 10.8 percent rate in the first quarter of 1974. Inflation in the CPI in Japan was 26.3 percent in the past year and 13.2 percent in Great Britain.

The tendency of all forecasters has been seriously to underestimate inflation while showing a better record of estimates for output and employment. For instance, early in the year the forecasts for the GNP deflator in the first quarter were in the 7 and 8 percent range; the first quarter was in fact at the annual rate of 10.8 percent. While forecasts for the rest of 1974 typically show a marked reduction in this rate of inflation, it is my view that these estimates, derived from a combination of econometric models and hunch in varying proportions, still have a tendency to underestimate the extent of inflation in the second half of the year. A number of forecasters have again revised these estimates upwards recently.

I wish to propose for our discussion the nagging question of why these inflation rates, and at the same time pose the inescapable enigma of the private and public policies that are appropriate to constrain such inflation over the long term.

As an example of one view of inflation, the April 1974 *Monthly Economic Letter* of the First National City Bank argued against any Federal concern with monitoring private actions or government influence in particular markets as a means to constrain inflation. It held that "Inflation has little to do with the structure of private markets, which change only slowly. Rather, [inflation] depends on the relation between two growing aggregates, the level of monetary demand and the level of physical supply. When money demand grows faster than real output, the price level ultimately rises."

These views are a mirrored image of the perspective of Milton Friedman: ". . . inflation is made in Washington, in that stately and impressive Grecian temple on Constitution Avenue that houses the Board of Governors of the Federal Reserve System. Prices have been rising at faster and faster rates because William McChesney Martin and the other distinguished men who govern the system have decreed that they shall." (*Newsweek*, January 20, 1969, p. 78.) The names and the inflation rates are different today, but the theory is unchanged.

Let it be clear that I have no doubts that monetary policy is a major tool which can restrain or stimulate the economy; indeed, monetary policy and fiscal policy are generally considered to be the major tools. But I reject the absolutism and exclusivity of this and similar analyses of inflation and its antidote, particularly for the long term.

The experience of recent years, in my view, supports the realistic judgment that monetary and fiscal policies are not sufficient tools by themselves to restrain effectively the types of inflation we have had, or that the authorities in charge of these policies—in the executive or legislative branch of government—are constrained in the extent they can use them. For the present purpose it matters little whether monetary and fiscal tools are inherently inadequate to deal with contemporary inflations or that the users are inhibited by practical considerations in their application of these classical measures. The simple fact is that monetary and fiscal tools are not enough, and we must get to the task of developing other measures even though their contribution might be less immediate or powerful.

Another school of thought stresses that inflation is derived, or at least made more virulent, by monopoly power of certain business enterprises and labor organizations. The appropriate relief to this alleged cause of inflation is seen to be more vigorous prosecution of the antitrust laws. Organized consumer groups in the past year have often stressed this view to me, urging a greater role for the Federal Trade Commission and the Justice Department. I readily agree that a more competitive economy in some sectors is desirable. But such policies involve endless litigation and uncertainty and, accordingly, are not likely to make much of an impact on inflation. Further, the contributions of collective bargaining are not likely to be set aside by the American community in favor of extension of the antitrust laws to industrial relations. In the present setting, it has been the competitive sectors of the economy that have shown the greatest inflation.

While not neglecting the contribution of other policy tools, I would like to stress the need for a whole series of structural changes in the economy and in their relations to government in order to constrain inflation over the long pull. These structural changes take time to develop; some are major institutional changes, while others are more modest adjustments.

There is need for a central focus—a continuing Cost of Living Council, or similar type of organization—to work within the Federal Government and in cooperation with private sector institutions to explore, to stimulate and to induce necessary changes. These activities are not to be confused with jawboning or preachments. They involve, rather, seeking to get government and private groups to change their internal decision-making processes, their habits of mind and thought patterns, and their responses to their outside worlds. Such changes cannot be achieved by fiat or regulation, but must emerge from persuasion and hard experience as a series of new consensuses, both within the society and within separate economic groups and institutions.

I should like to set forth a number of examples of the type of structural changes that need to be made in government, in the government's relationships with various groups, in labor-management relations, and in business, all with the objective of creating a less inflationary economy.

GOVERNMENT

1. The single most important structural change needed in government to restrain inflation is a reorganization in the Congress to formulate coherent tax and expenditure policies and thereby to work more cooperatively with any administration toward a viable fiscal policy to constrain inflation. Many public spirited Members of the Congress of both parties have been working on this matter for many years and some progress has been made, but we have a long way to go. We simply cannot constrain inflation in this country until the Congress gets its fiscal house in order.

2. There is a need for change in outdated, outmoded Federal policies which contribute to inflation in specific industries. We have a golden opportunity now to rid ourselves for the long term of the restrictive agricultural policies of the past 30 years that were engendered particularly by the depression of the 1930's. The Cost of Living Council in 1972 and 1973, somewhat belatedly perhaps, took the leadership in pushing for the elimination of many of these restrictive practices—planting restrictions, import restrictions, some provisions of marketing orders, and the like. The extent to which agriculture has been largely transformed to expansionist policies, in my view, is not fully appreciated.

Yet, it is extremely important to maintain these changes in order to constrain inflation for the future, to rebuild stockpiles to provide a degree of cushion from worldwide price and crop fluctuations in the future, and to provide further counters for our foreign policy. Regrettably, there are already signs that the restrictive practices of the past are returning. Agriculture is but one illustration of areas where government policies to encourage supply, or to stop inhibiting supply, are essential to restrain price increases.

3. The involvement of government in various sectors of our economy also dictates a reevaluation of existing private policies. In the health care area the government has come to be the largest purveyor of funds and now is seriously considering new injections of dollars and demand in the form of national health insurance. Its interventions, including Medicaid and Medicare, essentially have provided for cost passthrough and reimbursement, with the inevitable consequences of unnecessary services, inefficiencies and, consequently, more inflation. It is essential that the government's involvement in the health care field be modified to restrain inflation by requiring that prospective budgeting procedures replace automatic cost reimbursement. That was the purpose and design of our Phase IV health regulations.

GOVERNMENT RELATIONS TO SPECIAL PROBLEM AREAS

4. The relationship of government to particular problem areas in our society warrants increased attention. For example, despite some commendable innovations in the last half dozen years, the fate of the housing industry and its fluctuations from year to year depend very largely upon general monetary policy and interest rates. There are enormous costs of instability and inefficiencies in home building which grow out

of the frequent and unpredictable changes in monetary policies. A significant area for institutional and structural change is to develop ways of providing for less violent fluctuations in housing through variable mortgage and deposit interest rates, as in some other countries, or other devices to provide a flow of funds more stable for housing with consequent greater efficiency and lower costs of housing production.

5. Another of the major problems of the society where the government has a role is the interface between work and school, particularly in the age group 16–21. Reported unemployment rates of 17.0 percent for 16 and 17 year olds and 11.4 percent for 18 and 19 year olds, compared to 4.9 percent for all age groups in 1973, may alternatively be viewed as a failure of the labor market, as it usually is, or as a failure in the educational system. No amount of general economic policy is likely to make much of a contribution to this problem and attempts to do so will likely contribute to inflation. Rather, there is a definite need for considerable restructuring of the local arrangements made to bring young people of this age group into contact with the labor market, and for labor market feedback, in turn, into the educational system.

Incidentally, to include these youth in our national unemployment figures, as we conventionally now compute them, whether or not the person has previously held a job, is also to provide a most unsatisfactory and inflationary indicator for general economic problems.

6. One of the areas of policy most likely to affect long-term inflation prospects has to do with the impact of the rest of the world upon the United States through variations in imports, exports and exchange rates. I am convinced that the major lesson of the inflation of 1973 is the reality that we live in a vastly more interdependent world in primary commodities and manufactured goods than ever before. One needs to be very careful not to promote autarky, by restricting unduly either imports or exports. But, at the same time, the United States can no longer afford to be the market of last resort, as in the case of ferrous scrap—the only country to export ferrous scrap, with the consequence that our steel prices must bear the full impact of the residual decisions of all other countries.

Neither is it realistic for a domestic energy program to be entirely dependent on price policies of other oil producing countries where those policies have been used for political purposes. A world in which primary producing countries decide to raise, in cartel fashion, the prices of many other primary products is a very different one than we have previously experienced. Thus, the time has come to equip ourselves with trade policies to deal with these new conditions.

LABOR-MANAGEMENT RELATIONS

7. Today, an opportunity exists as never before for the development of imaginative machinery for the settlement of disputes over the provisions of new collective bargaining agreements in a number of industries. Basic steel and railroads have reflected this atmosphere. Yet, a good deal of further constructive work can be done in other sectors, such as paper, maritime, retail food, construction, newspapers, and the like. The fragmentation of collective bargaining in many industries which conduct local or regional negotiations, with the associated whipsawing and escalation of settlements, is one of the principal ways in which collective bargaining creates inflationary pressures. Dispute settling machineries which deal with these questions, and at the same time direct the attention of the parties to their fundamental long-run problems of technological change, productivity and manpower, can be enormously constructive.

8. Within the labor area, one of the most important structural problems for the future relates to the continued growth in fringe benefits relative to the pay package. There is no doubt that following 1940 it was appropriate to develop a variety of private pension, health and welfare, and other fringe benefit plans. But the question needs to be raised whether these tendencies have not now been excessive as one considers the costs of private pension plans and as one recognizes that the tax system tends to encourage parties to put money into fringes rather than into wages where it might very well better serve the interests of workers and members. Simply stated, when funds put into the pay envelope are taxed at 30 percent or more, while monies placed into certain fringes are tax free, the tax system is biasing the bargaining processes in an inflationary manner.

9. Various structural changes are required in collective bargaining that vary from industry to industry. One illustration may be sufficient. In the construction industry it is imperative that the owners set up a more viable working relationship with the contractors in order to strengthen the management side in collective bargaining. This has never been easy to do, since the contractors feel that the owners will interfere unduly in the bargaining process and seek to eliminate "contracting out." Yet, in the absence of such working relationships, owners often tip the scales in favor of the union side by encouraging particular contractors to work through a strike or to work overtime or by setting completion schedules and volumes of construction in an area which can have only inflationary consequences. In the same way, the jurisdictions of local unions or the group involved at the bargaining table may be inappropriate to represent the best long-run interests of the members in the area. International unions have a more general and long-term perspective than local negotiators and, thereby, should have larger role.

BUSINESS PRACTICES

10. One of the most significant areas of business decision-making have to do with the timing of investment decisions. The present inflationary period has been made very much worse by company decisions not to expand capacity substantially in such industries as steel, fertilizer, paper, cement, oil refining, and the like. The fraction of Gross National Product expended on net new plant and equipment investment has been lower for many years in the United States than among our industrialized competitors. The present purpose is to second guess those decisions. It is essential, rather, to explore ways in various industries to achieve a smoother flow of investment outlays over the future. This is a most difficult matter in the framework of the American legal system. Nonetheless, a more public discussion of these issues, a government-business discussion of the capacity needs of various industries, and an exploration of the means of financing such expansion seem to me necessary in the American economy of the future. It may very well be that in several industries, such as basic steel, the prices that would be required to attract new capital to the industry may be so high, and the inflationary consequences of such prices may be so high, and the inflationary consequences of such prices may be so great for the economy as a whole, that other means of financing modernization of capacity, such as various forms of tax and accelerated amortization and depreciation arrangements, may be preferred to constrain inflation. These issues require urgent and quantitative review.

11. There are occasions, also, when government and the business community can work cooperatively to solve problems which contribute to inflation. In the economy at most times, and particularly when operations are near capacity, there are various bottlenecks, areas of shortages and problems of efficiency and distribution within and among various sectors. At the present time special problems relating to railroad flat car availability, the production of steel for drag lines, the distribution of fertilizer, the production and distribution of roof bolts for underground coal mines, and the supply of ferrous scrap are illustrative. There is a role for the government in assisting to isolate and eliminate such inflationary bottlenecks by providing data, by bringing together representatives of sectors to make a contribution to the resolution of the problem, and by other nonmandatory means.

Both the Cost of Living Council and the National Commission on Productivity have been active in solving these problems, but both may be eliminated by Congressional inaction. The continued identification of a changing agenda of such problems and work with the sectors on these problems can make a contribution to expansion of output and supply without the imposition of mandatory controls and can reduce pressures which lead to Congressional demands for the reimposition of mandatory controls.

12. In the achievement of public objectives, the energy area is bound to be one that will remain for many years at the center of public concerns. In a whole host of ways it should be possible to encourage the generation of capacity and distribution in the energy field so as to minimize the impact upon price and inflation. In this field as in all stabilization matters, there is involved the delicate balancing of prices high enough to generate adequate supply but not so high that they represent an undue burden to consumers and an unnecessary impetus to inflation.

The Administration has proposed for the post controls period the establishment of a small Cabinet-level agency to work on some of these changes without the authority to impose mandatory wage and price controls in order to develop a less inflationary economy. These illustrations can be multiplied many times. Tomorrow and next year there will be new and different opportunities.

These activities are not to replace fiscal and monetary policy, nor are they to provide an excuse for less diligent macroeconomic policies to restrain inflation. These monitoring activities, designed to promote inflation-restraining structural changes, are to be supplementary and supportive. In some circumstances, however, they may be decisive. Dr. Arthur Okun has well made this point, although one need not accept his precise numbers: "Let me replay fiscal and monetary policy with perfect hindsight over the last two years and I don't think I could save you more than a couple of points on the rate of inflation. Let me replay agricultural policy and energy policy, however, and I'll give you five points." (*New York Times*, April 28, 1974, F. p. 24.)

One of the difficulties with the structural change policies here proposed lies in the failure of the discipline of economics itself. Since the 1930's the preoccupation of the core of economics has been with macroeconomic issues and models of the total economy. This area has attracted the best of the younger generation and is the center of attention in the journals and in scholarly writings. Even this body of contemporary theory is not very adequate in analyzing inflation. Abba Lerner stresses this point in the current Economic Literature in discussing Keynesian economics: "A new ball game has been established in which only direct influence on the wage unit by an incomes policy, as a kind of splint on the fractured price mechanism, can restore a free economy working at a satisfactory level of employment."

But this attention to macroeconomics has

not helped the making of economic policy very much, in my view, or assisted in the concerns over individual sectors which now require attention. The academic and career field of industrial organization which treats market structures and pricing decisions, or the related fields of labor market analysis, have languished. The result is that, despite a greatly enlarged economics profession, there do not exist many first-rate specialists in microeconomic analysis equal to the challenge before us. There are only a few specialists in the academic world, in business or in government with working knowledge of the institutional structures and the operation of various industries and markets. This intellectual limitation has been a serious impediment in the generation of ideas to deal with sectoral and structural problems that are central to any operating concern with contemporary inflation.

The deficiency is even more serious since economists are not well trained, or adjusted, to pay attention to processes by which institutions change or are changed in this society. They know far too little about the ways in which managements, labor organization, other producer groups and government agencies in fact operate and respond to various economic and political pressures or opportunities. They specialize in predicting results on the basis of varying inputs with the institutions and market structures unchanged. But a major area for anti-inflation policy concerns the understanding and inducing of such changes.

A new breed of analysts and public policy makers is required, with more emphasis on understanding private decision-making, more emphasis upon detailed data, more concentration on problem sectors, and more resort to persuasion and cooperation. The government is deeply involved in private decision making, like it or not, and the government has many counters to play, apart from any mandatory wage and price controls, and our interest groups are ordinarily sufficiently willing to participate to warrant a major effort to develop less inflationary policies for all.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 254

At the request of Mr. SCHWEIKER, the Senator from New Mexico (Mr. MONTOYA) was added as a cosponsor of S. 254, a bill to prohibit assault on State and local law enforcement officers, firemen, or judicial officers, and for other purposes.

At the request of Mr. MONTOYA, his name was added as a cosponsor of Senate bill 254, supra.

S. 2665

At the request of Mr. JAVITS, the Senator from California (Mr. TUNNEY), and the Senator from Ohio (Mr. TAFT) were added as cosponsors of S. 2665, to authorize the fourth replenishment of the International Development Association.

S. 2932

At the request of Mr. MONTOYA, the Senator from Oregon (Mr. HATFIELD) was added as a cosponsor of S. 2932, to amend title 38 of the United States Code to provide that veterans' pension and compensation will not be reduced as a result of certain increases in monthly social security benefits.

S. 3097

At the request of Mr. TAFT, the Senator from Iowa (Mr. HUGHES) was added as a cospsonsor of S. 3097, to amend the Rail Passenger Service Act of 1970 in order to provide for a demonstration project providing certain rail transportation for highway recreational vehicles.

S. 3182

At the request of Mr. MCCLURE, the Senator from Utah (Mr. BENNETT), the Senator from Wyoming (Mr. HANSEN), and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. 3182, to prohibit the banning of lead shot for hunting.

S. 3259

At the request of Mr. TAFT, the Senator from Minnesota (Mr. HUMPHREY) was added as a cosponsor of S. 3259, to amend the Rail Passenger Service Act of 1970 in order to authorize certain use of rail passenger equipment by the National Railroad Passenger Corporation.

S. 3286

At the request of Mr. KENNEDY, the Senator from Maine (Mr. HATHAWAY) was added as a cosponsor of S. 3286, the Comprehensive National Health Insurance Act of 1974.

S. 3305

At the request of Mr. CLARK, the Senator from Maryland (Mr. BEALL) was added as a cosponsor of S. 3305, a bill to amend the Public Health Service Act to provide assistance for programs for the diagnosis, prevention, and treatment of, and research in, Huntington's disease.

S. 3311

Mr. HATHAWAY. Mr. President I ask unanimous consent to be added as a cosponsor to S. 3311, a bill to provide for the use of simplified procedures in the procurement of property and services by the Government where the amount involved does not exceed $10,000. This bill, which was introduced on April 4, 1974, by the distinguished chairman (Mr. CHILES) and other members of the ad hoc Subcommittee on Federal Procurement of the Government Operations Committee, is a most important and vital amendment to our Government procurement laws.

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

Mr. HATHAWAY. Mr. President, as Chairman of the Government Procurement Subcommittee of the Senate Small Business Committee, I have tried to look at this proposed piece of legislation from the point of its effect on the small business contractor. It is my understanding that it contains considerable potential value for the small business community, principally in the fact that it reduces the paperwork burden in a considerable portion of Government contracting. In 1972, the Department of Defense issued nearly 800,000 formally advertised contracts under $10,000. While only 10 percent of all DOD military procurement, it amounts to 98 percent of the contract transactions.

In other words, most of the contracts awarded are small ones. And it is the smaller contracts, generally, which go to the small business contractors.

Government contracts, competed under highly technical circumstances, are typically known for their thickness and complexity. Conversely, small purchases, which do not have to be formally advertised, and are currently defined as $2,500 or less, are designed to simplify the procedures and reduce the administrative costs. This is fine for the Government, but it also is advantageous to the small businessman. In a recent poll of over 130 small business contractors by our Government Procurement Subcommittee, the paperwork burden was cited as one of the chief and continuing problems in this field. They must not only perform the basic work required by contract, but also comply with numerous other requirements.

More than one contractor has commented on the battery of experts needed in order to fully comprehend and abide by the contractual requirement. For instance, one businessman wrote:

> It seems you have to have a legal staff as big as your accounting staff and both are larger than the production staff if an organization (small business) is going to do business with Uncle Sam. From where I sit at present, doing business wtih the government would be more hassle than it's worth—most of the time.

Last year three different small business organizations—the Smaller Business Association of New England, Independent Business Association of Wisconsin, and the Smaller Manufacturers Council, representing a sizable number of small business contractors—all called for an increasing of the small purchase limit from $2,500 to $10,000. It was their position that this requested simplification of the rules would open up much small Government business to the small business firm. They also took the position that—

> The $10,000 limit be periodically reviewed and raised, in line with the GNP deflator, consumer price index, or some such commonly accepted measure of the general change in price levels.

These voices from the small business community are an important expression of position.

Not to be overlooked is the fact that the Congressional Commission on Government Procurement last year similarly recommended this change. With the distinguished former Senator from Florida (Mr. CHILES) as one of the Commissioners, the Commission's expertise in making this recommendation is strong and valuable guidance to the Senate.

Therefore, I would urge my colleagues to support S. 3311, which is expected to reach the floor of the Senate soon.

S. 3316

At the request of Mr. MOSS, the Senator from Arizona (Mr. FANNIN) was added as a cosponsor of S. 3316, to establish National Historic Trails as a new category of trails within the National Trails System, and for other purposes.

S. 3334

At the request of Mr. MONDALE, the Senator from Iowa (Mr. HUGHES) was added as a cosponsor of S. 3334, a bill to amend the Interstate Commerce Act in order to improve service in the transportation of household goods by motor common carriers.

S. 3339

At the request of Mr. HUMPHREY, the Senator from South Dakota (Mr. ABOUREZK) was added as cosponsor 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. 3395

At the request of Mr. BENTSEN, the Senator from North Carolina (Mr. ERVIN) was added as a cosponsor of S. 3395, the Justice Department Reform Act.

S. 3438

At the request of Mr. MONDALE, the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 3438, to amend the Regional Rail Reorganization Act of 1973 in order to expand the planning and rail service continuation subsidy authority under such act, and for other purposes.

SENATE JOINT RESOLUTION 209

At the request of Mr. MONTOYA, the Senator from Illinois (Mr. STEVENSON) was added as a cosponsor of Senate Joint Resolution 209, designating May 12 through May 18, 1974, as "National Migrant Education Week."

ADDITIONAL COSPONSORS OF CONCURRENT RESOLUTIONS

SENATE CONCURRENT RESOLUTION 76

At the request of Mr. KENNEDY, the Senator from Iowa (Mr. HUGHES) and the Senator from Maine (Mr. HATHAWAY) were added as cosponsors of Senate Concurrent Resolution 76, relating to arms control in the Indian Ocean.

SENATE CONCURRENT RESOLUTION 79

At the request of Mr. GRIFFIN (for Mr. GOLDWATER), the Senator from Nebraska (Mr. HRUSKA) was added as a cosponsor of Senate Concurrent Resolution 79, a concurrent resolution expressing the sense of the Congress with respect to the celebration of the 100th anniversary of the birth of Herbert Hoover.

EDUCATION AMENDMENTS OF 1974—AMENDMENTS

AMENDMENT NO. 1310

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

Mr. HELMS submitted an amendment, intended to be proposed by him, to the bill (S. 1539) to amend and extend certain acts, relating to elementary and secondary education programs, and for other purposes.

AMENDMENT NO. 1312

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

Mr. BENTSEN. Mr. President, I am today submitting an amendment intended to be proposed by me to the Education Amendments of 1974, which would establish a program to provide incentive grants to States which adopt statewide plans to equalize educational opportunity by increasing aid to poorer school districts.

The problems of school finance have occupied educators and the courts for several years now, and they culminated a Supreme Court opinion that affected my own State of Texas. In San Antonio School District against Rodriquez, the Supreme Court, on a narrow 5-4 vote, ruled that inequalities in educational support among school districts in San Antonio did not constitute a violation of the equal protection clause in the Constitution.

However, Mr. Justice Stewart, in concurring, noted that our present methods of financing public education within the States are "chaotic and unjust." The Rodriquez decision by no means stilled the debate on school finance, and some State courts have ruled that the tax system with their States is a violation of either State or Federal constitutional principles.

Despite the Rodriquez decision several States have undertaken plans to overhaul their plans for providing aid to schools in order to bring more fairness in the distribution of State funds. These States include California, Colorado, Florida, Illinois, Kansas, Maine, Michigan, Minnesota, Montana, North Dakota, Utah, and Wisconsin. Some States have moved in recognition that there is an inherent unfairness to poor school districts when the variations in taxing abilities of individual school districts within a State have ranged as high as 84 to 1 in Texas, 52 to 1 in Louisiana, and 30 to 1 in Michigan.

This year's Elementary and Secondary Education Act takes note of the public policy decision of many States to move toward an equalization of school district expenditures. Section 534 of the bill provides up to $1 million per State in planning funds to assist States in developing a plan which works in the direction of greater equity in school financing. My amendment, in a new section following this one, is a logical next step in that it provides incentives for States which establish and maintain plans to equalize educational opportunity through State plans to finance education more equitably.

It should be clear, Mr. President, that my amendment does not mandate equalization plans. It is not punitive. It does not compel States to participate. However, it offers incentives to and rewards those States which move to adopt Statewide plans for school financing, which adopt general criteria assuring that State wealth, not local school district wealth, will determine educational quality; that children with greater educational needs, such as the handicapped, receive funds commensurate with their needs; that take into account the higher costs of educating children in areas with higher living costs and other factors contributing to increased educational expenditures.

The amendment purposefully does not require a mathematical equality of spending for education among school districts. That would be counterproductive, since many State equalization plans do not provide for such a procedure. In fact, some plans use a so-called "foundation" approach, in which a State merely guarantees a certain level of per pupil expenditure among school districts, but leaves the districts free above that level to provide for themselves.

The aim of this amendment, then, is not to compel equal spending, but to move the States in a direction in which they adopt Statewide policies to insure that make substantial progress toward a more equitable distribution of funds. And it is not the intention of the amendment to penalize wealthier school districts by "leveling them down" to the level of the poor districts; the purpose is to provide incentives for the States to guarantee that more State funds are spent for education so that the poor districts may be "leveled up" to the spending levels of their wealthier neighbors.

It would have been possible to draw the amendment with very precise language detailing the need for mathematical equality in spending and compelling the States to comply, but even the committee recognized the difficulty of such a task. Not only would such an amendment run counter to the Rodriquez decision, it would nullify the efforts of several States, which, by a variety of methods, have sought to upgrade their financial aid plans to provide greater equity in funding.

No single plan for equalization need be the only model a State can follow. In a field as complicated as this one, a variety of efforts should be welcomed.

The amendment provides no funds until fiscal 1976, to give the States more time to develop their plans. In fiscal 1976, $50 million would be authorized, in fiscal 1977, $75 million; in fiscal 1978, $100 million. No State could receive more than 10 percent of the funds in a given fiscal year.

I believe this amendment can provide a change in policy direction and a recognition by the Federal Government that there are glaring inequities in school finance that must be corrected

At this point, I would to print a copy of the amendment in the RECORD.

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

AMENDMENT NO. 1312

On page 358, between lines 22 and 23, insert the following new section:

EQUALIZATION INCENTIVE GRANTS TO STATES

SEC. 535. (a) The Congress finds that the Federal Government has an obligation to provide incentives for each State to assist them in equalizing the resources available within that State so that an opportunity to obtain an education appropriate to individual need will be available to all children regardless of their place of residence within the State. It is therefore, the purpose of this section to provide financial assistance in the form of incentives to the States to encourage them to equalize educational opportunity.

(b) The Commissioner is authorized to make grants to States in accordance with the provisions of this section. Incentive grants received under this section may be used to improve the quality of elementary and secondary education among the local educational agencies within each State, in such areas as the State deems vital.

(c) (1) A State is eligible to receive a grant under this section only if the State educational agency provides assurance that—

(A) the quality of education provided to a child within that State is not the result of the wealth of the school district of the local educational agency in which the child attends school, but reflects the wealth of the State as a whole;

(B) amounts commensurate with their needs are expended on children with greater educational needs, including, but not limited to, educationally disadvantaged, gifted and talented, handicapped, and vocational education students; and

(C) amounts commensurate with the education costs are expended in local educational agencies within the State with greater costs, including costs attributable to sparsity of population, high density of population, and high living costs.

(2) The Commissioner is authorized to establish general guidelines for defining the principles set forth in clauses (A), (B) and (C) of Section 534(a)(1) and in this subsection. No guidelines established under this paragraph shall be based upon a formula requiring a mathematical equality of educational expenditures among school districts.

(d) Any State desiring to receive a grant under this section shall submit an application to the Commissioner at such time, in such manner, and accompanied by such information as the Commissioner may reasonably require. Each such application shall—

(1)(A) describe the State equalization program that meets the requirements of subsection (c),

(B) describe, in the case of a state equalization program already in effect, a description of that program which meets the requirements of subsection (c);

(2) provide assurances that the State will make substantial progress to carry out the state equalization program;

(3) Provide for making periodic reports to the Commissioner evaluating the effectiveness of the state equalization program assisted under this section and such other reports as the Commissioner may reasonably require to perform his functions under this section.

(e) The Commissioner shall approve an application which

(1) Meets the requirements of subsection (d), and

(2) Contains provisions that demonstrate that the State does not equalize by removing existing funds from wealthy educational agencies within that State in order to carry out its State equalization program.

The Commissioner shall not finally disapprove an application of a State except after reasonable notice and opportunity for a hearing to a state.

(f) Whenever the Commissioner, after reasonable notice and opportunity for a hearing to any State, finds that there is a failure to meet the requirements of this section, the Commissioner shall notify the state that further payments will not be made to the State until he is satisfied that the requirements have been met.

(g) Unless inconsistent with the purposes of this section, the General Education Provisions Act shall apply to the equalization incentive grant program authorized by this section.

(h)(1) There are authorized to be appropriated to carry out the provisions of this section $50,000,000 for the fiscal year ending June 30, 1976, $75,000,000 for the fiscal year ending June 30, 1977, and $100,000,000 for the fiscal year ending June 30, 1978.

(2) No State may receive more than 10% of the funds available for making grants under this section for any fiscal year. Funds appropriated to carry out the provisions of this section shall remain available for the succeeding fiscal year after the year in which they were appropriated.

On page 358, line 24, strike out "Sec. 535." and insert in lieu thereof "Sec. 536."

On page 123, in the Table of Contents, redesignate item "Sec. 535." as "Sec. 536." and insert immediately after item "Sec. 534." the following: "Sec. 535. Equalization incentive grants to States.".

AMENDMENT NO. 1325

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

BUCKLEY-CURTIS-M'CLURE REVENUE SHARING SUBSTITUTE

Mr. BUCKLEY. Mr. President, earlier this year, the Subcommittee on Intergovernmental Relations published the results of a survey on the state of citizen regard for and involvement in government. The report, entitled "Confidence and Concern: Citizens View American Government," contained many informative facts and statistics, among which was the following:

The public underscores its belief in shared governmental responsibilities with an overwhelming endorsement of two policy propositions:

"(1) State and local governments should be strengthened; and

(2) The Federal government should have power taken away from it."

When asked which level of government can best improve public schools, those polled responded as follows: 50 percent thought that State and local government could best improve public education while only 14 percent thought Federal Government could do that important job.

I think it is clear that the majority of the American people want control of their schools in State and local hands as much as possible. Yet the history of the recent past discloses that the wishes of American citizens in this area have been all too often ignored. Federal aid to education has meant, in effect, increasing Federal control of education.

Perhaps the problem was best summed up by that eloquent and knowledgeable expert of Federal aid to education, EDITH GREEN. In an article in the New York Times, January 16, 1974, Congresswoman GREEN wrote:

Each new program spawns at least one new administrative unit within the Government. This involves new office space, new staff of many ranks, new organization charts, new regulations. Administrative growth is a galloping cancer. Many listed as new state or city employees are there solely because of Federal funds or Federal requirements . . .

The enormous Federal influence has not yet really entrenched itself, either structurally or philosophically, in the American experience. It is by no means too late to cut discretionary funds to a justifiable and manageable amount, and to do away with the myriad categorical programs. To the extent that financial assistance is required for education programs, such assistance can be supplied through outright block grants with minimum restrictions on how or for what they are spent, once a basic overall need has been established. Decentralization and general aid are key concepts in the rehabilitation of our educational system; they and they alone permit each locality to determine its own priorities, plans and objectives—to focus on its own particular educational problems.

I have quoted Congresswoman GREEN not only because she is a nationally-recognized expert on education, but also because she has stated:

As a long-time supporter of Federal financial aid for education, I have come to realize with much pain that many billions of Federal tax dollars have not brought the significant improvement we anticipated.

Mr. President, we have here, it seems to me, one of those rare occasions in which the opinion of the public and the opinion of the experts are in total agreement. The high motives and obvious compassion for the needy that have been the hallmarks of our Federal education programs are often thwarted by the clumsy and often impenetrable set of rules and regulations that accompany Federal aid. The States and localities need Federal aid; they most certainly do not need the bureaucratic redtape and regulatory shackles that by now are an integral part of the educational Federal aid to States.

With this in mind, I am therefore today introducing on my own behalf and on behalf of the Senators from Nebraska (Mr. CURTIS) and Idaho (Mr. MCCLURE) an amendment to S. 1539 by way of substitution which proposes, major changes in the manner in which the Federal Government would distribute Federal tax dollars for elementary and secondary education. It represents, in effect, an updating of the Education Revenue Sharing Act that was introduced on April 29, 1971, by the late Winston Prouty. I want to quote from Senator Prouty's remarks when he introduced that bill for the basic principles he cites apply equally to my own amendment to S. 1539. At that time, Senator Prouty said:

The well-intentioned efforts of Congress in recent years have resulted in a maze of elementary and secondary education programs, which while noble in their intent are cumbersome in their implementation.

Guidelines, regulations, matching fund requirements ensnarl the educator in time-consuming trivia which is counter-productive to the educator's primary role—education.

Clearly, remedial action is necessary to make Federal aid to education more responsive and less cumbersome.

Now that Federal support for elementary and secondary education is well established, it is time to move from categorization to consolidation in such a way that the goals of educational quality and opportunity are met.

We did not institute the needed reforms then, and I fear S. 1539, as reported out, will only make matters worse.

The efforts of the Education Subcommittee have been sincere and well-intentioned, and the subcommittee and its staff are deserving of commendation for their hard and thoughtful work on the maze of Federal aid to education programs. However, S. 1539 does not remedy any of the basic flaws and inadequacies of current Federal aid to education. It does not significantly streamline the inefficient and costly Federal educational bureaucracy. In fact, it mandates a great increase in bureaucracy and personnel. The bill adds 14 new bureaus, centers, and offices to the Federal educational bureaucracy. It also mandates a rigid administrative structure within the Office of Education, in particular restricting efforts toward regional administrative decentralization. These and other provisions of the bill would create, in President Nixon's words,

A bureaucratic nightmare, entwined in its own red tape, making it impossible for the Department of Health, Education and Welfare to carry out its responsibilities.

As a result, children in educational need would suffer.

More importantly, it does not provide the program consolidation needed to simplify the Federal funding process for elementary and secondary education, thereby continuing to restrict the ability of States and individual communities to set their own priorities. While the bill proposes some consolidated categorical funding, it is virtually in name only, since it only allows for consolidation of 50 percent of the funds above 100 percent of the amounts appropriated in specific prior years.

Tinkering with various programs will not remedy the waste, the abuses, and the ineffectiveness of many Federal education programs. A more fundamental and far-reaching reform is necessary for the benefit of our children and our Nation. That is what our amendment proposes to do.

The Buckley-Curtis-McClure substitute amendment to S. 1539 is an educational revenue sharing alternative to the present system of Federal control over American education. As I indicated earlier, the substitute is in many respects very similar to the administration's original educational revenue sharing proposal of 1971, S. 1669. Let me briefly summarize the amendment:

First. It would make funds available to States and local education agencies in five areas of longstanding concern: education of the disadvantaged, education of the handicapped, vocational education, education of children connected with the Federal Government, and supporting materials and services. In addition, there is a sixth category, reading and special projects, into which the authorizations of the special categorical programs authorized or extended by S. 1539 are considered.

When President Nixon first offered his educational revenue sharing proposal in 1971, he pointed out that it consolidated "more than 30 Federal aid categories." This amendment does the same, reducing the categories to the basic six which are mentioned above.

Second. Funds would flow to the States on the basis of an automatic formula, except that no State would receive less money than it did in fiscal year 1974 from the programs being consolidated.

Third. Each State would be required to prepare a plan for distribution of funds, in consultation with a State advisory council broadly representative of public and private education interests and members of the public, with an opportunity for interested persons to comment on the published plan. However, in a major change from present law, no Federal approval of the plan would be required. Thus, a State will be able to plan for its own needs and priorities, rather than having to adapt to some predetermined Federal plan and agenda.

Fourth. Federal impact funds and funds for disadvantaged children would be passed through by the State directly to the school district. Other education revenue sharing funds would be distributed among the local educational agencies by the State agency, on the basis of their relative needs for additional assistance in the areas of education of the handicapped, vocational education, supporting materials, and reading and special projects. The State education agency would have the flexibility to transfer up to 30 percent of the funds from any one category, with the exception of those funds passed through to local education agencies. Thus, additional funds could be made available for the education of the handicapped, if the State and local school districts felt that they were needed.

Fifth. In addition any administrative savings realized as a result of the consolidation of Federal programs will be distributed back to the States. Savings created by a reduction in the Federal education bureaucracy and its activities should run into the tens of millions of dollars.

If this substitute were to become law all States will receive at least as much additional aid in fiscal year 1975 as they would under the committee's S. 1539. In fact it can be said with some assurance that every State will receive more than they would have under the committee bill because of the administrative costs savings which are inherent in this approach. Support for my substitute constitutes support for more dollars to the States; opposition serves to keep a relative greater amount of money within the discretionary control of policy planners in Washington.

Is there any justification for the Federal Government to continue to exercise its cumbersome, costly and stultifying control over American education? Is there any justification for continuing to prevent State and local education officials from having far greater flexibility in making program decisions more responsive to the needs of their students and communities? I submit that the answer to these questions can only be no, Mr. President.

It is time for the Congress to establish a new relationship between the Federal Government and State and local governments in the field of education, one which demonstrates confidence in the good sense and responsibility of State and local officials, one which will better deal with educational problems of the present, and better anticipate problems and needs of the future. As the President said:

> I believe we must recognize that the Federal Government cannot substitute its good intentions for the local understanding of local problems, for local energy in attacking these problems, and for local initiatives in improving the quality of education in America. We must also recognize that State and local authorities need Federal resources if they are to meet their obligations and if they are to use the peculiar advantages of state and local knowledge, responsibility and authority to their fullest potential. Education Revenue Sharing accommodates the federal role in national education to both these realities, and it lays the foundation for a new and more productive Federal-State relationship in this area of vital national concern.

Mr. President, I send the Buckley-Curtis-McClure subcommittee amendment to the desk, and ask unanimous consent that it be printed in the RECORD.

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

AMENDMENT NO. 1325

On page 126, line 1, strike out everything through page 130, line 24.

Beginning on page 154, line 21 strike out everything through page 383, line 23 and insert in lieu thereof the following:

TITLE II—CONSOLIDATION OF STATE-ADMINISTERED EDUCATION PROGRAMS

SEC. 201. This title may be cited as the "Consolidated Educational Assistance Act."

AUTHORIZATION OF APPROPRIATIONS

SEC. 202. There are authorized to be appropriated for each fiscal year ending prior to July 1, 1978 such sums as may be necessary for carrying out this title.

ALLOTMENT AND USE OF APPROPRIATED FUNDS

SEC. 203. (a) From the sums appropriated pursuant to section 3 for any fiscal year, the Secretary shall allot to each State an amount equal to 100 per centum of the average per pupil expenditure in the United States multiplied by the number of children in average daily attendance in the public elementary or secondary schools of such State during such year who resided on Federal property, which amount shall be available for any educational purpose.

(b) From the remainder of such sums, the Secretary shall allot to each State an amount which bears the same ratio to such remainder as the sum of the products determined under paragraphs (1) and (2) of this subsection with respect to such State bears to the total of the sums of such products with respect to all States. Such products for any State shall be—

(1) 0.6 multiplied by the number of children in average daily attendance in the public elementary or secondary schools of such State during such fiscal year who (A) resided on other than Federal property with a parent employed on Federal property, or (B) had a parent on active duty in the uniformed services (as defined in section 101 of title 37, United States Code); and

(2) 0.1 multiplied by the number of children aged 5 to 17, inclusive, in the State.

(c)(1) That portion of each State's allotment derived from application of the provisions of paragraph (1) of subsection (b) shall be available for any educational activity.

(2) Except as provided in section 205—

(A) one-sixth of that portion of each State's allotment derived from application of the provisions of paragraph (2) of subsection (b) shall be available only for programs and projects at the preschool or any other educational level designed to meet the special educational needs of handicapped children;

(B) one-third of that portion of each State's allotment derived from application of the provisions of paragraph (2) of subsection (b) shall be available only for vocational education activities; and

(C) one-half of that portion of each State's allotment derived from application of the provisions of paragraph (2) of subsection (b) shall be available only for supporting materials and services.

(d) Programs, projects, or activities assisted under this Act may include construction.

(e) In the event that any State is not eligible to receive funds under this title for any fiscal year, or notifies the Secretary that it does not desire to receive such funds, the allotment of such State for such fiscal year derived from any provision of subsection (b) shall be available for reallotment from time to time, on such date or dates during such year as the Secretary may fix, to other States in proportion to the original amount of the allotment to such other States which was derived from any such provision for that

year. Any amount for a fiscal year so reallotted to a State under this subsection shall be deemed part of its allotment derived from the same provision of subsection (b) for such year.

(f) The amounts appropriated and allocated pursuant to this Act shall be paid to the States at such intervals and in such installments as the Secretary may determine, taking account of the objective that the time elapsing between the transfer of funds from the United States Treasury and the disbursement thereof by States shall be minimized.

(g) For purposes of this title, the Secretary shall determine average daily attendance, average per pupil expenditure, and numbers of children, and in doing so he shall use the most recent satisfactory data available to him, referrable with respect to data used for each purpose to the same time period for all jurisdictions. All determinations and computations by the Secretary under this section shall be final and conclusive.

DISTRIBUTION OF FUNDS WITHIN EACH STATE

SEC. 204. (a) Each State shall pay to each of its local educational agencies for a fiscal year an amount equal to the sum allotted to such State pursuant to section 203(a) for such year on account of the number of children in average daily attendance who resided on Federal property in the school district of such agency.

(b) The remainder of each State's allotment shall be available—

(1) for use, in accordance with the provisions of section 203 and 205 and the plan developed pursuant to section 207(b), by the State agency designated pursuant to section 207(a); and

(2) for distribution, for use by them in accordance with the provisions of sections 204 and 206 and such plan, among the local educational agencies of such State on a basis reflecting the relative needs of each of such agencies for the types of assistance for which appropriations under this title are available;

except that not more than 30 per centum of such allotment derived from application of the provisions of section 203(b)(1), relating to the presence within the State of children with a parent employed on Federal property or with a parent on active duty in the uniformed services, may be paid to local educational agencies not having any of such children in average daily attendance in their schools.

TRANSFERS AMONG PURPOSES

SEC. 205. (a) Thirty per centum of that portion of each State's allotment which is available for the purposes described in clause (A), (B), or (C) of section 203(c)(2) may be made available for any of the other purposes described in section 203(c).

(b) The 30 per centum limitations in subsection (a) may be exceeded if the State demonstrates to the satisfaction of the Secretary that such action will achieve more effectively the purposes of this title.

PARTICIPATION OF NONPUBLIC SCHOOL CHILDREN

SEC. 206. (a) The State agency designated pursuant to section 207(a) shall provide that—

(1) except as provided in subsection (b), children enrolled in nonprofit private elementary or secondary schools will be given an opportunity to participate, on an equitable basis, in activities for which funds are made available under clause (A), (B), or (C) of paragraph (2) of section 203(c); and

(2) title to and control of funds received under this title and other property derived therefrom will remain in one or more public agencies.

(b) If the Secretary determines that provisions of State law prevent any State agency designated pursuant to section 207(a) from complying with subsection (a), the Secretary shall, if he finds that the State is otherwise eligible to participate in the program under this title, permit such State to participate, but in such case he shall—

(1) arrange, by contract or otherwise, for children enrolled in the nonprofit private elementary or secondary schools within such State to receive, on an equitable basis, services similar to those provided from the funds made available under clause (A), (B), or (C) of paragraph (2) of section 203(c) to public school children within such State; and

(2) pay the cost thereof out of that portion of the allotment to such State for carrying out each such paragraph or clause.

STATE ADMINISTRATION

SEC. 207. (a) The chief executive officer of each State which desires to participate in the program under this title shall designate a State agency which shall be the single State agency for administration (or supervision of the administration) of such program in such State, except that this requirement may be waived in accordance with the provisions of section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214).

(b) The State agency designated pursuant to subsection (a) shall, for each fiscal year, develop and publish a plan for the distribution and expenditure of funds available therefor under section 204(c). Such plan shall be developed after consultation with the advisory council appointed pursuant to section 208, shall not finally be adopted by such State agency until a reasonable opportunity has been given to interested persons for comment thereon, and shall be made available to the Secretary.

(c) In administering the program under this title, the State shall comply with the provisions of this title and with regulations prescribed by the Secretary pursuant thereto.

STATE ADVISORY COUNCIL

SEC. 208. (a) The chief executive officer of each State which desires to participate in the program under this title shall appoint an advisory council which shall be broadly representative of the education community in the State and of the public, including at least one person representative of the public elementary or secondary schools of the State; at least one person representative of the nonprofit private elementary or secondary schools of the State; at least five parents of school age children in the State who will be affected by the activities authorized under section 203; and at least one person who has special competence in each of the educational areas described in sections 203(c)(2)(A) and 203(c)(2)(B).

(b) The State advisory council shall—

(1) advise the State agency designated pursuant to section 207(a) on the preparation of, and on matters of general policy arising in the administration of, the plan developed under section 207(b);

(2) evaluate activities assisted under this title;

(3) advise State or local officials who have responsibility for carrying out activities assisted under this title with respect to the planning, evaluation, administration, and assessment of such activities; and

(4) prepare and submit to the Secretary not less often than annually a report of its activities, recommendations, and evaluations, together with such comments thereon as the State agency designated pursuant to section 207(a) and the chief executive officer of the State deem appropriate.

TREATMENT OF FEDERALLY CONNECTED CHILDREN

SEC. 209. The State agency designated pursuant to section 207(a) shall provide that children attending school within the State who reside with a parent on Federal property, who reside with a parent employed on Federal property, or have a parent who is a member of the uniformed services will receive public elementary or secondary education on a basis comparable to that provided to other children in the State.

DEFINITIONS

SEC. 210. For purposes of this title—

(1) the term "adult education" means services or instruction below the college level for individuals (A) who have attained the age of 16, (B) who do not have a certificate of graduation from a school providing secondary education and who have not achieved an equivalent level of education, (C) who are not currently required to be enrolled in schools.

(2) the term "average per pupil expenditure in the United States" means the aggregate current expenditures of all local educational agencies in the United States for any fiscal year, plus any direct current expenditures by the States in which such agencies are located for the operation of such agencies during such year (without regard to the sources of funds from which either of such expenditures is made), divided by the aggregate number of children in average daily attendance to whom such agencies provided public education during such year.

(3) the term "construction" means the erection, acquisition, alteration, remodeling, or improvement of facilities, including the acquisition of land necessary therefor, and the cost of construction includes the cost of architect's fees.

(4) the term "current expenditures" means expenditure for public education, but not including expenditure for community services, capital outlay, and debt services, or any expenditures made from funds allotted under this Act.

(5) the term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(6) the term "Federal property" means real property which is owned by the United States or is leased by the United States, and which is not subject to taxation by any State or any political subdivision of a State or by the District of Columbia. Such term includes (A) real property held in trust by the United States for individual Indians or Indian tribes, and real property held by individual Indians or tribes which is subject to restrictions on alienation imposed by the United States, (B) for one year beyond the end of the fiscal year in which occurred the sale or transfer thereof by the United States, any property considered prior to such sale or transfer to be Federal property for the purposes of this title, and (C) any school which is providing flight training to members of the Air Force under contractual arrangements with the Department of the Air Force at an airport which is owned by a State or political subdivision of a State. Such term also includes any interest in Federal property (as defined in the foregoing provisions of this paragraph) under an easement, lease, license, permit, or other arrangement, as well as any improvements of any nature (other than pipelines or utility lines) on such property even though such interests or improvements are subject to taxation by a State or political subdivision of a State or by the District of Columbia. Notwithstanding the foregoing provisions of this paragraph, such term does not include (D) any real property used for a labor supply center, labor home, or labor camp for migratory farmworkers, (E) any real property under the jurisdiction of the United States Postal Service and used primarily for the provision of postal services, or (F) any low-rent housing project held under title II of the National Industrial Recovery Act, the Emergency Relief Appropriation Act of 1935, the United States Housing Act of 1937, the Act of June 28, 1940 (Public Law 871 of the

Seventy-sixth Congress), or any law amendatory of or supplementary to any of such Acts.

(7) the term "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled or other health impaired children who by reason thereof require special educational services.

(8) the term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(9) the term "nonprofit", as applied to a school, means a school owned and operated by one or more nonprofit corporations or associations no part of net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(10) the term "secondary school" means a day of residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(11) the term "Secretary" means the Secretary of Health, Education, and Welfare.

(12) the term "State" includes, in addition to the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(13) the term "supporting materials and services" means such materials and services as the purchase of school textbooks, library resources, and educational equipment; the provision of supplementary educational centers and services, of school pupil personnel services, of adult education, and of school meals; the training or retraining of teachers, teacher aides, and other school personnel; the strengthening of State or local educational agency capabilities and of educational planning at the State or local level; the support of the advisory council appointed under section 208; and the administration at the State level of the program carried out under this Act, and

(14) the term "vocational education" includes vocational or technical training or retraining (including field or laboratory work and remedial or related academic and technical instruction incident thereto and work-study programs for students who need the earnings from work in order to commence or continue their education) conducted as part of a program designed to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations or to prepare individuals for enrollment in advanced technical education programs, but excluding any program to prepare individuals for employment in occupations generally considered professional or which require a baccalaureate or higher degree; and such term also includes vocational guidance and counseling in connection with such training or for the purpose of facilitating occupational choices; instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training; job placement; and the training of persons engaged as, or preparing to become, teachers in a vocational education program or teachers, supervisors, or directors of such teachers.

REPEAL OF PROGRAMS REPLACED BY THIS TITLE

SEC. 211. (a) Effective with respect to appropriations for fiscal years beginning after June 30, 1974, the following statutes and parts of statutes are repealed:

(1) title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 821–827);

(2) title III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 841–848);

(3) title V of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 861–870);

(4) part B of the Education of the Handicapped Act (20 U.S.C. 871–877);

(5) the Smith-Hughes Act (20 U.S.C. 11–15, 16–28);

(6) sections 3 and 4 and 7 of Public Law 81–874 (20 U.S.C. 238–239);

(7) Public Law 81–815 (20 U.S.C. 631–647);

(8) title III of the National Defense Education Act of 1958 (20 U.S.C. 441–455);

(9) subpart 2 of part B of title V of the Higher Education Act of 1965 (20 U.S.C. 1108–1110c);

(10) the Vocational Education Act of 1963 (20 U.S.C. 1241–1391); and

(11) the Adult Education Act (20 U.S.C. 1201–1211a).

TITLE III—SPECIAL PROJECTS

SHORT TITLE

SEC. 301. This title may be cited as the "Special Projects Act".

PURPOSE

SEC. 302. It is the purpose of this title to provide financial assistance to the States to enable them to carry out special projects—

(1) to experiment with new educational and administrative methods, techniques, and practices;

(2) to meet special or unique education needs or problems; and

(3) to place special emphasis on educational priorities of the State.

AUTHORIZATION OF APPROPRIATIONS

SEC. 303. There are authorized to be appropriated for the purpose of carrying out this title $1,700,000,000 for the fiscal year ending June 30, 1975, $1,800,000,000 for the fiscal year ending June 30, 1976, $1,900,000,000 for the fiscal year ending June 30, 1977, and $2,000,000,000 for the fiscal year ending June 30, 1978.

ALLOTMENT OF FUNDS

SEC. 304. (a) From the sums appropriated pursuant to section 303 for any fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to the total of such amounts as the number of children enrolled in the public and private elementary and secondary schools of that State bears to the total number of children so enrolled in such schools in all of the States.

(b) There is hereby authorized to be appropriated for each fiscal year for the purposes of this subsection an amount equal to not more than 3 per centum of the amount appropriated for such year for payments to States under subsection (a). The Commissioner shall allot the amount appropriated pursuant to this subsection among the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands according to their respective needs for assistance under this title. In addition, he shall allot from such amount to the Secretary of the Interior the amount necessary for such assistance for children and teachers in elementary and secondary schools operated for Indian children by the Department of the Interior. The terms upon which payments for such purpose shall be made to the Secretary of Interior shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purpose of this title.

(c) For the purposes of this section, the term "State" means the 50 States and the District of Columbia.

USE OF FUNDS

SEC. 305. The funds allotted to each State pursuant to section 304 may be used by such State for the purposes of this title set forth in section 302. Such purposes shall include the carrying out of programs and projects related to, but not necessarily limited to, any of the following:

(1) education for the use of the metric system of measurement;

(2) gifted and talented children;

(3) community schools;

(4) consumers education;

(5) educational equity for women;

(6) arts in education programs;

(7) dropout prevention;

(8) school nutrition and health services;

(9) correction education services;

(10) ethnic heritage studies;

(11) reading improvement;

(12) desegregation assistance;

(13) drug abuse prevention;

(14) bilingual education (including bilingual vocational education);

(15) Indian education; and

(16) education of the handicapped.

REPEAL OF PROGRAMS REPLACED BY THIS ACT

SEC. 306. Effective with respect to appropriations for fiscal years beginning after June 30, 1974, the following statutes and parts of statutes are repealed:

(1) title VII of the Elementary and Secondary Education Act of 1965;

(2) title VIII of the Elementary and Secondary Education Act of 1965;

(3) the Drug Abuse Education Act of 1970;

(4) the Cooperative Research Act;

(5) the Emergency School Aid Act;

(6) the Indian Education Act; and

(7) parts A, C, D, E, F, and G of the Education of the Handicapped Act.

Beginning on page 384, redesignate title VIII as title IV and renumber sections 801 through 806 as sections 401 through 406, respectively.

On page 384, line 15 delete everything after the comma, through and including the period in line 20, and insert in lieu thereof the following: "except in cases involving children whose parents have made an express, written, voluntary request for, or have given their written, voluntary consent to such transportation, or teachers who have made an express, written, voluntary request for, or have given their written, voluntary consent to such transportation."

At the end of the bill, add the following new title:

TITLE IV—MISCELLANEOUS

DISPOSITION OF ADMINISTRATIVE SAVINGS

SEC. 401. (a) The amount of funds which, by reason of the enactment of this Act, are not required to be appropriated for salaries and expenses of the Education Division but which would have been required to be so appropriated had this Act not been enacted, is hereby authorized to be appropriated for the purpose of making grants to States for the purpose specified in subsection (c).

(b) The funds appropriated for any fiscal year pursuant to subsection (a) shall be allotted by the Secretary to each State in an amount which bears the same ratio to the total of such sums as the number of children enrolled in the public and private elementary and secondary schools of that State bears to the total number of children so enrolled in such schools in all of the States. For the purpose of this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(c) Sums allotted to States in accordance with this section shall be available for any educational purpose.

MINIMUM STATE ALLOTMENTS

SEC. 402. The total amount of funds received by each State pursuant to titles II and III of this Act for any fiscal year shall in no case be less than the total amount of funds received by such State in the fiscal year ending June 30, 1974 under the statutes or parts of statutes repealed by those titles. The Secretary is authorized to modify any allocations required to be made pursuant to those titles as necessary to carry out this section.

AMENDMENT NO. 1327

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

Mr. BAYH. Mr. President, I have cosponsored and supported the amendment offered by the distinguished Senator from Arkansas (Mr. MCCLELLAN) to more equitably distribute title I funds to aid local school districts with students from disadvantaged homes. For my own State of Indiana this amendment will result in an increase of $2 million in Federal assistance under title I. In fact, 88 of the 92 counties in Indiana will receive more funds under the McClellan amendment than they would under the committee formula for allocating title I assistance.

However, one of the unintended and unfortunate consequences of the McClellan amendment it to penalize schools districts such as those in Lake County, Ind., which have a concentration of students from disadvantaged homes. I understand the desire of the Senator from Arkansas to eliminate the title I, part C aid which gives as much or more money to a single and wealthy county in New York than it does to more than half the States including Indiana. Obviously the formula for determining part C assistance—designed to aid localities with especially high percentages of students from low-income families—is not working if it provides such unfair benefits to a wealthy county which has the means to provide for its own students better than many other localities.

But if we are to adopt the McClellan amendment, adjusting the formula for allocating title I, part A funds, and eliminating part C funding, we have the further responsibility to ease the burden on those school districts across the country for which these changes would impose an unfair burden.

The amendment I am offering would help solve this problem by creating a special fund of $35 million which the Commissioner would be able to allocate to those school districts who will carry the greatest burden with the adoption of the McClellan amendment.

These funds would be available at the Commissioner's discretion to those districts which in any fiscal year would receive 90 percent or less under title I than they received in the previous fiscal year. The Commissioner would be expected to allocate the funds with careful attention to the impact of reduced Federal aid in individual districts and the ability of those districts to make up the loss in Federal assistance with local funds.

In the case of Lake County, Ind., the drop of 12 percent in funds received under title I from fiscal 1974 to fiscal 1975 would pose an unfair burden. I am certain there are other districts across the country which, like Lake County, would be the unintended victims of adoption of the McClellan amendment, which itself remedies many of the inequities of the past.

By providing the Commissioner with a discretionary fund to aid those school districts who would lose 10 or more percent of their title I aid under the McClellan amendment—with special attention to the ability of individual districts to make up the loss of Federal aid so we do not create a trust fund for wealthy districts—we can achieve the laudatory goals of the McClellan amendment without penalizing districts that can least afford it.

AMENDMENT NO. 1328

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

Mr. CRANSTON (for himself and Mr. GURNEY), submitted amendments, intended to be proposed by them, jointly, to Senate bill 1539, supra.

AMENDMENT NO. 1329

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

Mr. MONDALE. Mr. President, I am introducing today, with the Senator from New York (Mr. JAVITS), an amendment to assure continued authority for the Federal support for disadvantaged students studying law, under the sponsorship of the Council on Legal Education Opportunity (CLEO).

This amendment is supported by the administration and the American Bar Association.

It will simply perfect the authority reflected in the 1972 amendments to the Higher Education Act of 1965. Funds have already been appropriated under this existing authority.

The proposed amendment would allow the continuation of the highly successful program administered by the Council on Legal Education Opportunity (CLEO) which, since 1968, has been responsible for the admission of more than 1,300 disadvantaged students to law school. Through a program of recruitment, remedial education prior to admission, and modest stipend support, CLEO has opened the legal profession to those from educationally and economically disadvantaged backgrounds. Experience thus far indicates that the CLEO student competes successfully with his or her peers.

Because of the $1,000,000 limitation on appropriations included in the 1972 amendments, only 31 students could be supported by CLEO. The proposed amendment would allow the Secretary to allocate the funds in such a manner as to benefit the maximum number of students with stipends at a lower level than required under existing authority and by eliminating support payments to educational institutions required by the existing authority.

It is estimated that approximately 200 students could be assisted each year if the proposed amendment is adopted.

AMENDMENT NO. 1330

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

SPECIAL PROGRAMS IN ADVANCED MATHEMATICS FOR DISADVANTAGED CHILDREN

Mr. MONDALE. Mr. President, on behalf of myself and Senators KENNEDY, TAFT, HART, and BEALL, I send an amendment to the desk.

Mr. President, 3 years ago in Berkeley, Calif., I was privileged to see a class of disadvantaged children solving college-level problems in the mathematical theory of exponents with amazing spontaneity, enjoyment, and obvious understanding.

These children were participating in project SEED, a program in which college-trained mathematicians teach advanced mathematics to disadvantaged children.

In its 11-year history, project SEED—Special Elementary Education for Disadvantaged Children—has demonstrated that disdavantaged children can learn abstract, conceptual mathematics nornally taught on the college level. More important, in learning advanced math, these children have also learned to perform well in standard arithmetic and algebra.

And project SEED's sponsors believe that programs like SEED can go far toward breaking the expectation of failure that is perhaps the greatest barrier to successful compensatory education—by proving to the children themselves, their teachers, and families that children of poverty can perform well in the culture-free area of advanced math.

Mr. President, largely through funding by State governments and private sources, and through the donation of free services by mathematicians from universities and private industry, project SEED now reaches roughly 6,000 children in 12 States.

Initial evaluations conducted in California indicate that the SEED approach can produce accelerated learning—above national norms—for disadvantaged students with an investment of $175 per child per year. This is certainly among the least expensive of the hopeful compensatory education programs.

But funding is hit-or-miss. There have been few opportunities to offer the program to students over a period of years. There have been few chances to evaluate the impact of SEED training on children after they have left the program—or its impact on attitudes or performance in academic areas other than mathematics.

It is our belief that this approach deserves sustained funding as an experimental model by the Federal Government, so that its impact can receive the thorough evaluation which it clearly deserves.

Senators KENNEDY and TAFT joined me in asking the Office of Education to explore possible sources of funding. However, Acting Assistant Secretary of Education Saunders responded that, under existing law, there is no authority for such funding.

I ask unanimous consent that Mr. Saunders' letter may appear in the RECORD at the conclusion of my remarks.

Without agreeing with Mr. Saunders' analysis, the amendment we offer today

is designed to provide authority to the Office of Education to fund programs along these lines.

Our amendment authorizes use of discretionary funds set aside in the Emergency School Aid Act to fund programs conducted by one or more private, nonprofit agencies, in cooperation with local school systems, of special programs for teaching standard mathematics to eligible children through qualified instruction.

Because the pending bill increases the discretionary fund from 6 to 8 percent of appropriations, ample funds should be available if, as we hope, the Assistant Secretary concludes that this approach is worth exploring, and receives one or more acceptable applications.

Mr. President, I am hopeful that the Senate will accept our amendment, and I ask unanimous consent that a collection of materials regarding project SEED, together with the text of our amendment, may appear in the RECORD at the conclusion of my remarks.

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

AMENDMENT NO. 1330

Insert at the appropriate place in the bill the following:

SEC. —. Section 708(a) of the Emergency School Aid Act is hereby amended by the addition of the following subparagraph (3):

"(3) The Assistant Secretary is authorized to make grants to, and contracts with, one or more private, nonprofit agencies, institutions or organizations, for the conduct, in cooperation with one or more local education agencies, of special programs for the teaching of standard mathematics to children eligible for services under this Act through instruction in advanced mathematics by qualified instructors with bachelors degrees in mathematics, or the mathematical sciences from colleges or other institutions of higher education, or equivalent experience."

[From Think, September-October 1970]

HOW TO TEACH THE ESOTERIC MATHEMATICAL PRINCIPLE OF INFINITE CONVERGENCE—AND MAKE ANY SIXTH-GRADER EAT IT UP

(By George A. W. Boehm)

(No rules to memorize, no lectures, no dull drill, drill, drill. Yet disadvantaged children from first to sixth grades master math that might topple a bright college undergrad. The secret: combine Socratic questions with a love of math and a belief in kids, as Bill Johntz does. Result: the kids begin believing in themselves.)

One afternoon last spring in the office of a school in Del Paso Heights, California, I sat alone wondering whether 20 children I had just watched were as precocious as they seemed. For most of the previous hour Warren Leffler, a young mathematician trained at the University of California, had beguiled a class of sixth graders with mathematical concepts that would confuse many high school seniors. The children apparently kept up with him every step of the way, for they eagerly volunteered ideas about such arcane topics as fractional and negative exponents.

The demonstration had been nothing less than sensational, but still I had reservations about how well the children really grasped mathematical ways of thinking. For one thing, the school was in an impoverished community and, as everyone has been told, children like these are almost universally backward in reading, writing and arithmetic. Moreover, from the way Leffler had gone over some points again and again, it was obvious that the class was intensively drilled. Conceivably, the apparent brilliance amounted to little more than cleverly coached rote learning.

Five young girls soon dispelled my doubts. On their way home, they spied me in Leffler's office, and after a brief, whispered consultation, they entered. One girl, acting as spokesman, introduced herself as Debra and inquired, "Mister, aren't you the man who watched Mr. Leffler teach us algebra?" I nodded and I explained I was waiting in the office while Mr. Leffler had a conference with the principal. "Good," she said. "Then we're going to teach you some algebra."

* * * * *

While Debbie waited for me to get my bearings, a slender Mexican girl, Christina, bounced to her feet, snatched the chalk, and declared: "Now it's my turn to teach the man." She drew a line on the blackboard and labeled one end 0, the other end 1. By marking it off into halves, quarters, eighths and sixteenths, she showed that Debbie's arithmetic could be portrayed geometrically.

At this point Leffler returned and announced we must leave. I begged time to ask one question of the group: "At the rate you are adding fractions or making marks on the line, how long do you suppose it will take to reach one?" After reflecting no more than 20 seconds, Debbie grinned broadly and said, "*Practically* forever." Her four friends giggled and bobbed their heads in agreement.

They clearly understood the difficult mathematical concept of "converging to a limit"—i.e., gradually approaching a goal without ever quite reaching it. It is a fundamental idea that bothered ancient Greek philosophers, and it was exploited by Newton and Leibniz when they contrived the calculus. I doubt whether many well-taught college freshmen could explain the basic philosophic content of a limit as intuitively and succinctly as Debbie did on the spur of the moment.

As schools open this fall, some 10,000 children like Debbie, Christina and their classmates will be getting similar insights into higher mathematics. For one period a day they will be taught by a professionally trained mathematician, while their regular teacher sits in the back of the room.

These children, ranging from the first through the sixth grades will be participating in Project SEED, an acronym for Special Elementary Education for the Disadvantaged. Though daring, it stands out as perhaps the most promising educational innovation in many years.

THE CHILDREN LOVE IT

It is also singularly noncontroversial. Starting in 1963, a Berkeley high school teacher, William F. Johntz, worked out the method and tested it by teaching in a nearby elementary school during his lunch hours and free periods. In the last three years SEED has spread rapidly from Nome to Tuscaloosa, from San Jose to New Haven. It has won the endorsement and financial backing of more than 100 local school boards and the California legislature. It has recruited as teachers first-rate mathematicians from industry, research institutes and several of the best universities. Most important, children love it.

As Johntz says, ". . . the true intellectuals in our society are the children. Their lust for abstract conceptual reasoning is almost universal until it is crushed. Adult genius is just the part of childhood that is retained."

Johntz's concern dates back to his boyhood in Winston-Salem, North Carolina, two decades before integration became a major issue. He recalls that he was shocked by the realization that the future was dim for black children.

The urge to do something for impoverished children propelled Johntz into teaching. After he graduated from Duke University, where he majored in psychology, he studied mathematics at the University of California at Berkeley.

Gradually Johntz became convinced that conventional education, even in Berkeley's excellent school system, failed to meet the needs of the poor.

As a teacher he had plenty of opportunities to study all kinds of compensatory education, e.g., remedial reading and other intensive programs designed to help lagging children make up ground. The more he saw, the more he was disenchanted: "Virtually all remediation is bound to fail, because it is just more of the same things children have come to dread. Psychologically," he says, "it reinforces habits of failure."

Johntz decided the solution was to go back to the early years of school and teach children something at which they could excel so as to build up their self-esteem. He hit upon mathematics, preferably forms of mathematics far removed from the arithmetic ideas that children pick up by getting change for a dollar or reading the newspaper. Abstract mathematics is one of the few topics in which children from all backgrounds start out on even terms, i.e., virtually from scratch. As Johntz explains. "Many disadvantaged children entering the first grade have spent six years listening to 'bad English' spoken in their homes and neighborhoods. They have not, however, been subjected to six years of 'bad math.' No math, perhaps, but not 'bad math.' "

Besides, young children generally have a natural bent for the kind of fantasy that characterizes pure mathematics. A research mathematician makes up his own rules—a set of arbitrary axioms—then reasons through to a logical conclusion. Similarly, a little girl mothering a family of dolls makes assumptions about their personalities and capabilities and lets them act out roles accordingly. People attuned to both mathematics and children find it not at all surprising that *Through The Looking-Glass* was written by a professional mathematician, Lewis Carroll. The exploration of a world in reverse existing behind a mirror is just the kind of intellectual game that delights children and mathematicians. "Children not only understand the essentially arbitrary nature of mathematics but find great pleasure in mathematical paradoxes as well," says Johntz.

Having made up his mind to teach higher mathematics to lower grades, Johntz sought for a way to involve the children as participants. In his spare-time teaching he worked out what he calls the "discovery method," now standard procedure in all SEED classes. Its aim is to guide and goad students to reinvent mathematical ideas through a continuous flow of provocative questions. The mathematicians who teach these full-sized classes of disadvantaged youngsters never lecture.

Typically, the teacher will begin enticing the children to discover the notion of exponents by writing on the board: $2E4=16$, $2E3=8$. "If these are true statements," he will say, "what number belongs in the box in this statement: $2E2=\square$?" Almost inevitably, after a mixture of logical argument and out-and-out guesswork, the class will arrive at a consensus. They will decide that 2E4 means 2x2x2x2; that 2E3 means 2x2x2; and therefore that $2E2=2x2=4$. From that point it is just a matter of time (perhaps two or three class periods) before they arrive at a complete generalization—i.e., that xEy signifies taking the number x and multiplying it by itself y times.

A SILENT RIOT

Johntz soon found he was almost too successful in animating hitherto listless and inattentive children. They became so eager to volunteer ideas and argue about them that

classes often degenerated into bedlam. And so, he made up rules. A child wanting to talk has to raise his hand and wait to be called on. Those who cannot resist the urge to express themselves can usually do so through signals. Both hands raised means: "I got that answer, too." Arms crossed above the head, like a football referee calling time out, signifies disagreement with something that has been said or written on the blackboard. Thus, a smoothly running SEED class is usually turbulent—in Johntz's words, "a silent intellectual riot."

As soon as he was satisfied with his techniques, Johntz opened his classes for inspection. Other schoolteachers, child psychologists and university professors came to watch *him perform*. And when he could, he gave demonstrations elsewhere in the Bay Area.

ROBERT'S CARTESIAN TRIUMPH

A SEED class running in high gear excites almost anyone who participates or happens to be watching. Here is a typical mathematical discovery made by a third grader.

In the early days of the program Bill Johntz, who founded it, had spent two or three periods introducing a Berkeley elementary school class to the notion of graphing. In the mathematical terms he freely employed, they had learned that an "ordered pair" of numbers can be mapped as a point in 2-dimensional space. For example, when he wrote (2,3) on the blackboard and asked: "Who wants to show this point?" every child waved one hand eagerly. He picked a volunteer, who literally skipped to the board, drew a large cross, and starting from the center marked off two steps to the right and three steps upward. The rest of the children shot up both hands, a signal indicating they had the same answer written on paper at their desks. This, Johntz considered, was pretty good thinking by a class that was generally subpar in writing and arithmetic.

Then, without warning, he threw the children a curve ball. On the board he wrote (2, 3, 5) and asked: "What do you suppose this could mean?"

For about three minutes the children stewed and scribbled on their note paper. Here and there, two conferred with each other. Then one little boy tentatively raised his right hand. "All right, Robert," said Johntz, "suppose you tell us what it means to you."

Robert explained that he imagined a glass tube marked off in steps like a thermometer. "You hold it so it sticks straight out from the board. Then you slide it along so the end is on point (2, 3). Then you walk out five *steps* on the tube and that is point (2, 3, 5)."

"What do you think of Robert's idea?" Johntz asked. A few children raised both hands in agreement. A few others crossed their arms, signaling they thought Robert was wrong. And then the class began a debate on the merits of Robert's new theory.

Of course, Robert was basically right. Although it was hardly necessary to imagine a glass tube, he had just the same made an important invention, which mathematicians call "3-dimensional Cartesian coordinates." It is the usual way of identifying every point in space by a unique trio of numbers. By translating geometry into algebra it enables physicists and engineers to calculate such things as rocket trajectories or stresses on a steel girder.

Everyone present enjoyed Robert's triumph for a variety of reasons. The regular teacher, sitting by while Johntz taught algebra, was thrilled to see her class grapple successfully with a tough mathematical concept. Two parents, watching from the back of the room, were stunned to hear their own children volleying ideas they didn't comprehend in language they hardly understood.

And Johntz himself, an ardent of children, was excited because Robert had discovered a mathematical idea on his own. For such triumphs a growing number of mathematicians are devoting part of their careers to teaching elementary schoolchildren.

Among the first visitors to these educational shows was Leon Henkin, a distinguished mathematician from the University of California at Berkeley. Henkin was delighted with what he saw and wrote a letter to the Berkeley Unified School District, in which he said: "I regard it as one of the most significant projects in elementary education which has come to my attention in recent years."

But Henkin did much more. He urged his own graduate students to visit classes and decide whether they could help. One in particular, Warren Leffler, who taught last year in Del Paso Heights, has made SEED a full-time career. He has been Johntz's right-hand man in California, and this fall he has moved to Michigan to take charge of a new statewide program.

Working through the Academic Senate in Berkeley, Henkin also arranged for the University of California to pick up half of Johntz's salary; the other half is being paid by the Berkeley school system. And he helped set up a Community Teaching Fellows program, in which the university itself administers a part of the SEED program, providing its graduate mathematics students with schoolteaching as an alternative to teaching calculus to the university's own freshmen.

SEED'S TAKE ROOT

In this way the project has become to a large extent self-propelling. One of Leffler's first disciples, for example, was Tad Day, a brilliant young biophysicist at Stanford. Last year and this year again, Day has been spending half his time at Stanford and half at Yale. While on the West Coast he pursues his own graduate studies; while on the East Coast, he runs the New Haven school system's SEED program, teaching several classes himself and training other mathematicians from as far away as Westchester County, New York.

SEED mathematics is being taught in about 500 classes this fall, an increase of more than 80 percent since last spring. It is solidly entrenched in California, where it is financed at the rate of $1,000,000 a year in federal, state and local funds. Nonacademic scientists, too, have been especially helpful in California. Initially, seven researchers, all of them Ph. D's, from IBM in San Jose decided to try the program, on their own time, with first graders. Now IBM has more than a score of professionals involved in SEED projects, and among the other organizations that have shown interest are: RAND, Aerojet General, Chrysler, Ford, Hughes, Lockheed, North American Aviation, Olin Mathieson and New York Life.

Johntz, in his role as sales manager, arrives in town, takes charge of an unselected, full-sized ghetto class, and spends one period teaching them some rudiments of algebra. Then, on the following day, he shows them off before a school board, a group of corporate executives, or a legislative committee. He may not yet know all the children by name, but they know him and what he is driving at, and they almost never fail to astonish the audience by knowingly bandying such terms as "exponentiation" and "multiplicative inverse."

One reason these demonstrations are convincing is that Johntz is a superlative teacher. A tall, angular man with a soft, fervent voice and an unruly shock of brown hair, he exudes a combination of friendliness and enthusiasm that immediately charms most children. Then, too, the children take great delight in demonstrating their intellectual spirit and competence before an adult audience.

A REFRESHING DISCOVERY

Although he conducts demonstrations for many kinds of audiences, Johntz admits he is most comfortable and effective with mathematicians and legislators. Mathematicians almost universally appreciate the imaginative conceptualizing of the children, whereas the legislators find the low per pupil cost (approximately $125/student/year) coupled with hard data[1] substantiating the progress of the disadvantaged children in Project SEED very exciting.

California Assemblyman Newton Russell, Republican from Burbank, California, makes the following observation: "An unending parade of educators continue to seek funds from the legislature for projects that make vague claims about attitudinal changes in disadvantaged children. It is indeed refreshing to at last find a project for the disadvantaged that can demonstrate through careful pre- and post-test evaluation solid achievement in a subject as important to the child's future as mathematics."

In SEED's early days, a teacher-trainee would sit through a couple of Johntz classes, get a few words of advice, and start teaching on his own. This led to an occasional disaster, usually because the SEED specialist did not learn how to maintain discipline or he neglected to develop a working relationship with the regular teacher.

The rule now is that all would-be specialists must serve an apprenticeship of several weeks, first observing SEED teachers at work and later teaching their own classes with someone like Day or Leffler on hand to observe and criticize. Johntz stubbornly refuses to start a new program until enough teachers have been prepared.

THE FUTURE: PRO AND CON

Teaching SEED-style is not at all easy. The teacher must curb his impulse to deliver a lecture when he wants to make an important point; it is much more effective if he works out a line of questioning that leads the children to discover it for themselves. He must make sure that every child is brought into the act several times a period.

Professional mathematical training becomes essential when the children start generating their own concepts. Some of these ideas are so far out of the ordinary that anyone but a trained mathematician would simply dismiss them as wrong. Instead of squelching an unusual idea, an expert SEED teacher tries to get the child to explain the assumptions behind it and then follow it through to a logical conclusion. Most grade-schoolteachers could hardly be expected to do this unless they happened to major in mathematics.

The short-term future of SEED seems bright. But some of Johntz warmest admirers worry a bit about the long range.

He has far from exhausted the supply of mathematicians who are eager to devote part of their careers to elementary schoolteaching. But as yet he has developed no coherent organization for managing the project; it is still mainly a one-man job on which he spends a wearying 80 hours a week. He will eventually have to build up some sort of bureaucracy consisting of professional managers who, while perhaps not themselves fully appreciating quality education in mathematics, can work with mathematics who prefer full-or part-time teaching to research.

SEED may soon begin to suffer for want of a standard curriculum. So far, most teachers

[1] One of the conclusions of a 200-class evaluation of SEED made by Professor Robert P. Dilworth, a mathematics professor at the California Institute of Technology, was: "The program has had a significant effect on mathematics achievement during the year at both the second and fifth grade levels."

concentrate on a few topics that they themselves enjoy and think will appeal to young children. This is all very well for the first year or two, when the main objective is simply to encourage children to think mathematically. But when children change teachers or perhaps schools, they may be discouraged if they take up the same concepts for the second or third time, or if they hear classmates discussing mathematics they have never learned. Johntz intends to put out a syllabus of suggested topics. Eventually, he hopes, SEED teachers will follow the syllabus roughly half the time.

Because of the high mobility of the poor, says Johntz, continuity from year to year is a problem in SEED. No one has yet followed the school careers of early participants for several years to determine whether the program is of lasting benefit. For the last two years, the state of California has supported an evaluation, comparing SEED pupils with non-SEED pupils. The results have been partly inconclusive. Although SEED pupils make extraordinarily rapid progress in arithmetic (actually not taught in the program) and in algebra (taught in the program), there is no solid statistical evidence that they are much better off in reading and other subjects. Robert Dilworth, a Caltech mathematician who has headed the statistical analysis, suspects, however, that the psychological tests on which the evaluation depends may be at fault. Designed to measure progress along conventional educational pathways, they may not reflect the rewards which Johntz regards as the true worth of the program.

His real ambition to teach young children the habit of success and thereby give them the confidence they need to carry them through high school and college and into careers worthy of their innate ability—even though few may ever become professional mathematicians.

THEY BELIEVE IN SEED

Hundreds of regular teachers and principals who have watched SEED in action are indeed impressed by the way the program changes the children's whole attitude toward education and school life.

Many testify that the first brush with sophisticated mathematics quickens children's interest in such familiar subjects as reading and arithmetic. For perhaps the first time in their lives, the children have definite reasons for learning all there is to know.

Last spring, Mildred Chaplin, principal of P.S. 113, the first school in Harlem to adopt SEED, was astonished when she saw pupils in a new algebra class dividing fractions almost as easily as they could add two and two, for they had hardly begun working with fractions in their regular arithmetic period. This show of enterprise helped make Mrs. Chaplin a wholehearted believer. "I like to see them learn algebra," she says, "but now I realize that is only secondary."

Her boss, district superintendent Seymour Gang, well-known in educational circles as a boisterous crusader for quality education, is more outspoken: "SEED's in keeping with what we *don't* know about how kids learn. By that I mean we've spent 50–75 years leveling kids off. We set the curriculum so as not to exceed their limitations. Then when some of them don't do well, we set it lower. It's a descending spiral and a self-fulfilling prophecy. SEED gets at the core of the problem. It proves there really are no limitations in the kids themselves."

[From the East San Jose Sun, Mar. 19, 1969]

OLINDER'S EXPERIMENT IN MATH: MINUSES AND POSITIVES ADD UP TO BIG PLUS FOR PROJECT SEED

"Minus eight and positive 14 equal 14 minus eight. Is that correct?"

The math instructor calls out names of students seeking their opinions. And he gets several answers.

So, he slowly takes the problem apart so that all will understand.

But this is not a class where you'd expect to find negative numbers being discussed. They're usually associated with algebra courses.

This is a fifth grade class at Selma Olinder School.

The math instructor, who is not trained as a teacher, was Leo Rivera, of Milpitas.

He and nine other Lockheed and IBM employes spend 40 minutes each Monday through Thursday helping Olinder with Project SEED.

Project SEED, which deals only with mathematics, was developed by Dr. William Johntz of the University of California at Berkeley. The idea is being used in several other cities across the nation also. This is its second year at Olinder.

Rivera, for instance, comes in to Ron Low's fifth grade class and teaches them things they would not ordinarily learn about. The regular curriculum includes addition and subtraction, multiplication and division and use of fractions. With SEED, they will learn about the negative numbers, sets, a number line, and some geometry also.

Games also are incorporated into the learning. Rivera asked the children, after an intensive session of adding negative numbers, if they'd like to play a game. They agreed.

The game they played was tic-tac-toe—with negative numbers and even numbers.

The fifth graders don't grasp everything the first time—and such was the case with the even numbers. "What is an even number?" Rivera asked. Odd numbers—nine, 11 and three—were called out by the class. "Are you sure?" he asked.

"What's the definition of an even number?" Someone remembered they were divisible by two. With that explained, the class got back on the track.

Boys were pitted against girls. The tic-tac-toe pattern contained positive and negative numbers. The idea of the game was to place your X or O by adding a number to four to get the amount in the space.

To get his minus 12, one young man did a lot of changing his mind . . . "It's eight; no minus eight; no, wait, it's minus 16". But he got his X. (The game ended in a tie.)

The aim of SEED is to make math interesting and exciting for disadvantaged children. And it seemed to create enthusiasm in Low's fifth grade. One youngster, however, did have problems grasping the negative numbers idea. "I don't get it, I don't understand," he told Rivera.

"What don't you understand?" Rivera asked.

"The whole thing. I don't know what you're doing," the student replied.

Rivera and Low agree such candor is good and encouraged it. They want everyone to understand. Rivera took time out to work with the boy personally, trying to explain what he was doing.

The project is coordinated by the school's resource teacher, Ted Thomas. There are four persons working with the first grade classes; two working with second grades; one with fourth grade; two with fifth grades and one with a sixth grade.

[From IBM magazine, Sept. 1970]

ALGEBRA AT AGE 6? THEY LOVE IT

"What's another way to get a zero?" asks San Jose Research Chemist Dr. William A. Lester, Jr., who teaches algebra four times a week in San Jose's Olinder Elementary School.

Hands shoot up all over the first-grade classroom. "Plus three and minus three," a six-year-old answers.

Dr. Lester adds the numbers into the "truth set" on the blackboard and moves a drawing of a little boy, walking toward a house full of candy and toys, one step closer to his goal. The first graders cheer and wait eagerly for the next problem.

Dr. Lester is one of several scientists at the San Jose Research Lab who have left their offices at mid-morning four days a week during the past school year to drive 10 miles to Olinder School near San Jose's central business district, in a predominantly Mexican-American area. There they teach a 40-minute class in algebra to children ranging in age from 6 to about 11—students who would ordinarily begin studying algebra in high school at the age of 14 or 15.

The IBM volunteers made up the time by working after normal hours last year, but during the next school year the Research Lab will allow the volunteers to use some IBM time to teach at Olinder School.

"In view of the success of the program and the commitment you've made, the San Jose Research Laboratory would now like to match your commitment and support the program," Dr. Andrew H. Eschenfelder, lab director, recently told the group.

"The best years for learning abstract mathematics are the early years of a student's education, not the ninth or tenth grade," says Dr. Douglas McLean, another of the IBM volunteers. "That idea still has to be proved to a lot of people, of course. We're trying to help prove it."

Other IBM scientists trying to prove this point include Dr. Paul S. Bagus, Dr. George Castro, Dr. Thomas R. Koehler, and Dr. Erich Sawatzky. Help in establishing the program also came from Dr. James D. Lyons, Dr. Hans Morawitz, Dr. Will Rudge, and Donald E. Schreiber.

The Research Lab scientists started on this voluntary project a little over a year ago when they were invited to Olinder School by the San Jose Unified School District, which wanted to test this new system of teaching algebra. There, they met William F. ("Bill") Johntz, a Berkeley high school mathematics teacher who travels the country urging school districts to teach algebra in their elementary schools. He demonstrated his "discovery method" for teaching algebra in elementary school, and the IBMers, along with a few scientists and engineers from the nearby Lockheed Aircraft Company, took on the project of teaching the subject to a few elementary grades at Olinder.

Johntz's system has had amazing success. Called Project SEED (Special Elementary Education for the Disavantaged), it is a college preparatory math program now used in more than 400 elementary classrooms across the country. Most of the SEED Project schools are in disadvantaged areas where a high percentage of the students are nonwhite or come from families on welfare.

"Project SEED is aimed at disadvantaged students for several reasons," says Dr. Lester. "First, the casualty rate in mathematics is nearly 100 percent for high school students from poverty backgrounds. In a typical ghetto secondary school, less than one student in 30 succeeds in a college preparatory math program. This shouldn't be the case, since math is the most culture free subject; by that I mean, when they start out, poverty students don't have a disadvantage in relation to students from higher income homes, as they often do in English classes, for instance."

The regular home room teacher remains in the classroom to assist the volunteers during their Monday through Thursday 40-minute teaching sessions.

The Socratic, or "discovery method" is a general teaching technique in Project SEED. A child is asked a question that requires analysis. The reply is accepted without demurring, and then the teacher asks: "Who disagrees?" If several pupils disagree, the teacher asks for other possible answers. Gradually, the correct answer emerges without any of the children being told: "You're wrong!"

"A basic tenet of the discovery method of teaching is eliminating what Bill Johntz calls *failure symbols:* textbooks, tests, and so on. This is possible because our algebra

classes are only part of the students' general mathematics study," says Dr. Tom Koehler.

The SEED teachers have developed a number of devices to hold the students' attention. Dr. Koehler, for instance, plays "algebra tic-tac-toe" with his fifth grade class, which is a combination of two regular fifth grade classes and totals about 60 children. With one half of the class playing against the other half, the object for the students is to figure out a given mathematical equation, and use their understanding of the equation to Place X's and O's in the tic-tac-toe squares.

Teddie J. Thomas, resources teacher at Olinder Elementary, says it is a gratifying experience to watch these very young students get excited about the theory of positive and negative numbers; about filling in the variables in truth sets; about the area of rectangles and right triangles; about linear inequalities; and a hundred other complicated principles.

The problem with trying to spread this kind of training throughout entire cities is the lack of money to hire teachers who have the knowledge of higher mathematics, according to Dr. McLean, who says: "How do you get Ph.D.'s to teach elementary school classes? The money for salaries isn't there. The answer that I see is professionals in industry contributing their time and talents."

[From Newsweek, May 4, 1970]

THE COMMON LANGUAGE

The instructor wrote a complicated algebraic formula on the blackboard and then turned to his class. "Give me a sentence that will check that," he said, as a forest of hands shot into the air. One student carefully presented a description and development of the equation. The others loudly disagreed, some of them waving both hands like semaphores. The instructor went around the room in random order, asking probing questions, involving everyone. By the end of the hour, the students had talked their way through exponentiations, roots and logarithms—and, with a final exuberant burst of mental energy, had used logs to discover irrational numbers.

ETHNIC

For the professionalism of its approach, the class could have been on the university level. But in fact the 24 students—most of them black or Mexican-American—were fifth and sixth graders from the impoverished Del Paso Heights Elementary District in Sacramento, Calif. Their average IQ, by standard testing methods, was below 100. Yet they were working routinely with advanced mathematics, clearly understanding what they were doing and loving every minute of it.

While most ghetto classrooms around the country remain tragic exhibits of American society's failure to teach the simplest material to the children of its ethnic underclass, 700 elementary students in the Del Paso Heights District have been racing through advanced math as part of an exciting project called SEED (for Special Elementary Education for the Disadvantaged). SEED is the brainchild of William Johntz, a lanky, 47-year-old former high-school teacher who, like many educators concerned about teaching ghetto kids, long ago concluded that the schools were failing because they had not yet found a way around using *white* middle-class methods and language with poor, non-white students. Johntz, however, took his analysis a step farther. He reasoned that if language skills, with their forbidding overtones of white culture, were a stumbling block, then math, which is culturally neutral, might be the right place to start. Seven years ago, he began testing out his theory by devoting his lunch hour to teaching algebra to classes of black elementary-school students.

The experiment worked so well that Johntz now devotes all of his time to selling his unique mixture of Socratic method and serious math to school administrators, legislators and businessmen. Thanks to the undeniable success of both his method and his persistence, a score of school districts in California, Alaska and Michigan have publicly funded SEED projects, and the program is rapidly spreading elsewhere.

STATUS

Wherever it is taught, SEED involves the same tough material—abstract, conceptually oriented high-school and college algebra. Anything simpler or more verbally oriented, Johntz believes, would fail for the same reasons other programs of compensatory education frequently strike out; they are so obviously rudimentary and so culturebound that they turn off even the lowest achievers among poor, non-white students. "No black kid is going to feel better about himself for winning a watermelon-eating contest," Johntz argues. "If you're going to motivate kids, they've got to have success in a high-status area."

High-status areas, of course, require highly trained teachers. Johntz believes that, at a minimum, a SEED math teacher should hold a college degree in math. While a poorly schooled teacher can destroy a child's confidence by calling his answer wrong, the highly trained mathematician, through his deep understanding of the structure of the subject, is able to explore the possible value of unexpected responses.

CHEERIOS

In the Del Paso Heights District—the fourth poorest in California—Johntz's math specialists, several of whom work at IBM, have made their subject so popular that the SEED office has become a hangout for students. They come in and try to teach math to the secretary and anyone else who will listen. And some SEED students even substitute as math teachers at nearby grade schools and junior highs.

"I like the work," explains 12-year-old Julius Humphrey, "'cause there ain't no other kind of work like it." Christina Gonzales, 11, enjoys teaching too. "It builds up your vocabulary," she told NEWSWEEK's William J. Cook, "because of all the words we use" (some of those words are student-invented math symbols like the "cheerio," which is an infinite number equal to all the breakfast-table Cheerios in the world).

But SEED math does not only teach math lingo. Del Paso teachers have noticed that SEED students have lost their fear of the parts of speech. The program also means more than just math to the young mathematicians who teach SEED classes. George Drake, a 26-year-old doctoral candidate who helps instruct the black and brown algebraic prodigies, puts it simply. "This is the first time," he says, "that I've been able to apply math to anything socially useful."

[From the Newsletter, Education U.S.A., Apr. 13, 1970]

CONTROVERSIAL MATH PROGRAM WORKS, STUDY SAYS

One of the nation's most innovative and controversial mathematics programs now has major statistical evidence to prove that it works. The program, Project SEED (Special Elementary Education for the Disadvantaged), brings professional mathematicians, even Ph.D's, into the classroom to teach abstract math to disadvantaged elementary students. The program's founder and director, William F. Johntz, a former high school math teacher in Berkeley, Calif., says young children can learn algebraic concepts usually reserved for high school and college students and love every minute of it. His beliefs are backed by a new study of 400 second- and fifth-grade California classes. The study was conducted by the state of California (which has given the U. of California more than $300,000 for Project SEED) in conjunction with Stanford U. and Caltech. Preliminary results of the study, still a month away from completion, refute the critics who still can't believe that industrial mathematicians without a single education course can be more successful in a classroom than a trained teacher.

The study shows a significant improvement in the performance of SEED classes, says research director Robert P. Dilworth, a math professor at Caltech. Children in the SEED classes did "much better" on understanding and computing arithmetic than control classes and "enormously better" on understanding principles of algebra and geometry, Dilworth says. They also scored a little higher on reading tests, contradicting critics who say students learn math at the expense of their other subjects.

More praise for SEED comes from Massachusetts Education Comr. Neil V. Sullivan, who was superintendent of the Berkeley schools when Johntz first began SEED seven years ago. "There is no doubt that the program works at Berkeley," Sullivan says. Sullivan and many others across the nation want Johntz to set up SEED programs in their areas as his time permits. SEED already exists in 22 California school districts and in Nome, Alaska, and New Haven, Conn. Next year it will probably expand to Portland, Oreg.; Bloomington, Ind.; New York City, and possibly other areas, including Michigan, where Johntz astonished state legislators recently with a demonstration using local disadvantaged children. But the most important testimonial for SEED may be the fact that university professors, graduate students, and mathematicians from businesses such as IBM, Lockheed, Chrysler, and Ford find it fascinating and exciting to spend about 40 minutes every day working with a class of randomly selected disadvantaged students.

Johntz's project tries to succeed where other programs fail by increasing the self-image of disadvantaged students. Remedial programs reinforce a student's feelings of failure and inferiority, Johntz says. But he considers abstract math (not arithmetic) to be a pure, culture-free subject that allows all students to start with a fresh slate. And success in this field brings the students high status and confidence, especially the Berkeley elementary students in SEED who teach college classes at the U. of California. The keys to Project SEED, Johntz says, are the discovery approach to teaching—a must for success—and the use of instructors who fully understand and love math. Johntz and other speakers at the annual meeting of the National Council of Teachers of Mathematics are still concerned that young children are being turned off math for life by teachers who don't understand and don't like math. (For more information on Project SEED, write Johntz at 1011 Keith Ave., Berkeley, Calif. 94708.)

[From the New York Times, May 12, 1970]

EASIER PATH TO ALGEBRA FOR THE POOR

(By William K. Stevens)

Long before William F. Johntz succeeded in teaching algebra to elementary school children from poor families, he had become convinced that all children—until they come to hate mathematics in school—have "a lust for and high facility in abstract thinking."

He reasoned that math is a widely despised subject largely because children are confused and "corrupted" by elementary school teachers who know too little about the subject.

Further, he thought that if industrial and university mathematicians, with no conventional teacher training, would go into the schools for 40 minutes a day and apply the ancient teaching precepts of Socrates, they could lead children to confront directly the orderly, elegant realm of algebra.

And if that were carried off, Mr. Johntz concluded, young children from even the most deprived backgrounds would soon master concepts that have frustrated and eluded many a high school and college student over the years.

TESTING THE THEORY

Mr. Johntz, a former mathematics teacher from Berkeley, Calif., has put his theory to the test. About 200 mathematicians and scientists from such schools as the University of California and such concerns as the International Business Machines Corporation are now teaching algebra in more than 350 elementary classrooms scattered from California, where the program is financed by the state, to Alaska to Connecticut and New York.

On the basis of this test, Mr. Johntz feels he has shown his theory to be true.

For example:

In New Haven's Dwight Elementary School a few days ago, Tad Day, a 31-year-old biophysicist mathematician who commutes between Stanford and Yale Universities, was leading 24 fifth graders—most of them black and most of them poor, none of them specially selected—through a mathematical forest in which most people lose their way.

Mr. Day was trying to get the children to discover on their own this algebraic truth: When you add up a string of consecutive numbers extending from zero to an upper limit (say, 10) the result will always be one-half the upper limit multiplied by a number equal to the upper limit plus one.

This proposition embodies a process called summation, which is a basic underpinning of integral calculus. * * *

Mr. Day called on one of several children frantically waving their hands to read the "true sentence," as he calls all equations. The child did, quickly and correctly:

"The summation from 'i equals 0,' up to 10, equals the quantity 10 times the quantity one-half, times the quantity 10 plus one."

LOGICAL PROGRESSION

This was no mere repetition by rote; the class clearly knew what the equation meant. This was demonstrated earlier when Mr. Day skillfully led the children from one logical mathematical step to another. Along the way he got them to express and test their own ideas about how the numbers relate to each other.

Mr. Day's technique was Socratic in that he would ask a child a question, usually one requiring analysis, then accept the child's reply without demurring. Then he would ask, "Who disagrees?" If several pupils did, he would ask the first child to call on one of his classmates "to help you out."

In this way the answer or analysis would be subjected to criticism by others in the class. Never did Mr. Day provide an answer himself. And never did he tell a child his answer was wrong.

Using this technique, Mr. Day got the children to write the numbers from zero to 10 in order, then add them up and find that they total 55. Then he led them to dissect and manipulate the string numbers, and soon the class had developed the second half of the summation equation, and tested it out to see if it produced 55. It did.

It was then only a short step to substituting the Greek letters Alpha and Beta for numbers, and the children had created a general statement of mathematical truth.

Through it all, there was sheer electricity in the air. Virtually every child was obviously and thoroughly involved in what was invariably described as "fun."

Miss Etta Fisher, the class's regular teacher, was somewhat skeptical when the four-day-a-week program began last fall. But she says Mr. Day's activities have caused her children to brighten up, speak more, show more confidence in themselves.

She pointed out a boy who "didn't do any arithmetic papers at the first of the year," and who sometimes was a behavior problem. Now he is turning in papers regularly, and getting one-hundreds on them. And he no longer causes trouble, says Mrs. Fisher. Furthermore, she added, the whole class's performance in regular arithmetic lessons has improved greatly.

Her judgment tallies with the preliminary findings of the first controlled study of 200 elementary school classes taking part in the venture—Project SEED (for Special Elementary Education for the Disadvantaged), which was started by Mr. Johntz in Berkeley seven years ago.

The independent study, carried out by the California Institute of Technology, involved unselected second- and fifth-graders in regular-size classes across California who took part in Project SEED for one year.

SUCCESSES REPORTED

The recently disclosed preliminary findings show that SEED classes did "much better" in understanding principles of algebra and geometry, says Dr. Robert P. Dilworth, the Caltech math professor who directed the study.

Mr. Johntz, a lanky, graying, 43-year-old who still directs the SEED classes in Berkeley, is something of an evangelist for the program he started.

He travels about the country much of the time, teaching demonstrating classes and afterward telling stories like the one about how fifth-graders from Los Angeles' Watts district, after five weeks of algebra from a mathematician, taught the subject to classes of nonmathematical students at the University of Southern California.

Last fall, he astonished members of the Michigan Legislature by putting a class of 31 black youngsters from a Detroit ghetto through their algebraic paces in a statehouse demonstration, with the result that there is now a bill before the House to finance Project SEED throughout the state.

Mr. Day, who signed up as an instructor after seeing one SEED class in Palo Alto, established the program in New Haven; and last week he and Mr. Johntz introduced it in Ossining's Park School, where four mathematicians and physicists from the I.B.M. Watson Research Center in nearby Yorktown Heights are participating.

Mr. Day and Mr. Johntz also have introduced the program to P. S. 9 at 100 W. 84th Street in Manhattan, and P. S. 113 at 113th Street and Seventh Avenue, to begin before this school year is out.

The idea of having the expert—a graduate student or doctoral degree holder—confront young children is central to the SEED concept, Mr. Johntz explained in an interview in Ossining the other day.

"I myself look forward to the day when people in business will be deeply involved in elementary work." Mr. Johntz said. "I hope people who have Ph.D.'s will all teach at the elementary level part-time, and that the day will come when they will have to explain why they aren't."

[From SEPIA, Nov. 1970]

TEN-YEAR-OLD MATH TEACHERS?

(The students take the initiative in a sharp switch in technique that bears sweet fruit.)

The notion that mathematics is a subject only for adults was exploded recently when two ten-year-old Harlem schoolgirls from P.S. 113 taught high school algebra to 60 teachers at New York University's School of Education.

The session lasted two hours. When it ended, the teachers (who were the students) were astounded by the knowledge of their instructors. A few admitted they could not keep up with the lesson.

The "professors" were Paula Smith and Sharon Hunter, both from a Harlem public school, who have participated in a six-weeks experimental program called Project SEED (Special Elementary Education for the Disadvantaged).

One-thousand New York school children took part in the program. Sharon and Paula were among those few chosen to teach others, in this case the teachers, and all this after six weeks training.

Project SEED is the brainchild of Berkeley, Calif. educator William F. Johntz, its founder and director. SEED already exists in 22 California school districts and in Nome, Alaska, and New Haven. Next year it will probably expand to Portland, Ore., Bloomington, Ind., New York City and possibly other areas, including Michigan where Johntz astonished state legislators with a demonstration using local disadvantaged children.

Project SEED goes on the assumption children can learn algebraic concepts usually reserved for high school and college students. This is backed up by an impressive lineup of intellectuals, including Prof. Robert B. Davis, formerly professor of mathematics at MIT and Prof. David A. Page, University of Illinois.

This basic truth—if such it can be called—has been termed "One of the most important discoveries ever made in regard to the teaching of mathematics."

The social benefits of this discovery—that young children can learn advanced math—are enormous, especially for the disadvantaged.

Many Negro children entering the first grade have spent six years listening to "bad English" spoken in their homes and neighborhoods. They have not, however, been subjected to six years of "bad math." The Negro student often works from a negative position in English, while in math he usually starts from zero—at the same position as a beginning student from any other background.

The abstract subject—mathematics—becomes the great equalizer from which all blessings flow. Success in math gives motivation in every other subject area, especially in job and college opportunities.

Paula and Sharon, fifth grade students from a ghetto area Harlem School, put on a show that was an eye-opener for their class of teachers. They used the discovery method they had been taught, in which the teacher asks questions, gets the students involved. It is an audience participation technique in which the concepts come from the students.

Sharon and Paula imitated every technique and gesture they had picked up from their teachers, three young women, all of whom are graduate students in mathematics. It was obvious they were having a good time, and so was the class. For the information of the experts, they were demonstrating exponentiation, derived in terms of binary operation and not in terms of notation.

LOW EXPECTATIONS RAISED

It was a myth-buster all around. The class of young teachers, many of whom will be going into schools in disadvantaged areas, saw what could be done with the right teaching, the living example of which was before their eyes.

"Teachers of culturally deprived children often have low expectations for their students. This is due partly to the teacher's prejudice and partly to the low achievement of the students. The expectation of these teachers can be raised dramatically when they see their children learning conceptually-oriented mathematics.

"This effect is particularly vivid when the children are of elementary school age." So says Director William E. Johntz.

The demonstration was a strong plus for math as the great equalizer. Sharon and

Paula proved it all over again. Math, then, could prove to be a balance wheel in making education equal.

It's an ego booster. The effect on the children in dramatic, since their success gives them the confidence they need to improve their work in general.

[From the Boston Herald Traveler, Jan. 10, 1970]

SEED TEACHES DISADVANTAGED TO GRASP ABSTRACT MATH

(By Muriel L. Cohen)

A class of ghetto children will demonstrate an astonishing grasp of abstract mathematics in the first live educational exhibit ever staged at the State House.

The demonstration of unexpected talent from some of the lowest students on the academic totem pole will launch two significant changes in education in this state.

The program will be the first in a series of actual demonstrations of innovative techniques which will use the State House as a platform.

It will be the opening of a campaign to win legislative support for post college level math courses for disadvantaged elementary school children.

State Education Commr. Neil V. Sullivan said yesterday he will propose to the state Board of Education next week that alternate monthly business meetings concentrate on educational practices and curriculum.

To accomplish this, Sullivan will suggest meeting in Gardner Auditorium so that the board, interested legislators and educators can watch some innovative practices in a simulated classroom setting.

Sullivan describes these meetings as the most efficient and effective means of transmitting to the tax-conscious general public and budget-wary Legislature why education spending is important.

He has chosen to kick off these sessions with Project SEED, an acronym for Special Elementary Education for the Disadvantaged.

Sullivan saw it succeed in Berkeley, Calif., during his tenure as superintendent of schools. Last week he invited SEED founder William Johntz, a mathematician and psychologist, to launch the program in Massachusetts.

Johntz spent two days last week with state officials, professors and researchers at MIT and Harvard to prepare for the project.

When skeptics at the state Department of Education questioned whether SEED was simply a "sophisticated mathematical gimmick" in compensatory education Johntz cited a Cal Tech study proving that SEED-trained youngsters improved in academic and social areas as a result of the experience. Data on 400 children show that SEED boosts their reading and arithmetic score while teaching them pure mathematics and logic.

After a single training session, Johntz will take a full-size class of children from an inner city school to Gardner Auditorium for a demonstration. He will show dramatically that youngsters, even those with low intelligence scores, can talk knowledgeably about roots, logarithms and exponentation.

This is the technique he used in California and Michigan where the legislatures have appropriated funds, despite their austerity programs, to support SEED. Johntz took classes into Gov. Reagan's conference room in Sacramento and into the governor's offices in Lansing, Mich. with spectacular results.

SEED mathematics is being taught in about 500 school districts, in 15 states and is soon going international. Johntz is training Indian mathematicians who will begin SEED programs in their country.

In his role as SEED super-salesman, Johntz enjoys the support of public figures from every shade of the political spectrum. In California he has the backing of Max Raffery, conservative former superintendent of schools, as well as of the liberal new superintendent, Wilson Riles.

Johntz attributes his legislative successes to the fact that mathematics is a no-nonsense subject without political, cultural or social implications, and SEED costs about $150 per child, as compared with an average of $300 for most compensatory programs.

Robert Jeffries, Title I coordinator in Massachusetts, estimates that 150,000 to 200,000 disadvantaged children are currently enrolled in federally funded compensatory programs. He said last week that actually there are more children, particularly in Boston and Springfield schools, who could qualify for SEED.

In seeking a commitment from the state, Johntz explained that he begins very slowly in a few pilot schools. Teachers are trained in the classroom and expansion is self-stimulated rather than imposed.

Johntz left his native North Carolina 25 years ago, irritated by the narrow racism of the South. Now he takes particular pleasure in destroying some long held stereotypes about poor blacks on the basis of data produced by SEED.

He claims that most compensatory and remedial programs are "patronizing" and simply reinforce the disadvantaged child's derogatory self image.

A lanky, academic type with the zeal of a Messiah whose time has come, Johntz uses SEED results to refute the controversial hypothesis advanced two years ago in the Harvard Educational Review by his Berkeley colleague Arthur Jensen.

A psychologist, Jensen, roused tempers of blacks and social scientists across the country by arguing that blacks cannot handle abstract reasoning for genetic reasons.

Johntz first radical concept was the use of mathematics to develop academic skills and improve the self concept of disadvantaged children.

A second unorthodox practice is to use university professors, researchers and other highly-trained mathematicians as teachers. In this way, Johntz has made a significant impact on public school education—at least in California.

On the basis of the success of non-credentialed SEED teachers, the state legislature has waived certification requirements for teachers in the $100 million of compensatory programs in California.

Johntz claims another first for the record books because it is the first time that non-certified teachers have worked in public schools on a regular daily basis. There are professors in Berkeley schools now in the second year of a day by day, week by week commitment to SEED.

SEED is also altering the teaching styles of the professors. Johntz has insisted that all SEED teachers refrain from lecturing. All teaching is done by the Socratic method questioning and leading the child to reach a logical conclusion.

Because children can ask way out questions, it is imperative that well-trained mathematicians help them arrive at the answer.

Johntz has no trouble recruiting teachers. After a demonstration at an IBM research installation in California, seven of the 10 mathematicians present volunteered to join the program.

"Why do highly-trained scientists leave their university offices or their research studies every day and drive 30 minutes to a ghetto school to teach for 40 minutes?"

Johntz asks the question himself and shrugs for an answer. He can only say that more and more teachers are moving into SEED, some of them on a full-time basis.

He spends an 80-hour week, helping train teachers—which by his fiat must be done on site—and demonstrating projects.

Others have caught Johntz' fire. One of Yale's best graduate students turned down some attractive university offers last June to accept a full time position in New Haven's SEED program.

Johntz has even more sensational anecdotes about students. One of his favorites is a 15-year-old black girl from the toughest junior high in Oakland, Calif.

Seven of her 13 sisters and brothers are in jail or have been. After SEED training, the 15-year-old is now teaching college graduate students in a special math course at Berkeley and is herself college-bound.

Students turning teacher is another one of SEED's unexpected by-products. Two 11-year-old girls enrolled in a Harlem SEED class last summer were able to teach algebra and abstract math to 60 teachers in a graduate education program at NYU.

Johntz was long convinced that young children have a high facility for abstract thinking which is turned off and corrupted by elementary school teachers who themselves hate math, earlier victims of the same anti-math syndrome.

That is why, he reasoned, he would take highly-trained mathematicians, those who survived the poor teaching and who love the subject, and turn them loose on questioning children.

As a result poor children in SEED classes throughout the country—even in Nome, Alaska—Johntz claims, are experiencing academic success in a status subject.

Johntz fervently hopes that this phenomenon will attract increasing numbers of Ph.D.'s into the nation's classrooms with beneficent returns for all of society.

[From the New York Times, Dec. 31, 1970]

PUPILS CONCUR: MATH CAN BE BEAUTIFUL

"What's another way of saying zero?" asked William F. Johntz.

Hands shot up and some children from the fifth-grade class at Public School 154 in the South Bronx jumped to their feet, begging to be called on.

"O.K., John sub 2, you make up a problem."

John sub 2, so identified because there were three Johns in the class, proudly walked to the blackboard and wrote $18+\square=0$.

"That's a beautiful problem," said Mr. Johntz, creator of a project called Special Elementary Education for the Disadvantaged (SEED), as he gave the children their first algebra lesson.

ONE-HOUR SESSION

John sub 2 was one of about 20 children from P.S. 154 who participated in a classroom demonstration of how to teach algebra to youngsters. The one-hour classroom demonstration took place yesterday on the stage of the Grand Ballroom of the Waldorf-Astoria Hotel as the National Council of Teachers of Mathematics ended its three-day convention.

It was one way math teachers from around the country and Canada shared information on what they regard as their major critical problem—the education of the inner-city child.

The audience of 200 teachers watched intently as Mr. Johntz wandered among the pupils asking probing questions. When a child replied, Mr. Johntz always asked the class if anyone disagreed. Although other answers were usually given, the correct answer gradually emerged without any of the children being told, "You're wrong."

Smiles frequently spread across the room as the children cheered and clapped when one of their classmates gave the correct answer. Hearty applause resounded as the class ended.

Project SEED is a college preparatory mathematics program now used in more than 400 elementary classrooms around the country. Ninety per cent of the children are urban blacks from poor areas.

The 200 teachers taking part in the pro-

gram are mathematicians and scientists from such schools as the University of California and from such concerns as the International Business Machines Corporation. No textbooks or tests are used.

TRAVELS WIDELY

Mr. Johntz, a former mathematics teacher from Berkeley, Calif., began developing his elementary education program eight years ago and has traveled throughout the country demonstrating his method of teaching algebra and geometry.

He stresses the importance of using teachers who have an expert grasp of mathematics and of applying a Socratic method in which the pupils develop their own mathematical solutions.

A number of the 2,500 mathematics teachers registered at the convention have expressed concern about their inability to reach inner-city youngsters in their classes.

Several other ways to make mathematics more interesting were discussed at the meeting.

One involves using the camera as a tool, with pupils taking photographs of geometric forms for subsequent analysis of why certain forms are used for specific functions.

Another approach calls for the placement of geometrical objects in a sandbox so that children can experiment as they play. For example, a pupil can fill a cylinder with water and then measure the volume by pouring the water into containers of known volume.

[From Bell Labs News, Mar. 5, 1971]

GROUP DYNAMICS WITH LOVE IS KEY TO HELPING CHILDREN VIA MATH

MURRAY HILL.—A mathematician using a local fifth-grade class demonstrated last week how teaching higher mathematics to elementary school children helps them improve their school work by bettering their self image.

Many minority children "just don't make it in public schools," said William F. Johntz, founder of a project called Special Elementary Education for the Disadvantaged (SEED). Because large numbers of children have been convinced that they are inferior, an intellectual, culture-free subject is an effective way to help them, the former Berkeley, California, high school teacher said.

Johntz was asked to demonstrate his method here to give BTL volunteers and school officials who might be interested in an opportunity to investigate a potential project together, explained Denny Dudley, coordinator of 330 BTL volunteers in New Jersey community projects.

Johntz said that the project he started by himself eight years ago is being used in more than 500 school systems in 15 states and many foreign countries. The Michigan legislature passed a bill making SEED a statewide project after Johntz and a class of children put on a demonstration before the legislature similar to the one here last week.

"Mathematical ability is universal," Johntz said. Kids with an IQ of 80 do graduate level math. Some of the children we have taught are now teaching math to university students. We teach slow kids something other kids don't know yet. Then, for the first time in their lives they know something the rest of the class doesn't know. We've seen such children move from 27th place in class to the second place and stay there."

Children in the program learn university mathematics vocabulary very quickly, then they feel more confident with words in general, Johntz said. This makes them more articulate. Also, Spanish children learn to speak English much faster after participating in SEED, he said.

In Michigan, children who have been in SEED two months are discovering the existence of rational numbers, and are working with logarithms, radical numbers, interpolation and inverse matrices, Johntz reported.

The teaching method is to ask questions, not lecture, he explained. When you ask questions, you can't leave the class behind. You must frame questions that will get a response. You reward the response, then frame a new question that will get a response.

"Without the method it would be a dreadful failure," Johntz said.

That the method in the hands of its originator is far from a failure was evident from the 25 children from Emerson school, Plainfield, whom Johntz had met only two days before. Arms waved enthusiastically each time Johntz asked a question. Whether the answer was right or wrong, Johntz rewarded the child for answering.

When the demonstration was over and the children went to lunch, Johntz explained some of the details of his method to the audience of people interested in mathematics.

To teach by this method, he said, you have to know mathematics deeply and enjoy it. "The people who work in our project find it enormously more rewarding than working with university students," he said.

"We always use a natural class in a school," he said. "No students are deleted, none are added. Volunteers go into schools daily, and the regular teacher stays in the classroom with us."

Those attending the session, besides nearly 130 Bell Lab scientists, included 57 persons representing 13 New Jersey public schools, 5 New Jersey education officials, 16 representatives from 8 nearby industries, 30 from 7 colleges, and 15 others.

JOHNTZ METHOD PLEASES MANY BTL VOLUNTEERS

Bell Labs employees deeply involved in volunteer programs reacted enthusiastically to the teaching demonstration given at Murray Hill last week by mathematician William F. Johntz of California.

"His analysis of why children are having trouble with their studies will be invaluable to us," said Ruth Bauer, group supervisor of personnel systems at Murray Hill, who coordinates 45 volunteer tutors in a remedial reading program in Livingston, and teaches English to foreign-born adults in Dover. "He showed us how the teacher inspires the pupil. I made many notes on his techniques to vary the teaching pace."

"The people in our project don't have self-confidence, and we have to build it," said Elizabeth Bridgers, a secretary in the research division who heads a Summit volunteer program to teach typing to adults. "I was fascinated by the demonstration," she said. "He used several techniques that will help us."

Carl Weinberger, who coordinates 16 volunteers tutoring mathematics in East Orange, said "I keep thinking how his method can be applied across the board, all the way to college. I can't praise him enough." Carl works in the Engineering Information Center at Whippany.

"The demonstration gave me the desire to teach young children," said Yako Yafet, a physicist who has tutored high school students in physics and mathematics in East Orange, and who taught in the summer science school at Murray Hill last year. A member of the Crystal Physics Research Dept., Yafet said Johntz "could challenge the children continuously, keeping them thinking for themselves, holding their attention."

[From Yale Alumni magazine, June 1971]

HIGHER MATH IN LOWER SCHOOL

(By Karen Waggoner)

"Who can read this sentence? . . . Look at all the hands. Nancy says she can read it. Jonathan says so. Nellie has it, and so does Peter. Barbara, can you read it for us?"

She reads: "Quantity two ex-po-nen-ti-a-tion three times quantity two ex-po-nen-ti-a-tion four equals triangle variable ex-po-nen-ti-a-tion quantity square variable plus diamond variable."

The six-syllable words don't quite roll off Barbara's tongue, but it is only the third day of algebra lesson for a class of "disadvantaged" fourth graders at Timothy Dwight School in New Haven.

The class's regular teacher sits at the back of the room while an associate professor of mathematics at Yale, Robert Szczarba, leads the children through a vigorous intellectual exercise that would leave many bright high school students breathless.

Professor Szczarba is a mathematician who teaches undergraduatse and directs graduate student seminars at Yale in topology and Kähler mathematics. But to these fourth graders he's "the algebra teacher." The kids are unimpressed by his credentials; what does matter is that he is teaching them algebra—a subject they thought was "high school."

"What numbers will make this a true sentence?" Prof. Szczarba asks ."What's going to go in the triangle?"

Hands shoot up all over the room. An incorrect answer sets off exuberant arm-waving from those who disagree. Instead of being told he is wrong—sometimes wrong answers are based on profound thinking—the student is asked to "call on someone to help you out," and the class tries to determine what logic led to the incorrect answer.

During the 45-minute period the class generalizes the equation with the Greek letters alpha, gamma and eta. In future lessons they will progress from the additive law of exponents to zero, negative and fractional exponents, summation and limits.

The method of teaching is the "discovery" or Socratic method, and the program is Project SEED (Special Elementary Education for the Disadvantaged). Professor Szczarba and another Yale mathematician, Stuart Sidney, an assistant professor who teaches complex analysis to graduate students, have been released from some of their University teaching duties so they can teach four days a week for SEED. Along with Tad Day, the mathematician who brought SEED to New Haven, and several Yale graduate students, they teach higher mathematics to elementary classes in three New Haven schools. SEED began several years ago on the West Coast. Yale is the first university to release faculty members who want to teach, and other schools are now following Yale's lead.

Project SEED has three basic postulates:

1. Disadvantaged children do poorly in school because they believe the myth of their own inferiority and because their teachers have low expectations of them.

2. The most effective way to destroy this feeling of inferiority is for the children to experience meaningful success. Unlike compensatory or remedial programs, which tend to re-inforce a child's negative self-image, SEED offers success in a high-status subject and can also improve a child's attitude toward other schoolwork. Controlled testing in California schools found SEED students excelling in regular elementary math as well as in algebra.

3. Disadvantaged children will succeed with high school and college algebra if it is taught by someone highly trained in mathematics using the discovery method of asking provocative questions. A regular classroom teacher who tries to teach abstract mathematics, Mr. Day says, would be like an American tourist in Mexico who learns enough Spanish to ask questions but is overwhelmed by the responses. "My children, who are not in a high achievement group, have grasped things I never thought they could do," says Barbara Conte, the classroom teacher for Professor Szczarba's SEED group.

Professor Sidney was an early SEED con-

vert and helped get Yale support for the project. Professor Szczarba was skeptical about the need for Ph. D. level mathematicians as teachers in the fourth grade, but he attended a SEED demonstration when another appointment was cancelled. "I walked in and was overwhelmed," he said. "I decided that day to teach."

Neither professor is thought of as an activist. To them SEED is not a do-gooder volunteer pastime. The program offers them a chance to engage in intellectual activity with people who are interested purely in ideas rather than in correct answers or grades—and who don't want to be coddled. If the "algebra teacher" offers too many hints, he is likely to be reprimanded. "You're not spozed to be giving us any clues," they tell him after class.

"I'm interested in people not hating mathematics as they do now," Professor Szczarba says. "The response of my fourth graders is proof to me that mathematics can be an enjoyable activity. It's a magnificent thing when all of a sudden they can read 'gamma times one over gamma is equal to identity element for multiplication.' "

Yale's "algebra teachers" find it hard to believe that until two years ago there were no black students in New Haven in college preparatory math; yet they know that in every SEED class there are many students doing high school algebra.

Professor Sidney calls SEED a "spectacular case" of a project designed to fit President Kingman Brewster's guidelines for deciding which community projects Yale should take on and which it should turn down. "It involves real honest-to-God Yale people," he says. "It's something we can do naturally with the resources that we have. And it involves doing those things which Yale is peculiarly suited to do."

The community supports Yale's "algebra teachers" because they're not doing research on the children—they're involved in day-to-day, week-to-week teaching—and because mathematics is culture-free and a white teacher can function in a black classroom.

How successful would SEED's discovery techniques be outside the elementary school classroom?

"The SEED experience has changed my whole attitude toward teaching," Professor Szczarba says. "I'm now convinced that the single most important ingredient is involvement on the part of the student. This new attitude has affected both the way I help my son with his homework and the way I teach my courses at Yale. We do far too much lecturing in most of the courses taught at the college level."

[From the Boston Evening Globe, Mar. 25, 1971]

THE SEED OF A BOLD IDEA: MATH PLUS IMAGINATION EQUALS A DIVIDEND

(By Nina McCain)

William F. Johntz would like to officiate at a marriage between the best trained mathematicians and scientists from local universities and Rte. 128 industries and children from the poorest and least successful elementary schools.

Johntz is not a clergyman, although there is an unmistakable aura of the evangelist about him.

He is a math teacher and director of Project SEED (Special Elementary Education for the Disadvantaged) which uses mathematicians from universities and firms like IBM to teach abstract, high-school level math to poor and minority group children who have a high failure rate in school.

SEED is operating in California and Michigan, where it is totally funded by the states, and in such diverse communities as Nome, Alaska, and New Haven, Conn. It has received rave reviews in newspaper and magazine articles and was found, in a study by a Caltech math professor, to produce significantly higher scores both in computation and understanding than ordinary math classes.

Johntz was in town this week to attempt to get SEED started in Massachusetts, a state he considers particularly fertile territory because of its large concentration of scientific manpower, including numbers of highly trained people who are now unemployed.

He launched his campaign with a demonstration math class taught before a roomful of university people, legislators, businessmen and members of the state Board of Education. Using about a dozen fifth graders from the Mackey School in the South End whom he had seen only three times before, Johntz put on a convincing display of his major thesis—that children, including disadvantaged children, have "an amazing talent and lust for the abstract."

The children whipped through an exercise in algebraic equations involving exponents at a pace that left at least some members of the audience several steps behind. In the process, Johntz used the techniques that lie at the heart of his teaching method. With a series of rapid fire questions, Johntz led the children to make their own discoveries and correct their own mistakes. He was relaxed and friendly, always used first names when he addressed the children, and never told a child he had the wrong answer.

The children responded with absorbed, excited interest and eager hand-waving on answer questions. At the end of the hour, Johntz told them, "They do this stuff in second year high school algebra but they don't understand it like you do, they just memorize it."

After the children had left the room, Johntz explained the philosophy behind SEED. The main problem disadvantaged children face, he said, is that they "think of themselves as being inferior."

Most compensatory education programs fail because they focus on the children's failures in school and on remedial work. SEED concentrates instead on providing children with an opportunity to succeed in a "culture free" subject—abstract mathematics—that is also a high status subject because it is considered to be extremely difficult.

Johntz believes that all children have a natural ability for abstractions and symbols and that math normally "wipes out" both poor and middle class youngsters because it is taught by elementary school teachers who hate and fear the subject. The solution, according to Johntz, is to

"Take the early elementary grades, where every child is an intellectual, every child is turned on, and put them into contact with people who love the subject and know it deeply."

He has found that university professors and mathematicians from places like IBM and Bell Labs are willing to go into the public schools and teach regularly because "they find it intellectually and mathematically exciting to work with young children."

Johntz emphasizes that SEED is not like the usual program in which university or business people come into schools to consult or give a guest lecture. The people who teach in SEED handle regular classes, every day usually on a released time basis from their jobs.

The classroom teacher is not displaced but stays in the room while the class is going on, absorbs some of the teaching techniques and "learns a lot of math," according to Johntz.

Johntz, a former high school math teacher in Berkeley, Calif., now spends a good bit of his time traveling around the country spreading the SEED gospel. A demonstration class that he conducted before the Michigan legislature was so impressive that the state now has the program in about 70 classrooms with full state funding.

Johntz would like to get the same kind of state funding in Massachusetts. He has been meeting with legislative leaders and members of the education committee and hopes to get legislation filed this term. He estimates that it would take about $500,000 to get the program started.

State education commissioner Neil Sullivan, former superintendent in Berkeley, is an enthusiastic supporter of the program and brought Johntz to Massachusetts. But Sullivan said yesterday that the State Department of Education will not attempt to file a bill for funding the program this late in the legislative session.

Johntz also is meeting with representatives of the state employment service in an attempt to find ways of using some of the unemployed professionals who have been squeezed out of the electronics and space industries.

[From the Detroit News, Oct. 3, 1971]

SEED MAKES ALGEBRA EASY FOR FOURTH GRADERS

(By Kay Kirby)

The "teacher" wrote an equation on the board and without turning around called out.

"Who can read this?"

A small black girl stood up and read in a high piping voice: "Alpha e lambda times alpha e gamma equals alpha e parenthesis lambda plus gamma end parenthesis."

This was not in a college classroom, but in a standard fourth grade room at Duffield Elementary School and the "student" was reciting in her SEED algebra class, which meets four times weekly.

The "teacher" was Warren Leffler, who holds a doctorate in mathematics and heads the SEED (special elementary education for the disadvantaged) in six Michigan cities. He is a slight, young man whose liking for math is only exceeded by his liking for kids.

"Everybody agree?" he continued. "Then let's translate. Tell me if I'm wrong." And he started writing numbers in place of symbols.

"Stop!" the whole class chorused at one point.

"Tell me what to put in then," he continued. Using a rapid series of questions, he led the class through some algebra that would leave most adults gasping. At one point a problem on the board read 2E500x2E70=2E (500+70).

How would you find that answer?" he asked quickly.

"How about a computer?" a youngster shot back.

"That might take a little time," Leffler countered. "What kind of an answer would you get?"

"Maybe," a tall slender boy said hesitantly, "maybe, infinity?"

Immediately waving arms of protest went up throughout the room.

"There seems to be some disagreement," Leffler said kindly. "Let's see what someone else thinks."

A little girl giggled and said, "It would be a klig-lee-wig" and everybody laughed. (A klig-lee-wig is the name the class gives to a symbol for all the grains of sand on earth—a very large number—but not infinity.)

The idea of teaching abstract math to young children started about eight years ago with Dr. William Johntz at Berkeley, Calif. His SEED program is now being used in 15 states.

Its purpose is to give a youngster an improved self-image and success. Remedial math, according to Johntz, tends to accentuate failure.

Math was chosen because it is considered "culturally free," lacking the built-in failure one often finds with language.

"The true intellectuals in our society are the children," Johntz has said. "Their lust for abstract conceptual reasoning is almost universal, until it is crushed. Adult genius is just the part of childhood that is retained."

The class at Duffield is not a "special" one in any way—just one of the fourth grade rooms selected for the project. The only prerequisite is that the class must be designated as disadvantaged by the state.

An unusual feature of the SEED programs is that they are taught not by teachers but by trained mathematicians. Also in SEED classes there are no "wrong" answers..

"You need a true mathematician to sense the direction of a 'wrong' answer," Leffler maintains. "All answers are based on a principle and you have to feel out the direction of the thinking."

Basically the SEED format is a fast moving question and answer method that dates back to the early Greeks. A SEED teacher candidate observes a class for about four weeks and attends an evaluation session after each class.

When he starts on his own, a SEED supervisor observes at least once a week, and in addition the new teacher is required to observe another class at least once a week.

Many gimmicks are used. If a child disagrees he waves his arms horizonally. If he agrees he raises both hands vertically and if he wants to recite he holds up a name card.

"This cuts down on the noise level," Leffler observed, and referring to the disagreement sign, quipped, "We call it our silent protest movement."

In Michigan last year 4th, 5th, and 6th grade SEED students were tested with others on regular arithmetic performance. Although the study is not completed, Leffler said sixth graders showed marked improvement while scores of the fourth and fifth grade SEED students were "out of sight."

Essential to the program, Leffler insists, is the presence of the regular classroom teacher in the room. Mrs. Pearline Squalls, homeroom teacher at Duffield, participates in discussions and helps with the questions and answers.

According to Mrs. Theresa Denman, elementary math supervisor for Detroit schools, one of SEED's biggest advantages is that regular teachers have an exposure to the "discovery method technique" in action.

[From the Trenton Evening Times, Apr. 16, 1971]

PUPILS DO THEIR MATH THING IN DISPLAY AT STATE ASSEMBLY

(By Ramona Smith)

"Alpha exponentiation Q, times Alpha exponentiation Beta, equals Alpha exponentiation Q plus Beta."

That was a Trenton elementary school class speaking. In unison.

Two dozen Columbus School pupils did their mathematical thing at the New Jersey Statehouse yesterday, whisking through second-year algebra problems in the state Assembly Chamber.

Their teacher for the day was William F. Johntz, national director of project SEED (Special Elementary education for the Disadvantaged), a program for exposing disadvantaged youngsters to abstract mathematics.

FUNDS SOUGHT

Johntz conducted the demonstration lesson for some 50 educators, reporters and cameramen. Legislators were scarce at yesterday's demonstration but Johntz is hoping the legislature will come up with $500,000 to fund SEED programs for an estimated 3,300 New Jersey children.

A small SEED program is currently functioning in Camden and Assemblyman James J. Florio, D-Camden, has introduced a bill that would give the state Education Department half a million dollars for project such as SEED. That bill is now in the hands of the Assembly education committee.

Johntz, who says that at an estimated $150 per pupil the state "cannot afford not to have" the SEED program, said Trenton would "absolutely" be among the districts involved if the Legislature comes across with the funds.

NO OFFICIAL STAND

Johntz claims "the most solid support" of the state Education Department for the proposal but department officials indicated their agency is taking no official stand on the project.

The Columbus School youngsters, a combination fifth and sixth grade class normally taught by Mrs. Rose Richardson, were chosen for the state-house demonstration as representative of disadvantaged inner-city pupils, Johntz said.

Anticipation of failure becomes "a self-fulfilling prophecy" for such youngsters, Johntz said, but the children can gain confidence through a "success experience" like learning abstract math at a rate that leaves some college graduates behind in the dust.

PARADOX FOUND

Some such graduates appeared to be left behind in the dust yesterday as the children identified the "paradox" of arriving at two conflicting answers to the same problem by correctly using different mathematical methods.

The youngsters, who had had three previous sessions with Johntz or his assistant, were asked for homework to figure out what many adults would recognize as the square root of 11. They breezed quickly through the square roots of nine and 16.

Johntz began the SEED program eight years ago in Berkeley, Calif. and now heads projects in California, Michigan and about 10 other states Project teachers typically have at least two or three years of graduate work in math, he said, and many are loaned to the program by industries or educational institutions.

SCIENTISTS HELP

Thirty-two researchers at Bell Laboratories in Murray Hill have volunteered to work in the proposed New Jersey program, according to Johntz. Training these teachers, he said takes from two to four weeks.

Johntz contended that children "have a universal talent and lust for doing abstract mathematics" but that ordinary school lessons leave pupils "mathematically emasculated."

"Mathematics as it is normally taught is, I think, the most destructive kind of experience that we have in the public schools today," Johntz asserted.

Johntz's teaching method avoids lecturing to students or telling them when their answers are wrong. Mistakes are detected by other members of the class who wave their arms over their heads in a scissors motion that Johntz labels their "gesture of intellectual protest." And Johntz makes deliberate errors to keep them alert and challenging.

[From the Columbus Dispatch, Mar. 5, 1972]

MATH LESSONS TEACH PUPILS SELF RESPECT

(By Melanie Croker)

The 10- and 11-year-old inner city students rattled off such algebraic terms as "gamma," "lambda," "variable" and "exponent" with understanding and enthusiasm that amazed 200 educators.

The performance was by 26 fifth and sixth graders of the Fair Ave. Elementary School, 1395 Fair Ave., at the Bell Telephone Labortories, 6200 E. Broad St., Friday.

The students had learned the terms—and much more—in three prior sessions introducing Project SEED (Special Elementary Education for the Disadvantaged).

The sessions were directed by Warren Leffler, Michigan SEED director. SEED is designed to improve academic achievement of children in poverty surroundings by teaching them abstract, conceptually oriented mathematics in elementary grades.

It is also designed to improve the students' self image, for it is intellectually demanding, and this in turn enables them to do better in all subjects.

Following the students' performance, Columbus Public Schools Supt. John Ellis commented:

"The program has excellent potential. I hope competent mathematicians in the Columbus area will be willing to participate in an area program."

University level teachers and professional persons teach SEED courses.

This is one reason the program is so successful. This level of teacher is totally interested in the subject, program personnel feel. The children are presented advanced mathematics, something they normally wouldn't get until in a higher grade. It makes them feel proud and they want to learn.

"Math is a wipeout as it's presented in the public schools," said William F. Johntz of Berkeley, Calif., founder of the program.

He added, "They (public schools) turn out millions of adults who don't like it (mathematics). The adults let you know quickly they are basket cases in the area. It's treated like a universal phenomenon.

"We believe math is a talent that is universal—until it's destroyed in the public schools. We have one generation of math victims working to make other victims," he philosophized.

"It's 14 years of brainwashing," the Harvard Ph. D. candidate continued.

The SEED method has proven to be of value to the youngsters in at least three states who have adopted it, he said.

Not only do the students take a great amount of interest in mathematics for once because of the individual attention, they also gain interest in other fields of study, he said.

The children get involved in algebraic equations and talk freely about bases, exponents and variables.

The teacher presents the material slowly on a friendly basis, encourages participation, questions. The children do all the work. The teacher guides them.

If students disagree at any time, they signal "No" with hands. It's their show. Everyone participates. That also makes the program successful—"They can't close their minds as in other class work," Johntz said.

"Math is high status. An understanding of it gives one a feeling of power," Johntz said.

His theory is you can't change children until you change their self-image. "If children are surrounded by persons who are unsuccessful they have nothing to work for, he said. "Poor children often feel inferior in the school context, and if someone convinces you you're stupid, no matter how bright you are, you'll act like it."

So by taking a subject "culture free"—algebra—and presenting it to youngsters in poverty surroundings, Johntz feels, the children can learn to gain respect for themselves.

The children in the Fair Ave. group seemed to have gained that respect in four lessons—and they loved the mathematics, many for the first time.

The 11-year-olds all liked the algebra presented in the SEED sessions, which were added along with other school work.

Valerie Howard, 11, said it makes her feel proud of herself, "You don't get tired of it."

Paul Quinichett, 11, added, "You want to learn. This way you can get a head start for junior high work."

[From the Seattle Times, May 18, 1972]

SIXTH GRADERS TEACHING AT UNIVERSITY OF WASHINGTON

(By Grant Fjermedal)

Numbers and equations filled the air of a University of Washington classroom today as two Madrona Middle School sixth-graders taught an algebra class.

The pace was fast as the university students tried to match minds with the two young black students who took turns at the board.

Kenneth Alston, 11, and Rodney Alexander, 12, are participants in a Model City-funded Special Elementary Education (program) for the Disadvantaged. In SEED, university and industrial-research mathematicians teach college-level algebraic concepts to elementary pupils without textbooks.

Kenneth and Rodney, who have participated in the program since it began two years ago, appeared before 20 students of a contemporary education class.

"This will be a study of exponentiation," Kenneth said as he approached the blackboard, covering a good part of the board with blue-chalked figures, "If you know the answer, raise your hand."

A student with long brown hair, muttonchop sideburns and thick black glasses produced the answer.

But for Kenneth, the concepts, the mechanics are more important than the answer so he pressed on, "How did you get that?"

"From previous experience," the student replied.

In soft-voiced exasperation the 11-year-old teacher said, "Just like a college student, never answers a question." And then went back to work.

Midway through the class, Kenneth turned the chalk over to Rodney who spoke of the multiplicative law. "That's a pretty long word, so I won't spell it."

After some warm-up problems he asked the students to take out a paper and pencil, wrote a problem on the board and walked to the back of the room, asking them to raise their hands when they had the answer.

After a few hands went up he returned to the front of the class. The answer was given—the square root of three to the fourth power.

Proud of his quick class, he repeated the process. And though it took a bit longer, and only two hands went up, the right answer again surfaced—four to the 5,040th power.

At the end of the period Rodney said, "Well, I'd say you are a pretty good class." The students applauded.

In comments after the class, both boys said they planned to major in mathematics in college. Both want to teach the subject someday.

They are looking forward to continuing the program next fall but Dr. Virginia M. Warfield, director of the SEED project here is not so sure the funding will be available.

"Up until this week I was convinced the program would be wiped out for next year in Seattle. Now I see some faint glimmer of hope."

[From the Atlanta (Ga.) Journal and Constitution, Mar. 21, 1974]

IT ALL ADDS UP TO KIDS WITH A HUNGER FOR MATH

(By Jane Leonard)

Hands shot up into the air.

Crossed fingers represented a multiplication sign. Curled fingers above and below a straight one were instructions to divide.

Clinched fists on the end of outstretched arms indicated approval. And when the 25 fifth graders from Gideons Elementary School of Atlanta waved one arm across the other they were disagreeing with the way Dr. Wayne Patterson of Princeton University was solving a math problem.

"What's wrong?" Patterson asked the class as he turned away from the four blackboards he had filled with complicated formulas and saw that the entire class was giving him the sign of "intellectual protest."

"You counted the times sign," yelled Tony, almost falling out of his desk to get the attention of the mathematician.

"Who can get this straight?" asked the university faculty member pretending ignorance.

"Let me. Let me," cried Tony, arms once again thrust upward.

And as soon as one problem was solved by the students who shouted instructions to the teachers, they went on to another—each more difficult than the previous.

When they reached 56 as the answer to an equation, Patterson wanted to quit. "The numbers are getting too big to handle" was his reason.

"So," the fifth graders responded, "let's go up to millions."

"When they reached the thousands he said, "We'd better quit. Just one more."

"Three more," the youngsters begged.

Finally they reached the additive law of exponents and exponentiation.

"Exponentiation," the class members said together, experimenting with the sound of a new word in their mouths.

"Isn't that the biggest word you have ever heard of?" he asked.

"No," replied one in the mostly black class. He thought "Czechoslovakia" was a mite bigger.

"Exponentiation" didn't exactly flow but came out in separate, mumbled syllables.

But the youngsters knew how to use the word to solve math problems. And that was what it was all about.

Patterson was using the class to show a group of about 150 mathematicians and educators that young disadvantaged kids could learn conceptual advanced math and actually enjoy doing it.

Patterson is part of Project SEED (Special Elementary Education for the Disadvantaged) and was showing how the project works at a demonstration this week sponsored by the math department of Emory University and Atlanta Area Teacher Education Service.

"The response is consistently the same," said William F. Johntz, who founded SEED in Berkeley, Calif., about nine years ago.

"Regardless of their background, no one fails to respond with competence," he explained.

Students from poverty areas have "middle-class listening skills," he said, adding that life in the slum where there is little room for privacy teaches them to turn themselves off to persons who talk to them.

And such students also do not have help with homework as do middle-class children whose parents push them from birth to prepare for college. Poor students also don't have books, newspapers and magazines in their homes and therefore have "a different attitude toward symbols on paper."

Middle-class students, even though they may not be as smart as poorer students, do better on tests "because they are brainwashed" to feel the symbol on paper is important.

Because of these disadvantages, the students from poverty areas feel inferior in school. To build confidence in them, Johntz decided to teach them advanced math—"a culture-free subject."

Since they had never been exposed to conceptual math, they could start from scratch on an equal footing with other students. Different from federal programs that concentrate on focusing on the student's problem area, SEED concentrates on what many think is "the world's hardest subject."

Johntz, a math teacher when he started SEED, said "mathematical talent is universal. All can do it until their ability is destroyed." This destruction comes about, he said, by math teachers who dislike the subject and really don't understand it.

And this message that math is dull and difficult has been passed from one generation to the next "for so long people think if they do well in math they are destined by fate."

"Math as it is taught today is a disaster," he said, adding that years of studying the subject give most students not just a neutral feeling toward it, but a negative one.

"But children in general can do math well and at high levels," he said describing youngsters as "the real intellectuals of society."

"They have a genuine lust for doing abstractual things," he continued.

Gammas, thetas, betas and other mathematical lingo seemed as much a part of the fifth-grade vocabulary as peanut butter sandwiches.

As Patterson taught them a new math term, he wrote it on the blackboard. After adding substitution, factoring and variables, he ran out of space and had to erase.

"Please forget these," he teased. "Won't one person in this room promise to forget these for me?"

"No," was the cry from the class.

[From the Newark (N.J.) Sunday Star-Ledger, May 28, 1972]

HIGHER MATH HELPS BUILD CONFIDENCE

(By Dagmaris Cabezas)

While some students raised both arms excitedly in agreement, others waved their arms wildly, disagreeing with the mathematical logic of a fellow student.

"That answer is incorrect," blurted out a tiny black girl. "It doesn't follow the additive law of exponentiation."

These mathematical "geniuses," who may be found in three fifth grade classrooms at Newark's all-black Morton Street School, are participating in Project SEED (Special Elementary Education for the Disadvantaged), geared to improving the academic achievement of disadvantaged elementary school students.

The project, conceived by a Berkeley high school teacher, William F. Johntz, eight years ago, attempts to improve the negative self-image of the disadvantaged child through higher level mathematics.

Prudential Insurance Co. in Newark, which financed the Morton Street School math program, provided four junior actuarial assistants—company mathematicians—who introduced the fifth graders to complicated mathematical logic last December.

"Since our aim is to make education a positive experience, we never tell a child he's wrong," explained Hal Barney, one of the SEED teachers.

"One of the most important things we teach the kids is to think and not be afraid of a wrong answer," added Barney. "Often a student might discover something which is peripheral to the question but which is very praiseworthy and intelligent."

According to the SEED philosophy, higher level mathematics helps the disadvantaged child to improve his self-image by demonstrating that if achievement is possible in this highly complex area, he can develop competence in all others.

"The kids have developed an incredible confidence," reported SEED teacher Neill Cartusciello. "One girl who would never ask questions recently discovered the answer to a problem involving negative exponents."

The SEED program attempts to establish discipline in the classroom by encouraging the children to establish their own system of behavioral rules.

"At the beginning of each course I ask the kids what type of rules they want," explained one SEED teacher. "They realize that in order to learn they cannot do everything they desire."

"It's not only that," said SEED Project Director Helen Smiler. "Because the kids like the subject, it eliminates problems."

One of the regular Morton Street School teachers, Miss Jane Pocknett, who remains with her fifth grade class during their daily one-hour SEED instruction, believes the program has improved the students.

"When they return to my class the children seem less reluctant to answer questions," she commented. "Also they have improved in their regular math class."

Miss Smiler, SEED project director, attributes the success of the program to the high level of competency of the participating SEED instructors, many of whom are mathematical researchers holding post-graduate degrees.

"Instead of just analyzing society's problems, scientists can now work to solve them through project SEED."

[From the Malay Mail, Aug. 26, 1972]

AMERICAN EDUCATION PLAN MAY HELP MALAYSIA'S BACKWARD PUPILS

IPOH.—An American educational programme for the disadvantaged may well be the answer to Malaysia's efforts to bridge the gap in academic performances between urban and rural pupils.

"Project SEED (Special Elementary Education for the Disadvantaged) is working well in the United States," said a teacher, Miss Helen Smiler, one of the directors of the programme.

"Socially and economically handicapped children, with no one to help them with their lessons at home, grow up with an inferiority complex.

"The biggest problem they face is thinking that they cannot succeed."

The programme, started nine years ago, is aimed at helping these disadvantaged children progress in their studies by giving them back their self-confidence.

Miss Smiler told the Ipoh Rotary Club luncheon meeting how this change was brought about by giving these children additional lessons in modern maths.

"The project's volunteers move into primary schools with high concentrations of disadvantaged children to give 40-minute special lessons daily.

"We teach these children lower secondary maths by the discovery method, to draw them out of their shells and get them to take part in school work," she said.

Miss Smiler said that maths was taught because it was a neutral subject in which all start as equals unlike other subjects like reading where a pupil from a poor home will begin at a disadvantage.

"And the results have to be seen to be believed," she said.

"I have some 10-year-olds who are capable of conducting a one-and-a-half hour lesson in maths for college students."

As their maths progress, these disadvantaged pupils, once given up for lost, also show marked improvement in their normal school work.

Miss Smiler, who is here on holiday, has started a similar programme in two of the more academically poor classes in Form Two in the Anglo-Chinese School here.

"And she has shown that the 'unteachable' can be taught," said the school's principal. Mr. Teerath Ram.

Miss Smiler was in the school six years ago under an American Field Service teacher-exchange programme. She has been teaching for the past nine years.

[From the Straits Echo (Thailand), Aug. 25, 1972]

NEW TECHNIQUE OF TEACHING MATHS TO BACKWARD PUPILS

IPOH.—Backward pupils in Malaysia can benefit from an educational project now being successfully undertaken in the United States.

This was disclosed by a Harvard mathematics graduate, Miss Helen Smiler, in a talk to Ipoh Rotarians at their weekly luncheon meeting at the Ipoh Club today.

Speaking on "Project SEED" (special elementary education for the disadvantaged), the pretty American who is one of the programme directors in the United States, captivated her listeners while expounding the new "discovery" technique of teaching mathematics.

"By involving student participation, with the teacher asking questions and the pupils providing the answers, there arises a motivation among the students for solving the problems and thereby creating an interest in the subject," she said.

As interest grows so does the student's self-confidence, she added.

According to Miss Smiler, mathematics is something cultureless and a fresh subject. Everyone starts learning it at the same level, whether a person is from a middle-class environment or from the ghetto.

BIG SUCCESS

"It's not so with reading because a child from a well-to-do family obviously will have an advantage over one from a poorer family," she pointed out.

She said that Project SEED had proved a big success since it was started nine years ago in the United States and it could prove advantageous to backward students in other parts of the world.

Miss Smiler, who is presently on holiday in Malaysia, has conducted such mathematics classes at the Anglo-Chinese School here.

"I am happy to say that the students I taught have responded very well," she said.

Mr. Teerath Ram, Principal of the ACS, later told newsmen that Miss Smiler had proved that even "unteachables" could be taught provided proper teaching methods were used.

[From the Columbus Citizen-Journal Jan. 31, 1973]

SEED HELPING GRADE SCHOOLERS LEARN COLLEGE MATH SKILLS

Thanks to a national program known as Project SEED, fourth and fifth graders in five Columbus elementary schools are mastering the same advanced mathematics skills as many college students.

Project SEED, which derived its name from the title Special Elementary Education for Disadvantaged, employs professional mathematicians and scientists from major universities and research organizations to teach abstract math concepts to elementary students on a daily basis.

Already in operation in a number of other school districts across the nation, the program has been operating in the Columbus Public Schools for the past four months.

Disadvantaged pupil funds provided by the state cover the board's share of the cost.

Classes have been established at Fair, Livingston, Main, Ohio and Weinland Park Elementary Schools.

The program is carried out in addition to a student's regular math classes. In addition to providing staff and materials, Project SEED also conducts training sessions for other teachers to acquaint them with methods used in the program.

Prospective SEED teachers are recruited and serve the program voluntarily. They undergo extensive training before entering the classroom and continue their training while "teaching."

The current team of SEED instructors include representatives of Bell Laboratories, Battelle Memorial Institute and Ohio State University graduate students in physics and math.

Brian Stecher of Bell Labs, director of the Columbus SEED project, said there is no problem in attracting local professional and academic talent.

William P. Johntz, founder and director of the project, said students not only learn math concepts they normally would not encounter until college "but they also develop a greater self confidence that enables them to do better in other studies."

Project SEED utilizes what is known as the "Socratic method" with instructors leading pupils through a series of activities designed to emphasize the joy of learning and allowing the student to discover for himself the concepts being taught.

In general, regular teachers have been impressed with results thus far.

"I have never seen a program that surpasses this one in effectiveness, value and organization," said one Livingston Elementary teacher.

"This program has given my students a chance to perform without pressures and the worry of being graded," said a Main Elementary teacher. "It has increased their enthusiasm to learn."

But perhaps the comments of an Ohio-av teacher summed up the program's success best.

"Not only does the carry over happen in math," she said, "but the children are starting to respond with eagerness to other unrelated subjects.

"This 'I can solve any problem' feeling is starting to change a non-reader, non-participator into an excited, curious, natural child who is starting to accept himself as a good person who can function in the world."

[From the Intercom, Feb. 9, 1973]

PROJECT SEED EXPERIMENT UNDERWAY

Mastering the same advanced mathematics that baffles many a college student is the goal of fourth and fifth graders in five Columbus elementary schools. The youngsters are members of eight Project SEED classes that began operating in the schools over the last four months.

SEED, which stands for Special Elementary Education for the Disadvantaged, is a national program in which professional mathematicians and scientists from universities and research corporations teach abstract math concepts to disadvantaged elementary school children. The program started ten years ago in California, now operates in other school systems throughout the country.

After reviewing a proposal from officials of the program last March, the Board of Education decided to set up a limited SEED program this year in the Columbus schools. Disadvantaged pupil funds provided by the state were used to cover the program's cost—$4,500 annually for each SEED class of about 30 students—and classes were established at Fair, Livingston, Main, Ohio and Weinland Park Elementary Schools. Additional classes are to be in operation at three more elementaries by the end of the year. The classes, each 40 minutes in length, are conducted four days a week, with a fifth day devoted to teacher training activities.

MULTIPLE BENEFITS OFFERED

William F. Johntz, founder and director of Project SEED, maintains the program offers multiple benefits for participating schools. Not only do students learn math concepts they normally wouldn't encounter until college, says Johntz, but in doing so they develop a greater self confidence that enables them to do better in other studies.

Johntz is understandably proud of SEED's achievements in other school systems and confident it will do the same for Columbus students. At the same time, however, he attributes much of the program's success to the regular classroom teacher. "Success heavily depends on the regular teacher," he says. "They (teachers) play an extremely important role."

Teachers, as well as students, stand to profit from SEED, Johntz believes. Most importantly, he says, watching her students

perform in a SEED class can raise a teacher's expectations for them. He also says the program gives teachers a rare chance to "watch their own class from the rear of the room" and to learn the techniques used by SEED instructors. (The classes are taught by the Socratic method, with instructors leading pupils through a series of activities designed to emphasize the joy of learning and allow the students to discover for themselves the concepts being taught.)

NEW FACES IN THE CLASSROOM

The most unique feature of Project SEED, perhaps, is that it daily brings into the classroom mathematicians and scientists—persons unused to meeting and communicating with elementary school children on a regular basis.

Prospective SEED instructors are recruited from universities and research firms to serve in the program—many voluntarily. They undergo extensive training before entering the classroom and take part in further training sessions once their classes begin. According to Johntz, corporations have shown considerable interest in SEED and believe it offers their employees a valuable experience. *Johntz says* the employees, too, are generally enthusiastic about working as instructors.

SEED recruitment efforts in Columbus apparently have met with the same success experienced in other cities where the program is being conducted. Brian Stecher, director of the Columbus SEED project, says there was no problem in attracting local professional and academic talent. Personnel from Bell Labs and Battelle Memorial Institute and Ohio State University professors and graduate students in physics and math make up the team of Columbus SEED instructors, Stecher reports.

EARLY SIGNS OF SUCCESS

Like those in other school systems, the Columbus SEED project faces an elaborate evaluation to measure its effectiveness. Extensive testing by the school system's evaluation department is expected to accurately indicate what difference SEED may make in the math skills of students taking part in the program. Pupil attitude questionnaires and classroom teacher evaluations are also planned, according to SEED personnel. While results of the formal evaluation will not be complete until April, preliminary indications are that SEED is what officials of the program say it is.

Teachers whose students are members of SEED classes were recently asked to comment on the program. "I have never seen a program that surpasses this one in effectiveness, value and organization," wrote a fifth grade teacher at Livingston Elementary, where the first class of the Columbus SEED project was conducted Oct. 11. Another Livingston teacher said the program has taught her students "to be very alert and discerning in other subject areas."

Meanwhile, a teacher at Fair Elementary observed in one sentence what SEED officials say in several pages of program description: "The most important factor coming out of Project SEED is that the children are learning and thoroughly enjoying the process."

[From Bell Lab News, July 23, 1971]

BELL LABS MAKE THE NEWS

On his own before a class of eager fifth and sixth graders at Emerson school in Plainfield, N.J., is Robert Kurshan, Murray Hill. Kurshan is one of about 15 Bell Labs employees now being trained as Project SEED instructors. Project SEED is a program designed to stimulate pupils and build their self-confidence through a group discovery teaching method using abstract mathematics. When trained, the BTL employees will teach classes in Plainfield schools as a supplement to the pupils' regular education throughout the year. Project SEED trainers are now at Murray Hill, and instruction for BTL volunteers will continue through August 13. A fall training program also is planned. Persons wishing to volunteer should call the Volunteers in Action office at Murray Hill, x6145.

[From the Seattle Post-Intelligencer, Jan. 31, 1971]

THAT FRIGHTENING NEW MATHEMATICS LARK TO YOUTH

(By Marjorie Shoemaker)

SEED, which stands for Special Elementary Education for the Disadvantaged, is a federally funded project which takes professional mathematicians into elementary school classrooms in disadvantaged areas to teach math by the group discovery method.

When Mrs. Virginia M. Warfield, Seattle SEED director, asks her fifth-graders to deal with exponentiation, that is, numbers in terms of powers, they wave their hands frantically to volunteer answers.

They handle formulas frightening enough to stop the average high school or college student. What's the secret? Combine a mathematician who loves his subject, a Socratic approach to teaching and a group of youngsters who don't believe that math is terrifying.

"We do not lecture, ever," Mrs. Warfield explained. "We ask questions. If a student asks a question, we ask him others designed to lead him to its answer.

"If a student makes a wrong answer we explore the thinking behind it, often to great profit, since the off-the-track thinking can be at times the result of extremely sophisticated and complex misinterpretations. We never say baldly 'No, that is wrong.' "

And the students seem to learn and to enjoy learning. Mrs. Warfield invited children to come to her office at lunch and work algebra problems on the blackboard.

"They came in mobs, and often the class troublemakers were the first ones there," she said.

One day Mrs. Warfield walked into her office and found the following message:

"From Antonette to Mrs. Warfield, I like algebra and you too. So we can keep it that way. So that's that. Algebra is very important because people all around the world do not know what it means."

SEED has 10 classes at Madrona and three at T. T. Minor Elementary School. By the middle of February, two more will open at Madrona and three at T. T. Minor. SEED also will be offered to fifth graders at Bayley-Gatzert Elementary School.

None of the SEED instructors is a certified elementary teacher, but all are mathematicians. Four SEED instructors and two that are training to teach SEED are University of Washington math professor, and a few are housewives with math degrees.

Mrs. Warfield has her bachelor's degree in math from Bryn Mawr College, her master's in math from Brown University and is close to completing a doctorate.

She explained that an elementary teacher often is not well enough trained in math to explore the value in a child's "wrong" answer. The teacher might call it wrong and destroy a child's confidence.

Because SEED instructors are not usually certified, a teacher must be present with them in the classroom.

A prime purpose of SEED is to teach a student to enjoy mathematical thinking rather than regard it as a chore.

"At this age kids still want to learn, and they haven't developed the sophistication to not want to learn," Mrs. Warfield explained.

They haven't developed what she calls "adolescent madness."

The emphasis is on success, and failure is just not talked about.

"We think of it as an acultural program. The kids start from scratch on the same level. They use their brains, not any previous knowledge," said Mrs. Warfield.

The students develop their own symbolism and their own language in describing what happens in math. To understand negative numbers, they say, "Negative 3 is the number that says no to 3."

When a child offers his ideas in a SEED classroom, it's his peers—not his teacher—who may disagree with him.

When they agree they wave their hands in parallel fashion above their heads. They disagree just as enthusiastically by spinning their hands in front of them.

The SEED teacher never lectures, and Mrs. Warfield admitted many an instructor finds it difficult to train himself out of the lecturing instinct. The students conduct a dialogue with the teacher and among themselves.

"We feel it's a sign of progress when a child writing on the board looks at the class instead of the teacher," Mrs. Warfield said.

SEED is the brainchild of William F. Johntz, a former high school math teacher in Berkeley, Calif., who believes ". . . the true intellectuals in our society are the children. Their lust for abstract conceptual reasoning is almost universal until it is crushed."

Now school districts from Seattle to New Haven, Conn., have introduced SEED to their classrooms.

How is SEED success measured? There are no grades, but Mrs. Warfield believes the success indicators cannot always be measured by a test.

"What we consider success is getting children interested and getting those to succeed who haven't succeeded before," she said.

A study conducted last year by the University of California however showed SEED classes did "much better" on understanding and computing arithmetic than control classes and "enormously better" on understanding principles of algebra and geometry.

[From the San Francisco Chronicle, Dec. 27, 1971]

PLANTING A SEED OF HOPE

(By Judith Anderson)

"Multiply 64 times 64," the lanky fireball of a man instructed a conference room full of adults and children the other afternoon.

Brows furrowed, the adults picked up pencils and began writing on note-pads in their laps. Some concentrated on working the problem out in their heads.

A few seconds later, a 10-year-old boy pumped his hand wildly in the air; "4096," he answered proudly.

A classmate agreed with the answer, and the teacher asked her to go to the blackboard and show how she came up with the answer.

She wrote confidently:

(2E6) x (2E6) equals 2E (6 plus 6) equals 2E12 equals 4096.

The adults, slightly chagrined at being shown up by a bunch of fifth graders, were witnessing a dramatic demonstration of Project SEED (Special Elementary Education for the Disadvantaged). Now in its ninth year, the project was devised by William Johntz, who conducted a recent class at Levi Strauss headquarters, to teach high school and college algebra to minority children from poverty areas.

For an hour the businessmen and women, and educators, watched spellbound as 15 fifth graders (14 black, one Oriental, from Lafayette School in Oakland) grappled with logarithms, worked out lengthy equations and talked knowledgeably of gamma signs and variables. The subject of math obviously turned the eager youngsters on.

Johntz arranges periodic class demonstrations such as this one to encourage financial support from business and government, to attract potential teachers and to show the community what the project is all about.

The aura of excitement, with lots of hand waving and give and take between teacher and pupils, is typical of Project SEED classes, Johntz told the adults after the students had left the room.

Eskimo children in Nome, Alaska ("the worst slum I've ever seen in my life"), respond just like black children in Oakland or Mexican-American children in the Southwest, he said.

Math need not be "the world's deadliest subject," said Johntz, a former Berkeley high school math teacher who now directs Project SEED nationwide.

The secret is the approach. "If we approached arithmetic directly, this place would have been like a morgue," he said.

Arithmetic "clothed in abstract, conceptually oriented math" is what fascinates the children.

Algebra is only one of the lessons the elementary students are learning. More important, in Johntz's view, is the pride they develop by learning a subject far beyond their class level.

Children from poverty backgrounds "don't make it" in public schools, he said. "Every year they fall further behind."

Such children view themselves as inferior. In terms of American success standards of money and education, their parents are considered failures. They have few models to emulate, little encouragement to work toward college or a career.

Johntz has no sympathy for remedial education that praises minority children for doing "trivia." "That's a put-down, a further form of derogation," he commented.

His theory is that if a child can succeed in a subject where he's never had a chance to fail in the past, and in a subject that society values highly, the child will develop "a realistic picture of his own abilities." And a sense of pride, the kind of pride that comes from watching a group of educated adults struggle with a math problem that the children can solve in seconds.

Johntz's teaching concept grew from "an insane idea" into a nationwide project that receives federal, state and corporation funds. (A three-year appropriation of California state funds expired in June; Johntz is writing a new bill designed to renew the state funding.)

Specially trained teachers are professional mathematicians, scientists, insurance actuaries and graduate students who take at least an hour a day, five days a week, to go into public schools and teach. Some work for nothing; others who work for the project full time receive an annual salary of $8000 or $9000.

Johntz said IBM, Bell Laboratories and Prudential Insurance are a few of the corporations that are giving staff mathematicians time off to teach. Presidential also has promised classroom space in its Newark, N.J., headquarters.

The prediction that mathematicians wouldn't go into elementary schools on a daily basis didn't materialize, said Johntz. "They find it intellectually exciting to work with kids."

Progress studies show that Project SEED students score "precisely like middle-class white students on conceptual reasoning tests." The children also improve in reading and regular arithmetic, Johntz said, citing an evaluation made by the Cal Tech math department.

A side benefit of the special classes is that elementary teachers, who are always present at Project SEED sessions, learn math along with their students.

They also discover that their concepts of how much a minority child can learn change radically. The stereotypes crumble, he said.

No amount of explanation from Johntz could have expressed the results of his project as well as the children themselves did at the end of their class last week.

At the end of the hour Johntz reminded them that they were to go on a tour of Levi's factory to see how jeans are made.

"Do we have to?" several protested. "This is fun."

AMENDMENT NO. 1333

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

Mr. BROOKE submitted an amendment, intended to be proposed by him to the amendment (No. 1304) proposed by Mr. McCLELLAN, to Senate bill 1539, supra.

STANDBY ENERGY EMERGENCY AUTHORITIES ACT—AMENDMENTS

AMENDMENT NO. 1311

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

Mr. HELMS submitted an amendment, intended to be proposed by him, 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. 1313

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

Mr. BENTSEN submitted an amendment intended to be proposed by him to Senate bill S. 3267, supra.

AMENDMENT NO. 1331

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

Mr. DOMENICI. Mr. President, I am today submitting an amendment for the Senator from Utah (Mr. Moss) and myself, to S. 3267, a bill to provide standby emergency authority to assure that the essential energy needs of the United States are met.

This amendment was first introduced as legislation on May 1, 1974, as a result of a finding that construction company operators in New Mexico were experiencing great difficulty in obtaining asphalt used for roofing construction, paving highways, streets, and airport runways.

It has come to my attention that many road contractors in a number of States are experiencing serious problems in finding asphalt. A number of Federal contracts, specifically, Bureau of Indian Affairs contracts, are going to suffer significant delays because of a lack of asphalt.

Roofing contractors have indicated to me that they are having trouble obtaining asphalt for housing construction.

The reason the suppliers give is that they just do not have enough asphalt and there is no allocation authority in the Emergency Allocation Act of 1973.

I am very concerned that there can be no orderly development of our highway program or of our housing program as long as petroleum remains scarce and there is no allocation program for asphalt.

Mr. President, I feel that the Federal Energy Administration acting within the authority given to the President by this amendment should study this problem and take appropriate action to assure the orderly distribution of asphalt.

DUTY EXEMPTIONS FOR CERTAIN FOREIGN REPAIRS TO VESSELS—AMENDMENT

AMENDMENT NO. 1314

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

Mr. JOHNSTON submitted an amendment intended to be proposed by him to the bill (H.R. 8217) to exempt from duty certain equipment and repairs for vessels operated by or for any agency of the United States where the entries were made in connection with vessels arriving before January 5, 1972.

Mr. JOHNSTON. Mr. President, the role of women in our society has changed dramatically in recent years. Yet our tax laws have not changed to deal with the new role of women and particularly to recognize the needs of women who wish to be employed. For too long child care expenses have been deemed "personal" expenses—like medical or charitable expenses—rather than recognized as a basic cost of allowing women to be employed. Although the 1973 economic report to the President recognizes that the "labor force participation of women with children under 6 years has increased from 12 percent in 1950 to 30 percent in 1971," the report concludes that "child rearing is probably the major factor causing some women to interrupt and others to curtail their careers." Indeed, the same report notes that women have long experienced unemployment rates substantially above men, with the 1972 unemployment rate for women being 6.6 percent compared to 4.9 percent for men. Moreover, women headed 43 percent of all poverty families in 1972, compared to 23 percent in 1959. And black women suffered the most, heading 64 percent of all poverty families in 1972.

These figures are cause for great concern. We need to encourage all of our citizens to be employed and productive, yet our existing tax system perpetuates this unacceptable situation. The amendment that I am introducing today will, I believe, provide an important step forward in solving this problem.

The amendment to H.R. 8217 that I am introducing today on behalf of myself and the senior Senator from Louisiana (Mr. LONG) is designed to provide needed tax relief to working mothers and certain other individuals who require household and child care assistance in order to be gainfully employed or to attend school. The amendment would provide a deduction from gross income for expenses for the care of dependents up to the age of 15 and for expenses for the care of incapacitated dependents or spouses if such expenses are ordinary and necessary and are incurred to enable a taxpayer to be gainfully employed or to be a student.

Mr. President, I believe the need for this change in the tax law is clear. Under present provisions of the Tax Code, only very limited deductions are allowed for employment-related household and child

care assistance expenses, and these deductions are not available at all to the low-income taxpayer who does not itemize his deductions. Moreover, no present deduction is allowed for the cost of household or child care assistance needed to enable a taxpayer to attend school and thus better prepare to be gainfully employed.

The amendment that I am submitting today, for myself and Mr. LONG, recognizes that such household and child care assistance expenses are often necessary and directly related to a taxpayer's ability to be gainfully employed or to attend school and, therefore, provides a business deduction for such expenses to the extent that they are "ordinary and necessary" and are incurred to enable a taxpayer to be gainfully employed or to be a student. Hence, this amendment will provide to working mothers and others qualifying themselves for gainful employment the same right to take a business deduction—instead of an itemized deduction—as a businessman has to deduct his "ordinary and necessary" business expenses.

Mr. President, I might note that this amendment gives great flexibility to the taxpayers in arranging for necessary household or child care assistance. For instance, although an "ordinary and necessary" standard is established to avoid abuse of the provisions of this amendment, it is, of course, not intended that a deduction be denied for child care expenses merely because, for example, a relative might be able to take care of a taxpayer's children at no cost to the taxpayer. However, my amendment would not change existing provisions that prohibit deductions for payments to relatives, as it is important to avoid possible abuses of what I believe is the very sound tax policy contained in this amendment.

Mr. President, I believe that equity, as well as sound economics, dictate a tax policy that enables persons with dependents to be able to be gainfully employed and to attend school. The amendment that I am introducing today accomplishes that result, and I am hopeful that the Congress will move promptly to deal with the intolerable situation we now face.

Mr. President, I ask unanimous consent that the full text of my amendment be printed in the RECORD at this point.

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

AMENDMENT NO. 1314

At the end of the bill insert the following new section:

SEC. . DEDUCTION OF HOUSEHOLD AND DEPENDENT CARE EXPENSES FROM GROSS INCOME WHERE EXPENSES ARE NECESSARY FOR EMPLOYMENT OR EDUCATION.

(a) IN GENERAL.—Section 214 (relating to expenses for household and dependent care services necessary for gainful employment) is amended—

(1) by striking out "employment-related" in subsection (a) and inserting in lieu thereof "employment or education related";

(2) by striking out the matter in subsection (b)(2) preceding subparagraph (A) and inserting in lieu thereof the following:

"(2) Employment or education related expenses.—The term 'employment or education related expenses' means amounts paid for the following expenses, but only if such expenses are ordinary and necessary and are incurred to enable the taxpayer to be gainfully employed or to be a student:"

(3) by adding at the end of subsection (b) the following new paragraph:

"(4) STUDENT.—The term 'student' has the same meaning as it has under section 151 (e)(4).";

(4) by striking out subsections (c) and (d) and redesignating subsections (e) and (f) as (c) and (d);

(5) by amending paragraph (2) of subsection (c) (as redesignated by paragraph (4) of this section) to read as follows:

"(2) Gainful employment or student requirement.—If the taxpayer is married for any period during the taxable year, there shall be taken into account employment or education related expenses incurred during any month of such period only if—

"(A) both spouses are gainfully employed on a substantially fulltime basis, or are students,

"(B) one spouse is gainfully employed on a substantially fulltime basis and one spouse is a student, or

"(C) the spouse is a qualifying individual described in subsection (b) (1) (C).

For purposes of this paragraph an indivdual is considered to be gainfully employed on a substantially fulltime basis if he is a student and is gainfully employed for more than 15 hours during each week during the period in which he is a student."; and

(6) by amending paragraph (5) of subsection (c) (as redesignated by paragraph (4) of this subsection) to read as follows:

"(5) REDUCTION FOR CERTAIN PAYMENTS.—In the case of employment or education related expenses incurred during any taxable year with respect to a qualifying individual (other than an individual who is also described in subsection (b) (1) (A)), the amount of such expenses which may be taken into account for purposes of this section shall be reduced by the amount by which the sum of—

"(A) such individual's adjusted gross income for the taxable year, and

"(B) the disability payments received by such individual during the taxable year, exceed $825.

For purposes of this paragraph the term 'disability payment' means a payment (other than a gift) which is made on account of the physical or mental condition of the individual and which is not included in gross income.".

(b) DEDUCTION FROM GROSS INCOME.—Section 62 (relating to definition of adjusted gross income) is amended by adding at the end thereof the following new paragraph:

'(10) HOUSEHOLD AND DEPENDENT CARE EXPENSES.—The deduction allowed by section 214.".

(c) CLERICAL AMENDMENT.—The caption of such section 214 is amended by striking out the period and inserting in lieu thereof "OR EDUCATION.".

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking out the period at the end of the item relating to section 214 and inserting in lieu thereof "or education."

(e) EFFECTIVE DATE.—The amendments made by this Act apply with respect to taxable years beginning after December 31, 1974.

AMENDMENTS NOS. 1315 THROUGH 1324

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

Mr. NELSON. Mr. President, both within and outside the Congress, there is considerable discussion of proposals to cut income taxes at this time. The issue will come before the Congress and be disposed of one way or the other. The objective is to put additional purchasing power into the hands of those in the moderate and lower income groups who have seen their real income eroded by inflation. These are the income groups who have suffered the most because inflation has substantially reduced their capacity to purchase those essentials of food, clothing, housing, health insurance, and so forth. This is a laudable and meritorious objective which deserves the support of Congress.

However, it would be politically irresponsible to pass an income tax cut in the middle of this dangerous inflation without replacing these revenue losses by enacting some long overdue tax reforms. It will throw the Federal budget further out of balance, fuel an already rampaging inflation and play a cruel hoax upon the many people it purports to help.

This may be good election year politics, but it is bad economics, bad for the country and bad news for the taxpayer.

Many noted economists have clearly expressed their views that a tax cut without tax reform would be inflationary. For example, John Kenneth Galbraith, no one's favorite conservative, has written:

> I am very doubtful about a tax reduction. Inflation is still a major problem. It's a tough fact that tax reduction is the wrong medicine for that.

Also, Leon Keyserling, the first Chairman of the Council of Economic Advisers, recently wrote to the Washington Post that:

> Tax reductions should be enacted for those roughly in the lower half of the income structure, with compensating revenues through some increases higher up and closing many loopholes.

Mr. President, this series of amendments would reduce taxes by over $7 billion for 55,683,000 American taxpayers and pay for this relief by closing some of the most notorious tax loopholes that have destroyed the equity of the tax system. Others have proposed a tax cut not paid for by tax reform. Their approach would, first, fuel an already raging inflation; second, further add to the growing Federal debt; and third, play a cruel hoax on the very people it purports to help.

Tax relief without tax reform would be fiscal folly, and a fraud on the American taxpayers.

The amendments offered today were submitted as a separate bill on May 2 and were discussed in great detail at that time. In general, these amendments would, first, provide for tax relief and greater tax equity by substituting a $205 tax credit for the personal exemption; second, end the extraordinary tax preferences enjoyed by the profit-rich oil companies; third, strengthen the minimum tax, insuring that wealthy individuals pay at least some Federal income taxes; and fourth, end other various tax provisions which have granted tax favors to the few at the expense of many, and which have served no useful purpose.

On May 2, I discussed the compelling reasons for tax relief and tax reform. Today, I would like to discuss the economic reasons why a tax cut unaccompanied with revenue-raising measures would be a serious mistake.

Serious inflation amidst recession is an unhappy combination which was considered impossible in the past but is now a reality. In the first 3 months of this year, consumer prices rose 14.5 percent and wholesale prices 24.8 percent, while the gross national product—GNP—declined 5.8 percent—the severest drop since 1958—with unemployment remaining high.

Perhaps the strangest development, however, in this winter of economic discontent is the emergence of a new economic doctrine proclaiming that the economy is separate and divisible; that recession can be treated with little or no effect on inflation. Moving deftly from economic analysis to Aristotelian concept of "prime mover," one noted economist asserts that present "inflation has a life of its own" and, therefore, a tax cut would not be inflationary. Even more than the law, however, the economy is a "seamless web" where each aspect affects each other and the whole. Not surprisingly, to a large extent both the present inflation and recession result from the same cause of inadequate supplies in key economic sectors. Inadequate supplies are not remedied, but exacerbated by increasing demand.

With the 5.8-percent decline in GNP in the first quarter, the rate of growth over the past year was essentially reduced to zero. This 5.8-percent decline, however, was largely attributed to a sharp drop in auto and petroleum output with residential construction suffering a major recession. The decline in the economy has been concentrated extraordinarily in a few sectors of the economy for the last year. After eliminating those sectors of GNP affected by energy shortages and residential construction, the rest of GNP actually rose by 4.4 percent in the last year.

Mr. President, I ask unanimous consent to insert in the RECORD at this time a table showing real growth of GNP from 1973 to 1974.

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

REAL GROWTH IN GNP IN 4 SECTORS FROM 1ST QUARTER OF 1973 TO 1ST QUARTER OF 1974 [1]

[Dollar amounts in billions]

	1st quarter		Changes—	
	1973	1974	In dollars	In percent
Total GNP	$829.3	$832.0	+$2.7	0.3
Sectors affected by energy shortages:				
(1) Auto products	46.3	29.3	−17.0	−36.7
(2) Gasoline and motor oil	21.9	19.7	−2.2	−10.0
Fuel oil	6.2	5.1	−1.1	−17.7
Natural gas and electric	14.5	14.1	−.4	−2.8
Total	88.9	68.2	−20.7	−23.3
All other			+23.4	
(3) Residential construction	35.6	27.7	−7.9	−22.2
All other	704.8	735.9	+31.1	+4.4

[1] Constant 1958 dollars.

Source: Office of the Secretary, Department of the Treasury.

Mr. NELSON. Mr. President, housing continued to decline sharply in 1974, but this resulted from monetary policy, not inadequate demand. Demand exists, but only a few people can afford the present costs of new homes. A general tax cut has never been considered a proper response to a housing decline. The housing industry is much more influenced by monetary than fiscal policy. A tax cut will compel the Federal Reserve Board to further tighten the already dangerously restrictive money supply.

Unemployment, not rising as dramatically as production has declined, is further evidence of the decline's highly concentrated nature. Unemployment rose 5.2 percent in January, but dropped to 5 percent in April; the same rate as a year ago and the average for the past 20 years. I believe, however, that unemployment will rise again and programs especially tailored to deal with unemployment, such as expanded unemployment compensation and public employment programs, should be passed immediately by Congress. Unemployment figures, however, do not reveal a broad-based economic decline necessitating a tax cut.

Shortages caused by the energy problem have obscured the substantial additional shortages existing throughout our economy. During 1973, many basic industries were operating dangerously close to full capacity. Some industries, such as the paper industry, reached full capacity. Capacity utilization has declined somewhat in 1974, but remains higher than during the first half of 1972 or earlier periods.

Mr. President, I ask unanimous consent to insert in the RECORD at this time a table showing the Federal Reserve Board's index of capacity utilization for certain industries producing basic materials from 1972 to 1974.

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

OUTPUT, CAPACITY, AND CAPACITY UTILIZATION OF MAJOR MATERIALS [1]

[1967 output=100; seasonally adjusted]

Item	1972 average	1973 average	1972 I	1972 II	1972 III	1972 IV
Output	124.0	133.4	119.3	122.5	125.3	128.8
Capacity	137.4	141.1	136.1	136.3	137.8	139.4
Utilization	90.2	94.5	87.7	89.9	91.0	92.4

	1973 I	1973 II	1973 III	1973 IV	1974 I [2]
Output	131.2	132.5	135.0	134.8	132.5
Capacity	139.9	140.7	141.3	142.6	144.5
Utilization	93.8	94.2	95.5	94.5	91.7

[1] The major materials group includes woven fabrics, cotton and manmade yarns, wood pulp, paper, paperboard, manmade fibers, petroleum refining, raw steel, copper refining, aluminum, cement, and plywood and prefabricated products.

[2] Preliminary.

Mr. NELSON. Stimulating demand for these basic materials hardly seems necessary or wise, and the ominous 37.5 percent annual rate of inflation last month indicates the inflationary danger of a tax in industrial commodity prices forcibly cut.

Inflation has seriously eroded the American's purchasing power. In the past year, real earnings of workers dropped 4.7 percent. Inflation has overwhelmed income, and that, not inadequate demand, is why consumers are not buying as much as they did a year ago. In fact, consumers are spending more and receiving less for their money. It is the tax imposed by inflation that we should reduce.

Inflation now rages throughout the economy, but remains most virulent for food and fuel. Food prices are already declining in anticipation of a very good crop, but the Organizatiton of Petroleum Exporting Countries (OPEC) is making every effort to keep the price of oil artificially high. World oil prices, established by an international cartel, are identical in their economic impact to a tax on oil consumption. At present levels, this tax or increase in oil earnings by the oil exporting countries will be $60 billion in just 1 year. A transfer and concentration of that amount of wealth has a staggering impact on balance of payments for all other countries.

Mr. President, I ask unanimous consent to insert in the RECORD at this time, a table prepared by Alfred Reifman, Senior Specialist in International Economics for the Library of Congress on the impact of the rise in the price of crude oil on selected countries' balance of payments from 1973 to 1974.

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

BALANCES OF PAYMENTS ON CURRENT ACCOUNT [1]

[In billions of dollars]

	1972	1973	Projection: 1974 Before Dec. oil price rise	Projection: 1974 After Dec. oil price rise [2]
Oil exporting countries	1.6	6.1	12.5	55.0
United States	−6.2	4.5	9.0	−1.5
All other countries	8.1	−1.1	−21.5	−53.5
Japan	7.0	1.5	−.9	−6.0
France	1.0	.6	−.2	−3.7
Germany	2.2	5.5	3.6	−2.5
Italy	2.4	−1.4	−2.0	−3.5
United Kingdom	.7	−2.4	−3.5	−7.5
Nonoil producing primary producers	−7.5	−9.0	−17.7	[3] −23.0

[1] Goods, services and private transfers.

[2] The estimates also allow for a somewhat lower volume of oil imports and additional exports to the oil producing countries.

[3] Largely nonoil LDC's, but also includes Sino-Soviet countries and errors and ommissions.

Source: 1st 2 co. IMF, OECD "World Economic Outlook" Dec. 26, 1973. 3d col.: Helen Junz of Federal Reserve. 4th col.: OECD, source, Jan. 12, 1974.

Mr. NELSON. Unquestionably, world oil prices are drying up demand and raising the specter of worldwide depression. Some argue that a domestic tax cut should be enacted to counter this international tax on oil consumption. It would be folly to resort to domestic measures stimulating demand before every attempt is made to reduce international oil prices and increase supply. Basically, this is a problem created abroad which cannot be solved by a tax cut by any one country. Furthermore, to pay for oil, countries will try to curtail most other imports by currency devaluation and other measures restricting trade. Last week, Italy imposed a 5-percent surcharge on all imports, except capital goods and raw materials. Such measures result in only

temporary gains for one country at the expense of its trading partners and adds to the danger of worldwide depression. It is economic suicide to do anything that stimulates demand and sanctifies present world oil prices. The tax imposed by these prices must be cut by expanding energy supplies and curtailing its demand.

Control of inflation is this country's *top priority*. It is just impossible for most Americans to live with the present rate of inflation for any period of time. If inflation is not controlled, drastic wartime measures will obviously be considered.

A tax cut is like a little boy playing with matches in the midst of the Chicago fire. Just a 1-percent increase in consumer prices adds an $8.5 billion extra burden on consumers—$2.6 billion more than the proposed tax cut. The tax or economic burden imposed by inflation is most inequitable, falling hardest on the poor. In 1973, low-income persons suffered about one-fourth more inflation than did middle- and upper-income persons.

In 1973, a family of four earning $12,614 had to spend $502 more for the same amount of food that it bought in 1972. The Department of Agriculture reports that in March alone, the cost of food for a low-income family rose by 1.4 percent. Is it much more likely that these taxpayers will use any tax reduction to obtain some relief from the high prices of food and fuel? As Senator MONDALE stated during the Senate Finance Committee hearings on this issue:

> All studies show that if you give the average family a little more money, the first thing that they do is spend it on better food, higher protein. Most parents are very wise in the way they spend their money and if they had a little more money they would be able to buy more high protein food than they can do today.

While all studies probably overstate the case, this is a commonsense conclusion indicating the danger of increasing demand before supply, which is presently inadequate, is increased.

A tax cut not balanced with tax reform runs the grave risk of increasing inflation. For instance, an increase in *consumer prices* from one-tenth of 1 percent to 4 percent totally eliminates the benefit of the proposed tax reduction. For many taxpayers, less than a 1-percent increase in consumer prices wipes out the proposed tax reduction. My point is not that Americans do not need tax relief—no matter how small—but that if it is not achieved in a responsible way, it will only add to the problem.

Nostalgia for the 1950's and early 1960's is the current fad and perhaps it is understandable that some long to recapture the success of 1964 when a tax cut worked so effectively. Nostalgia is no substitute for sound economic analysis.

Similarities exist between the early 1960's and now, but the differences are greater. Before the 1964 tax reductions, an ominous chain of recessions occurred more and more frequently, interrupting briefer and briefer periods of economic expansion. The 1960–61 recession, for example, occurred after only 25 months of expansion. In contrast, during the 1960's there was the longest and strongest economic expansion in our history and the expansion which preceded the current pause in our economic growth was also a strong economic expansion. One of the major problems in providing tax cuts at the present time is that many areas, despite the economic decline, are still showing signs of marked strain of the type usually associated with economic boom.

Price behavior is another major difference between the two periods. During the early 1960's prior to the 1964 cut, the consumer price index was almost stable, with an annual increase of only a little more than 1 percentage point.

Similarly, the wholesale price index showed little upward movement. For example, in 1963, the wholesale price index for all commodities was slightly below the level existing in 1958. In contrast, we are now faced with a two-digit inflation. Over the past 12 months, the consumer price index has increased more than 10 percent and the wholesale price index has increased more than 20 percent. And the situation seems to be getting worse rather than better. In March, the consumer price index rose at an annual rate of 13.2 percent.

Interest rates are another example of the marked difference between 1964 and now. During the early 1960's, the Government bill rate stood at about 3 percent or less and long-term Government bonds yielded 4 percent or less. At present, we have bill rates with yields from 8 to 8.5 percent, long-term Government bonds rates in excss of 7 percent, and a prime rate which has reached 11 percent. Of course, these high interest rates to a large extent reflect raging inflation, since thse rates necessarily include a premium for inflation.

During the early 1960's, investment was stagnating. In 1962, for example, the rate of investment was almost unchanged from 1957, although the GNP had risen substantially.

In contrast, while the real rate of investment in the first quarter of this year has been relatively modest, business investment in recent years has been very substantial and businessmen, according to the most recent surveys, anticipate a 14- to 18-percent rise in plant and equipment investment this year.

A careful economic analysis shows that while in 1964 there was a good case for granting tax reduction to offset a chronic case of underutilization of our economy and that there was considerable slack in the economy as shown by the stable prices and low rates of interest and of investment, these conditions do not exist today. In today's excessive demand, shortage-plagued economy, a tax cut would be a disaster.

Mr. President, I ask unanimous consent that the amendments which I have submitted be printed in the RECORD.

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

AMENDMENT NO. 1315

At the end of the bill, add the following new section:

SEC. 4. CREDIT AGAINST TAX FOR PERSONAL EXEMPTIONS.

(a) Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits against tax) is amended by redesignating section 42 as section 43 and by inserting after section 41 the following new section:

"SEC. 42. PERSONAL EXEMPTIONS.

"There shall be allowed, as a credit against the tax imposed by section 1 or 3, the amount determined under section 151 for personal exemptions. Such credit shall not exceed the tax imposed by section 1 or 3 for the taxable year.".

(b) So much of section 151 of such Code (relating to deductions for personal exemptions) as precedes subsection (b) is amended to read as follows:

"SEC. 151. CREDIT FOR PERSONAL EXEMPTIONS.

"(a) AMOUNT OF CREDIT.—The amount of the credit allowed by section 42 for the taxable year for personal exemptions shall be $205 for each exemption allowed to the taxpayer under this section for the taxable year.".

(c) Section 151 of such Code is further amended by striking out "of $750" wherever it appears therein.

(d) Part II of subchapter B of chapter 1 of such Code (relating to items specifically included in gross income) is amended by adding at the end thereof the following new section:

"SEC. 84. CERTAIN INCOME OF CHILD CLAIMED AS DEPENDENT.

"Income received during a taxable year by a child from a trust created by his parent, and dividends, interest, and royalties received during the taxable year by a child from property given him by his parent, shall be included in the gross income of the parent, and not in the gross income of the child, if the parent is entitled to and claims a credit under section 42 for the exemption allowable under section 151 for such child as a dependent. This section shall not apply if the parent does not claim the credit allowed by section 42 on account of such child or, having claimed such credit, if the parent waives the allowance of the credit in such manner as may be provided in regulations prescribed by the Secretary or his delegate. This section shall have no application to income of a trust which is includable in the gross income of the parent under the provisions of subpart E of part I of subchapter J.".

(e) Sections 2(a)(1)(B), 2(b)(1), 141(c)(5), 143(b)(1), 214(b)(3), 874(b), and 931(e) of such Code are each amended by striking out the word "deduction" wherever it appears and inserting in lieu thereof the word "credit".

(f) Section 46(a)(3)(B) of such Code (relating to the investment credit) is amended to read as follows:

"(B) section 42 (relating to personal exemptions), and".

(g) Section 63(b) of such Code (relating to definition of taxable income) is amended by striking out all that follows after the words "adjusted gross income" and inserting in lieu thereof "minus such standard deduction".

(h) Section 72(n)(3) of such Code (relating to special computation of taxable income) is amended by striking out subparagraph (A).

(i) Section 170(b)(1)(C) of such Code (relating to unlimited charitable deduction) is amended by striking out clause (ii).

(j) Section 172(d)(3) of such Code (relating to net operating loss deduction) is amended to read as follows:

"(3) ESTATES AND TRUSTS.—No deduction shall be allowed for the personal exemption

allowed an estate or trust under section 642(b).".

(k) Section 214(b)(3) of such Code (relating to care of certain dependents) is amended by striking out "deductions" and inserting in lieu thereof "credits".

(l) Section 443(c) of such Code (relating to return for short period) is amended by striking out "a deduction under section 151 (and any deduction in lieu thereof)" and inserting in lieu thereof "as a credit under section 151 or a deduction under section 642(b)".

(m) The last sentence of section 642(b) of such Code (relating to estates and trusts) is amended to read as follows: "The deductions allowed by this subsectoin shall be in lieu of the credits allowed under section 42 (relating to credit for personal exemptions).".

(n) Section 703(a)(2) of such Code (relating to partnership computations) is amended by striking out subparagraph (B).

(o) Paragraph (3) of section 873(b) of such Code (relating to nonresident aliens) is amended to read as follows:

"(3) CREDIT FOR PERSONAL EXEMPTION.—Except in the case of a nonresident alien individual who is a resident of a contiguous country, only one credit shall be allowed for exemptions under section 151.".

(p) Section 891 of such Code (relating to citizens of foreign countries) is amended by striking out "under section 11 and".

(q) Section 933(1) of such Code (relating to residents of Puerto Rico) is amended by striking out "(other than the deductions under section 151, relating to personal exemptions)".

(r) Section 1211(b)(3) of such Code (relating to deduction of capital losses) is amended by striking out "the deductions provided in section 151 (relating to personal exemptions) or any deduction in lieu thereof" and inserting in lieu thereof "any deduction allowed by section 642(b)".

(s) Section 1402(a) of such Code (relating to self-employment income) is amended by striking out paragraph (7).

(t) The amendments made by this section shall apply to taxable years beginning after December 31, 1974.

AMENDMENT NO. 1316

At the end of the bill, add the following new section:

SEC. 4. REPEAL OF ASSET DEPRECIATION RANGE SYSTEM.

(a) Section 167(m) of the Internal Revenue Code of 1954 (relating to the Asset Depreciation Range System) is repealed.

(b) Section 167(a) of such Code (relating to a reasonable allowance for depreciation) is amended by adding at the end thereof the following: "Such reasonable allowance shall be computed, subject to the provisions of Revenue Procedure 62-21 (including the provisions for the reserve ratio test) as in effect on January 1, 1971, on the basis of the expected useful life of property in the hands of the taxpayer.".

(c) The amendment made by subsection (a) shall apply to property placed in service after April 30, 1974. The amendment made by subsection (b) shall apply to taxable years ending after April 30, 1974, but it shall not apply to property placed in service by the taxpayer before May 1, 1974, if an election has been made to have the provisions of section 167(m) applicable to such property.

AMENDMENT NO. 1317

At the end of the bill, add the following new section:

SEC. 4. REPEAL OF DEDUCTION FOR WESTERN HEMISPHERE TRADE CORPORATIONS.

(a) Part III of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to income from sources without the United States) is amended by striking out subpart C (relating to Western Hemisphere trade corporations).

(b) Section 170(b)(2) of such Code (relating to charitable deductions for corporations) is amended by striking out subparagraph (D).

(c) Section 172(d) of such Code (relating to the net operating loss deduction) is amended by striking out paragraph (5).

(d) Section 1503 of such Code (relating to consolidated returns) is amended by striking out subsection (b).

(e) Section 1562(b)(4) of such Code (relating to multiple surtax exemptions) is amended by striking out "and 922 (relating to special deduction for Western Hemisphere trade corporations)".

(f) The amendments made by this section shall apply with respect to taxable years beginning after the date of the enactment of this Act.

AMENDMENT NO. 1318

At the end of the bill, add the following new section:

SEC. 4. REPEAL OF THE TAX EXEMPTION FOR A DISC.

(a) Section 991 of the Internal Revenue Code of 1954 (relating to tax exemption of a DISC) is amended by adding at the end thereof the following: "This section shall not apply to any taxable year beginning after the date of the enactment of this sentence."

(b) Section 992 (a) of such Code (relating to definition of DISC) is amended by adding at the end thereof the following new paragraph:

"(4) Termination.—No corporation shall be treated as a DISC for any taxable year beginning after the date of the enactment of this paragraph."

AMENDMENT NO. 1319

At the end of the bill, add the following new section:

SEC. 4. FOREIGN TAX CREDIT REDUCTION IN CASE OF FOREIGN LOSSES.

(a) REDUCTION IN FOREIGN TAX CREDIT LIMITATION.—Section 904(a) of the Internal Revenue Code of 1954 (relating to limitation on credit) is amended by adding at the end thereof the following new paragraphs:

"(3) REDUCTION IN LIMITATION.—In the case of a taxpayer who in a prior taxable year sustains a loss in a foreign country or possession of the United States and chooses the limitation provided in paragraph (1) for such prior year, the amount of the taxpayer's taxable income from sources within such country or posession for the taxable year (but not the taxpayer's entire taxable income for the same taxable year) shall, solely for purposes of determining the applicable limitation under paragraph (1) or (2), be determined without regard to section 172 (relating to net operating loss deduction) and be reduced by the lesser of—

"(A)(i) the amount of such loss, decreased by

"(ii) the amount of any reduction previously made under this paragraph with respect to such loss or

"(B) an amount which is equal to 50 percent of the taxpayer's taxable income for the taxable year (determined without regard to this paragraph and section 172) from sources within such country or possession.

"(4) ALLOCATION OF LOSSES.—In applying paragraph (3) for any taxable year to which subsection (f) or (g) applies, a loss sustained in a foreign country or possession of the United States shall be allocated to the separate limitation (if any) under such subsection pursuant to regulations prescribed by the Secretary or his delegate.

"(5) SPECIAL LIMITATION ON CARRYBACKS AND CARRYOVERS.—For purposes of subsection (d), the amount by which tax paid or accrued to any foreign country or possession of the United States for any taxable year exceeds the applicable limitation under this subsection shall be determined without regard to paragraph (3).

"(6) CERTAIN DISPOSITIONS OF PROPERTY.—

"(A) Under regulations prescribed by the Secretary or his delegate, if during any taxable year property which is used in the trade or business which gives rise to the loss referred to in paragraph (3) is disposed of and such loss exceeds the amount by which the taxpayer's taxable income was reduced under paragraph (3) for such taxable year and preceding taxable years by reason of such loss, an amount equal to such excess shall be included in gross income for such taxable year.

"(B) No amount shall be included in gross income under subparagraph (A) in any case in which—

"(i) the property which is disposed of is not a material factor in the realization of the income (or loss) from the trade or business in which such property is used or is not a substantial portion of the assets used in, or held for use in, the conduct of such trade or business,

"(ii) the property is disposed of on account of its destruction or damage by fire, storm, shipwreck, or other casualty, or by reason of its theft,

"(iii) the property is transferred by reason of death, or

"(iv) the property is transferred in a transaction to which section 381(a) applies.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to losses sustained in taxable years beginning after December 31, 1974.

AMENDMENT NO. 1320

At the end of the bill, add the following new section:

SEC. 4. SEPARATE LIMITATION ON FOREIGN TAX CREDIT WITH RESPECT TO FOREIGN MINERAL INCOME.

(a) LIMITATION ON AMOUNT OF FOREIGN TAXES TO BE TAKEN INTO ACCOUNT.—Section 904 of the Internal Revenue Code of 1954 (relating to limitation on credit) is amended by redesignating subsection (g) as subsection (h), and by inserting after subsection (f) the following new subsection:

"(g) APPLICATION OF SECTION IN CASE OF FOREIGN MINERAL INCOME.—

"(1) IN GENERAL.—If any foreign country or possession of the United States, or any agency or instrumentality of such country or possession—

"(A) requires the payment of any bonus or royalty with respect to property which gives rise to foreign mineral income,

"(B) holds substantial mineral rights with respect to such property, or

"(C) imposes any income, war profits, or excess profits taxes on such income at an effective rate higher than on other income, subsections (a), (c), (d), and (e) of this section shall be applied separately with respect to foreign mineral income from sources within such country or possession.

"(2) FOREIGN MINERAL INCOME DEFINED.—

"(A) GENERAL RULE.—For purposes of paragraph (1), the term 'foreign mineral income' means taxable income from mines, wells, and other natural deposits within any foreign country or possession of the United States, to the extent such taxable income constitutes 'taxable income from the property' within the meaning of section 613. Such term includes, but is not limited to—

"(i) dividends received from a foreign corporation in respect of which taxes are deemed paid under section 902, to the extent such dividends are attributable to foreign mineral income, and

"(ii) that portion of the taxpayer's distributive share of the income of a partnership attributable to foreign mineral income.

"(B) SPECIAL RULES.—

"(i) For purposes of subparagraph (A), if for the taxable year a taxpayer's (or, where a consolidated income tax return is filed, the affiliated group's) foreign mineral income is less than $10,000, no part of the taxable income for such year shall be treated as foreign mineral income.

"(ii) For purposes of clause (i) of subparagraph (A), if less than 30 percent and less than $100,000, of the accumulated profits of the year or years from which dividends are paid, as determined under section 902(c), are attributable to foreign mineral income, no part of the dividends shall be treated as foreign mineral income.

"(3) OVERALL LIMITATION NOT TO APPLY.—The limitation provided by subsection (a)(2) shall not apply with respect to foreign mineral income. The Secretary or his delegate *shall by regulations* prescribe the manner of application of subsection (e) with respect to cases in which the limitation provided by subsection (a)(2) applies with respect to income other than foreign mineral income.

"(4) TRANSITIONAL RULES FOR CARRYBACKS AND CARRYOVERS.—

"(A) CARRYBACKS TO YEARS BEFORE ENACTMENT OF THIS SUBSECTION.—If, after applying subsection (d), taxes paid or accrued to any foreign country or possession of the United States in any taxable year beginning after the date of the enactment of this subsection are deemed paid or accrued in one or more taxable years beginning on or before such date, then the amount of such taxes deemed paid or accrued in such taxable year or years shall be determined without regard to the provisions of this subsection. To the extent the taxes paid or accrued to a foreign country or possession of the United States in any taxable year beginning after such date are not, after applying the preceding sentence, deemed paid or accrued in any taxable year beginning on or before such date, such taxes shall, for purposes of applying subsection (d), be deemed paid or accrued in a taxable year beginning after such date with respect to foreign mineral income, and with respect to income other than foreign mineral income, in the same ratios as the amount of such taxes paid or accrued with respect to income other than foreign mineral income, *respectively*, bear to the total amount of such taxes paid or accrued to such foreign country or possession of the United States.

"(B) CARRYOVERS TO YEARS AFTER ENACTMENT OF THIS SUBSECTION.—Where under the provision of subsection (d) taxes paid or accrued to any foreign country or possession of the United States in any taxable year beginning on or before the date of the enactment of this subsection are deemed paid or accrued in one or more taxable years beginning after such date, the amount of such taxes deemed paid or accrued in any year beginning after such date shall, with respect to foreign mineral income, be an amount which bears the same ratio to the amount of such taxes deemed paid or accrued as the amount of the taxes paid or accrued to such foreign country or possession for such year with respect to foreign mineral income bears to the total amount of taxes paid or accrued to such foreign country or possession for such year; and the amount of such taxes deemed paid or accrued in any year beginning after such date with respect to income other than foreign mineral income shall be an amount which bears the same ratio to the amount of such taxes deemed paid or accrued for such year as the amount of taxes paid or accrued to such foreign country or possession for such year with respect to income other than foreign mineral income bears to the total amount of the taxes paid or accrued to such foreign country or possession for such year.".

(b) CONFORMING AMENDMENTS.—Section 904(b) of such Code (relating to election of overall limitation) is amended—

(1) by striking out "with the consent of the Secretary or his delegate with respect to any taxable year" in paragraph (1) and inserting in lieu thereof "(A) with the consent of the Secretary or his delegate with respect to any taxable year, or (B) for the taxpayer's first taxable year beginning after the date of the enactment of subsection (g)", and

(2) by striking out "If a taxpayer" in paragraph (2) and inserting in lieu thereof "Except in a case to which paragraph (1)(B) applies, if the taxpayer".

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

AMENDMENT NO. 1321

At the end of the bill, add the following new section:

SEC. 4. REPEAL OF PERCENTAGE DEPLETION RATES ON OIL WELLS.

Section 613 of the Internal Revenue Code of 1954 (relating to percentage depletion) is amended by adding at the end thereof the following new subsection:

"(e) Disallowance of Percentage Depletion for Oil Wells After 1973.—The allowance for depletion under section 611 for oil wells shall not be determined under this section for any taxable year ending after December 31, 1973.".

AMENDMENT NO. 1322

At the end of the bill, add the following new section:

SEC. 4. REPEAL OF INTANGIBLE DRILLING COSTS FOR FOREIGN EXPLORATION.

(a) IN GENERAL.—Section 263(c) of the Internal Revenue Code of 1954 (relating to intangible drilling and development costs in the case of oil and gas wells) is amended by adding at the end thereof the following new sentence: "The provisions of this subsection shall not apply to any oil or gas well located outside of the United States and beyond the Outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to taxable years beginning after December 31, 1974.

AMENDMENT NO. 1323

At the end of the bill, add the following new section:

SEC. 4. TAXATION OF UNDISTRIBUTED PROFITS OF FOREIGN CORPORATIONS.

(a) Part III of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to income from sources without the United States) is amended by adding at the end thereof the following new subpart:

"Subpart J—Undistributed Profits of Controlled Foreign Corporations

"SEC. 985. AMOUNTS INCLUDED IN GROSS INCOME OF UNITED STATES SHAREHOLDERS.

"(a) AMOUNTS INCLUDED.—

"(1) IN GENERAL.—If a foreign corporation is a controlled foreign corporation (as defined in section 957) for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder (as defined in section 951(b)) of such corporation who owns (within the meaning of section 958) stock in such corporation on the last day in such year on which such corporation is a controlled foreign corporation shall include in his gross income, for his taxable year in which or with which such taxable year of the corporation ends, his pro rata share of the corporation's earnings and profits for such year.

"(2) PRO RATA SHARE OF EARNINGS AND PROFITS.—A United States shareholder's pro rata share referred to in paragraph (1) is the amount—

"(A) which would have been distributed with respect to the stock which such shareholder owns (within the meaning of section 958) in such corporation if on the last day in its taxable year, on which the corporation is a controlled foreign corporation it had distributed pro rata to its shareholders an amount (i) which bears the same ratio to its earnings and profits for the taxable year as (ii) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year, reduced by

"(B) an amount (i) which bears the same ratio of the earnings and profits of such corporation for the taxable year as (ii) the part of such year described in subparagraph (A)(ii) during which such shareholder did not own (within the meaning of section 958) such stock bears to the entire year.

"(b) EARNINGS AND PROFITS.—For purposes of this subpart, under regulations prescribed by the Secretary or his delegate, the earnings and profits of any foreign corporation, and the deficit in earnings and profits of any foreign corporation, for any taxable year—

"(1) except as provided in section 312(m)(3), shall be determined according to rules substantially similar to those applicable to domestic corporations,

"(2) shall be appropriately adjusted for deficits in earnings and profits of such corporation for any prior taxable year beginning after December 31, 1974,

"(3) shall not include any item of income which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States, and

"(4) shall not include any amount of earnings and profits which could not have been distributed by such corporation because of currency or other restrictions of limitations imposed under the laws of any foreign country.

"(c) COORDINATION WITH ELECTION OF A FOREIGN INVESTMENT COMPANY TO DISTRIBUTE INCOME.—A United States shareholder who, for his taxable year, is a qualified shareholder (within the meaning of section 1247(c)) of a foreign investment company with respect to which an election under section 1247 is in effect shall not be required to include in gross income, for such taxable year, any amount under subsection (a) with respect to such company.

"(d) COORDINATION WITH FOREIGN PERSONNEL HOLDING COMPANY PROVISIONS.—In the case of a United States shareholder who, for his taxable year, is subject to tax under section 551(b) (relating to foreign personal holding company income included in gross income of United States shareholders) on income of a controlled foreign corporation, the amount required to be included in gross income by such shareholder under subsection (a) with respect to such company shall be reduced by the amount included in gross income by such shareholder under section 551(b).

"(e) ADJUSTMENTS AND FOREIGN TAX CREDITS.—Under regulations prescribed by the Secretary or his delegate—

"(1) Adjustments to the basis of stock on account of earnings and profits taxed under subsection (a) shall be made in the manner provided in section 961 (relating to increases and reductions in basis on account of the income tax treatment of subpart F income);

"(2) Elimination of double taxation of pre-

viously taxed earnings and profits when distributed shall be made in the manner provided in section 959 (relating to exclusion from gross income of previously taxed subpart F income); and

"(3) Corporations shall be deemed to have paid income, war profits, and excess profits taxes paid (or deemed paid) by foreign corporations to a foreign country or possession of the United States in accordance with the special rules set forth in section 960.".

(b) Section 951 of such Code (relating to taxation of Subpart F income) is amended by adding at the end thereof the following new subsection.

"(e) TAXABLE YEARS ENDING AFTER DECEMBER 31, 1974.—No amount shall be required to be included in the gross income of a United States shareholder under subsection (a) (other than paragraph (1)(A)(ii) of such subsection) with respect to a taxable year of a controlled foreign corporation ending after December 31, 1974.".

(c) Section 1248(d)(1) of such Code (relating to treatment of gain on sale of stock in certain foreign corporations) is amended by striking out "under section 951" each time it appears and inserting in lieu thereof "under section 951 or 985", and by striking out "under section 959" and inserting in lieu thereof "under section 959 or 985(e)(2)".

(d) The amendments made by this section shall apply with respect to taxable years of foreign corporations ending after December 31, 1974, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end.

AMENDMENT NO. 1324

At the end of the bill, add the following new section:

SEC. 4. STRENGTHENING THE MINIMUM TAX.

(a) Section 56 of the Internal Revenue Code of 1954 (relating to imposition of minimum tax for tax preferences) is amended:

(1) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) IN GENERAL.—In addition to the other taxes imposed by this chapter, there is hereby imposed for each taxable year, with respect to the income of every person, a tax equal to 10 percent of the amount (if any) by which the sum of the items of tax preference exceeds $10,000.";

(2) by striking out "$30,000" in subsection (b)(1)(B) and inserting in lieu thereof "$10,000"; and

(3) by striking out subsection (c).

(b) The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

AMENDMENT NO. 1326

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

REPEAL THE OIL DEPLETION ALLOWANCE

Mr. RIBICOFF. Mr. President, it is time to eliminate the percentage depletion allowance tax loophole for oil and gas. Senators MAGNUSON, JACKSON, and I are today introducing an amendment to H.R. 8217, the tax bill recently reported out of the Senate Finance Committee, to accomplish that goal.

Every other business can deduct from its gross sales only the actual cost of replacing the goods it sells. Oil companies, however, can deduct 22 percent of their gross revenues from their taxable income, whether or not this deduction bears any relation to the actual cost of replacing the oil sold.

As a result, American taxpayers have been paying the oil companies billions of dollars a year through tax subsidies for the oil industry. The industry saved about $705 million in U.S. taxes in calendar year 1971 because of the oil depletion allowance. It has been estimated that because of rising prices this provision will cost the U.S. taxpayer $2.6 billion in fiscal year 1975.

The Senate will soon be considering a tax cut proposal to stimulate the economy and provide much needed relief for the already overburdened taxpayer. I support this tax cut to help taxpayers regain some of the earning power they have lost through inflation.

I can think of no better way to raise the money to pay for this tax cut for workingmen and women than to remove this special oil interest tax advantage and require the oil companies to pay their fair share of taxes.

The major oil companies' profits are skyrocketing and each of us is paying the price of these profits at the filling station and at tax time.

Look at the record. In the first 3 months of 1974 Exxon's profits were $708 million—39 percent above the same period in 1973.

Texaco's profits rose 123 percent to $589 million. Gulf Oil and Standard Oil of Indiana's profits were up 75 percent. Skelly Oil's profits were up 97 percent.

An Occidental's profits were up 817 percent.

It is unconscionable to allow these companies to reap such dividends at the expense of every working American. While the workingman in the lowest income tax bracket pays 14 percent of his income in taxes, four of the largest oil companies paid U.S. income taxes at an average rate of 2.89 percent. Aramco, the Middle-Eastern consortium of giant oil companies paid U.S. taxes at a rate of one-tenth of 1 percent.

Texaco paid 1.7 percent and Mobil 1.3 percent on incomes of $1.3 billion. These tax breaks helped the industry's profits climb 52 percent over last year to their highest levels ever.

Clearly the percentage depletion allowance is costing billions of dollars.

Is it serving any useful purpose? I strongly believe percentage depletion serves no useful purpose.

Depletion allowances were originally enacted to enable oil companies to subtract from their income a suitable amount to cover the loss which occurs as an oil well wears out or exhausts its supply. The original depletion allowance was called cost depletion. The law was based on the cost of what the oil company actually lost. It was similar to depreciation provisions which most businesses utilize. In the 1920's however, the law was changed, with the support of the oil companies, to allow the companies to subtract a set percentage of their income in computing taxes—originally 27½ percent and now 22 percent.

Today the allowance has little to do with actual costs of depletion, is costly, wasteful, misdirected, and discourages the diversification of our energy resources.

1. THE OIL DEPLETION ALLOWANCE IS COSTLY

In calendar year 1971 the allowance cost taxpayers over $700 million. With rising oil prices it is estimated that it will cost the taxpayers nearly $3 billion in 1975. This is because the allowance is based on income. Thus, as prices and profits skyrocket, so does the depletion allowance. Instead of paying more taxes on more income, the oil companies pay less.

2. THE DEPLETION ALLOWANCE IS A WASTE OF MONEY

Most of the benefit of depletion goes to foreign operations and to people who cannot and do not produce oil. A landowner who receives royalties from an oil company gets the benefits of percentage depletion. But this landowner has nothing to do with exploring or drilling for new oil. In 1968 a major Treasury Department study—the CONSAD study—concluded that 42 percent of the depletion allowance goes to such nonoperating interests in domestic production or to foreign oil producers.

3. PERCENTAGE DEPLETION DOES NOT ENCOURAGE EXPLORATION

That portion of the depletion allowance which goes to domestic oil producers does not encourage exploration.

Since only 10 percent of the exploratory wells strike oil, depletion benefits only a small portion of the high-risk drilling. Oil companies prefer to spend money drilling in existing oilfields to be certain of receiving the oil depletion subsidy. The main effect of the allowance is to encourage overdrilling in known oilfields. A producer can use the allowance to wipe out a maximum of 50 percent of net income on a well before tax computation. This means that the biggest benefit of the subsidy goes to the most profitable wells.

The allowance may actually operate to discourage producers from operating less profitable or marginal wells. The stripper well operator, producing less than 10 barrels a day, gets the short end.

He is forced to pump the wells he has while the big companies can close down their marginal wells and skim the cream off their profitable wells. With generous tax laws such as the depletion allowance, the big companies have more money to buy up and gain control of most of the stripper well operations.

4. DEPLETION ALLOWANCE DISCOURAGES DIVERSIFICATION OF U.S. ENERGY RESOURCES

The United States is too dependent on oil. Yet this misdirected tax subsidy discourages the production of cheaper and more abundant sources of energy. First of all, depletion benefits for minerals are based on the value of those minerals in the ground and not in their final processed form. Therefore, a $7 barrel of crude oil gets the full benefits of the depletion allowance while a $7 barrel of oil made from coal will only receive depletion benefits on the value of the original coal. Since coal costs less than oil, the bulk of the $7 cost of liquified coal lies in processing expenses. These do not qualify for depletion.

At present then, a company producing a $7 barrel of crude oil gets a tax bonus of about $1.30. A company producing the same $7 barrel of oil from coal liquefication would rescue a bonus from the taxpayers of only 10 cents. Those who develop solar energy or a more efficent gas engine would receive no bonus at all.

In sum, the depletion allowance dis-

courages the development of alternative energy resources, provides benefits to producers of foreign oil, pays dividends to foreign and domestic landowners to just sit back and collect royalties. And it gives most of its benefits to the large integrated oil companies and not independents.

I am pleased to note that the Ways and Means Committee has decided to recommend repeal of the percentage depletion allowance. However, the slow phaseout of the allowance contemplated by that committee would have no effect in 1974. Our proposal would return significant revenues to the Public Treasury rather than turning them over to an industry whose profits rose 55 percent in 1973 while the consumer paid the price.

I urge my colleagues to join with me in removing the percentage depletion tax loophole.

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

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

AMENDMENT NO. 1326

On page , line , add the following:

SEC. 4. REPEAL OF PERCENTAGE DEPLETION FOR OIL AND GAS PRODUCTION

(a) REPEAL OF OIL AND GAS DEPLETION. (1) Section 613(b)(1)(A) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 613(b)(1)(A)), is amended by deleting the words "oil and gas wells" and by inserting in lieu thereof the words "certain gas wells as defined in subsection (e) of this section".

(2) Section 613(b)(7) of such Code is amended by (A) deleting "or" at the end of subparagraph (A) thereof; (B) by deleting the period at the end of subparagraph (B) thereof and by inserting in lieu thereof "; or"; and (C) by inserting the following new subparagraph after such subparagraph (B): "(C) oil and gas wells."

(b) CERTAIN GAS WELLS. Section 613 of the Internal Revenue of 1954 (26 U.S.C. 613) is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULE FOR CERTAIN GAS WELLS.

"(1) The gas wells referred to in section 613(b)(1)(A) are—

(A) wells producing regulated natural gas, to the extent of such production, and

(B) wells producing natural gas sold under a fixed contract to the extent of such production.

"(2)(A) The term 'natural gas sold under a fixed contract' means domestic natural gas sold by the producer under a contract, in effect on April 10, 1974, and all times thereafter before such sale, under which the price for such gas cannot be adjusted to reflect to any extent the increase in liabilities of the seller for tax under this section by reason of the repeal of percentage depletion. Price increases subsequent to April 10, 1974 shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates the contrary by clear and convincing evidence.

"(B) The term 'natural gas' means any product (other than crude oil) of an oil or gas well if a deduction for depletion is allowable under section 611 with respect to such product.

"(C) The term 'domestic' refers to petroleum from an oil or gas well located in the United States or in a possession of the United States.

"(D) The term 'crude oil' includes a natural gas liquid recovered from a gas well in lease separators or field facilities.

"(E) The term 'regulated natural gas' means domestic natural gas produced and sold by the producer, prior to January 1, 1976, subject to the jurisdiction of the Federal Power Commission, the price for which has not been adjusted to reflect to any extent the increase in liability of the seller for tax by reason of the repeal of percentage depletion. Price increases subsequent to April 10, 1974 shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates the contrary by clear and convincing evidence."

(c) EFFECTIVE DATES. The amendment made by subsections (a) and (b) of this section shall apply to oil and gas produced on or after January 1, 1974.

Mr. MAGNUSON. Mr. President, high prices have created tremendous windfall profits for oil companies. The size of the windfalls is so large the numbers are hard to grasp. The Joint Committee on Internal Revenue Taxation estimates 1974 profits on domestic oil production alone will be $9 billion after taxes. These windfall profits are in large part attributable to taxpayer subsidies of the oil industry. It is time Congress insists that the oil industry pay their fair share of taxes on their increased profits.

I am pleased to join with Senator RIBICOFF and Senator JACKSON in an amendment to H.R. 8217, the vessel repair tariff bill, to restore equity to the energy tax system. Senator RIBICOFF, Senator JACKSON and myself propose that the Senate act to repeal the oil and gas depletion allowance immediately. This huge tax loophole has outlived any usefulness it may have had. Simple justice requires taxpayers no longer subsidize the industry that is reaping windfall profits far in excess of anything our Nation has ever before experienced.

Immediate repeal of the oil depletion allowance, effective January 1, 1974, as we propose, would yield $2.6 billion more revenues this year than a phased-in repeal such as proposed by the House Ways and Means Committee. By 1980, the total difference between immediate and phased repeal of depletion will total $80 billion.

These extra windfall profits are not needed to finance future oil and gas exploration. The Joint Committee on Internal Revenue Taxation estimates the industry is limited to investing a maximum of 50 percent of recent profit increases. Immediate repeal of depletion will still leave an average $1.50 per barrel increase in profits over 1973, as a price incentive for expanded exploration and development.

Depletion allowances have not stimulated exploration and development. To the contrary, a Library of Congress study concludes they have stimulated overdrilling of existing fields. Further, depletion allowances significantly reward large domestic producers out of proportion to the rewards received by smaller producers. Worst, during today's energy shortages, depletion allowances actively discourage capital expenditures and cheaper, more abundant energy sources such as coal liquefaction, oil shale and solar energy.

The Congress must choose the most efficient incentives to encourage the production of new domestic energy supplies. The existing tax subsidies are inefficient incentives and, in fact, often act as disincentives. Where tax subsidies do have an effect on oil producers, they create out-of-pocket transfers from taxpayers to producers.

Depletion was originally designed to allow producers to recover the loss in value of oil as they took it out of the ground. "Cost" depletion can be considered analogous to ordinary business depreciation. Percentage depletion, on the other hand, results in producers recovering the value of oil wells 16 times over.

Inefficient tax subsidies to oil producers cannot be justified during times of windfall profits. Domestic oil prices have more than doubled over the past year and the price of domestic crude oil continues to rise.

The President's energy message calls for a tax on windfall profits. I, and other Members of the Senate, have called for a price rollback. It is unconscionable to argue that tax subsidies are needed to further increase oil profits today.

The current windfall profits in domestic oil production can be entirely attributed to price increases in foreign crude oil. In 1972, domestic crude oil was more expensive than foreign crude oil. Today, foreign crude oil has a posted price in excess of $10 per barrel. Domestic crude oil production costs average less than $3.50 per barrel. New domestic crude oil is being sold at foreign crude oil prices. Domestic producers are reaping a $6.50 per barrel windfall because of foreign oil price fixing. Repeal of the oil depletion allowance would reduce this windfall by about $1.50 per barrel. So immediate repeal of depletion will still leave massive increased profits as a price incentive to attract capital for expanded oil and gas production.

There is no better time for the Senate to consider repeal of this tax loophole than in the context of tax relief for the ordinary consumer. I am proud of my record in consumer protection. Consumers have grown increasingly more frustrated as oil industry profits skyrocket, energy supplies grow short, and the oil subsidy burden on the common taxpayer increases. Repeal of the depletion allowance, effective January 1, 1974, will yield $19.4 billion more revenues by 1980, than the Ways and Means "oil tax reform" bill. This money is readily available for redistribution to hard-pressed taxpayers.

I sincerely hope that my colleagues will join me in this effort. The time to act is now. The choice is simple. Does the Senate wish to maintain unconscionably high windfall profits for oil companies, or does the Senate wish to provide tax equity for the ordinary workingman?

SOLAR HEATING AND COOLING DEMONSTRATION ACT OF 1974—AMENDMENT

AMENDMENT NO. 1332

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

Mr. CRANSTON (for himself, Mr. KENNEDY, Mr. ABOUREZK, Mr. BIBLE, Mr. CHURCH, Mr. DOMINICK, Mr. FANNIN, Mr. HANSEN, Mr. HASKELL, Mr. HATFIELD, Mr. JACKSON, Mr. MAGNUSON, Mr. MATHIAS, Mr. MCCLURE, Mr. METCALF, Mr. NELSON,

Mr. TUNNEY, and Mr. WILLIAMS) submitted an amendment, intended to be proposed by them, jointly, to the bill (H.R. 11864) to provide for the early commercial demonstration of the technology of solar heating by the National Aeronautics and Space Administration and the Department of Housing and Urban Development, in cooperation with the National Bureau of Standards, the National Science Foundation, the General Services Administration, and other Federal agencies, and for the early development and commercial demonstration of technology for combined solar heating and cooling.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 1304

At the request of Mr. COOK, his name was added as a cosponsor of amendment No. 1304, to the bill (S. 1539) to amend and extend certain acts, relating to elementary and secondary education programs, and for other purposes.

AMENDMENT NO. 1305

At the request of Mr. MATHIAS, the Senator from Kansas (Mr. DOLE), and the Senator from Florida (Mr. CHILES) were added as cosponsors of amendment No. 1305, to Senate bill 1539, supra.

AMENDMENTS NOS. 1239, 1308, AND 1309

At the request of Mr. ERVIN, the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of amendments Nos. 1239, 1308, and 1308, to Senate bill 1539, supra.

NOTICE OF HEARING ON CHANGING VETERANS DAY

Mr. HRUSKA. Mr. President, on behalf of the Standing Subcommittee on Federal Charters, Holidays, and Celebrations of the Committee on the Judiciary, I desire to give notice that the subcommittee will hold a public hearing on June 3, 1974, on the following general bills which have for their purpose designating November 11 of each year as Veterans Day and to make such day a legal public holiday: S. 41, S. 552, S. 618, S. 2882, S. 2901, and . 3079.

The hearing will commence at 10 a.m. in room 2228, Dirksen Office Building on June 3. Persons desiring to testify or submit statements should notify Thomas B. Collins, counsel, 2226 Dirksen Office Building on or before June 1, 1974.

The subcommittee consists of the Senator from Arkansas (Mr. MCCLELLAN) and myself, chairman.

NOTICE OF HEARING ON FLAG CODE REVISION

Mr. HRUSKA. Mr. President, on behalf of the Standing Subcommittee on Federal Charters, Holidays, and Celebrations of the Committee on the Judiciary, I desire to give notice that the subcommittee will hold a public hearing on June 7, 1974, on S. 340, a bill to establish a commission to study the usage, customs, and laws relating to the flag of the United States, and Senate Joint Resolution 91, a joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States.

The hearing will commence at 10 a.m. in room 2228, Dirksen Office Building, on June 7.

Persons desiring to testify or submit statements should notify Thomas B. Collins, counsel, 2226 Dirksen Office Building, on or before June 4, 1974.

The subcommittee consists of the Senator from Arkansas (Mr. MCCLELLAN) and myself, chairman.

ANNOUNCEMENT OF HEARINGS ON "INDEXING"

Mr. JOHNSTON. Mr. President, I wish to announce that the Subcommittee on Production and Stabilization of the Senate Committee on Banking, Housing and Urban Affairs will hold hearings on June 10 and 11 on the question of statutory wage and price escalation—what has come to be known as "indexing." This concept was first put forth in this country by Prof. Milton Friedman. It has generated widespread interest in recent weeks as the rate of inflation climbs and even the most optimistic economists see no end in sight.

The subcommittee hearings will be held in room 5302 of the Dirksen Building at 10 a.m. For further information, please contact my legislative assistant, Jack Weiss, at extension 5824.

Mr. President, for informational purposes I ask that a recent column on indexing be inserted in the RECORD. The column is by the distinguished columnist Hobart Rowen and appeared in the Washington Post on Sunday, May 5.

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

CLIMATE FOR INDEXING?

(By Hobart Rowen)

Milton Friedman, as I wrote a few weeks ago, has stimulated a lively controversy by suggesting that the way to beat inflation is to use a system of wage and price escalators.

This is sometimes called "indexing," and would be modeled on what is said to be a successful, long-time experience in Brazil.

Most economists who have expressed a public opinion on using escalators to compensate for inflation are against the idea, arguing that it will make matters worse.

But the steady upward march of prices creating the worst inflation in this country since the first World War—gives the idea of indexing at least some surface credence.

One uncontestable fact is that some segments of the public right now get the benefit of indexing, while others do not. Thus, some 4 million members whose leaders were far-sighted enough to get cost-of-living clauses written into their contracts get a measure of protection against inflation.

But since such contracts are still the exception rather than the rule, COL escalators simply become part of higher costs that everyone else has to pay. To take one example, auto workers get a COL adjustment under their contract. That leads to higher prices for cars that must be paid by purchasers whose wages were not similarly "indexed."

Critics of the Friedman proposal range in ideology all the way from liberal economies Arthur M. Okun and Robert R. Nathan to conservatives like Chicago banker Gayland Freeman and retiring Treasury Secretary George Shultz.

Nathan says that indexing "could become a real rat race, with everyone carrying around his own portable computer to check the figures to see he gets his fair share.

Shultz not only agrees that all increased costs "would be built in automatically," but protests that the Brazilian experience isn't applicable to this country in the first place.

It is true that there are great differences between their system and ours. One major one—not noted by Friedman—is that the indexing system there is designed to protect the value of capital investment rather than wages.

Thus, the Brazilian government establishes in advance what the upper limit of wage advances can be, and that is all the collective bargaining process is allowed to work out.

Those who are familiar with what has actually taken place in Brazil say the Government will typically establish 15 per cent as the anticipated rate of inflation, and thus assume a major political commitment to do no worse than that.

Having gone that far, according to a U.S. government source, the Brazilian Government has had to establish controls to give the appearance of success. The result has been black markets, with actual rises in prices under the indexing system perhaps double the officially stated increase.

Says Chicago banker Freeman: "The figures that the Minister of Finance puts out are suspect."

It is easy enough to put aside the notion of emulating Brazil, which is a dictatorship under the Army's thumb. The achievement, under indexing, of a GNP increasing by annual rates of 10 per cent for six years in a row (if the figures are believable) is hardly enough to compensate for a non-democratic form of Government.

But the idea of distributing the burden of inflation more equitably doesn't have to be associated with the anti-social character of the Brazilian Government. David R. Shelton, a Washington attorney, who once raised the question of indexing U.S. savings bonds, says in a letter:

"I have always wondered why our Federal government has been so solicitous to grant cost of living pension increases to retired bureaucrats. . . . and so determined to effectually confiscate the life savings of those little people suckered into putting everything they can accumulate into Series E bonds."

Another correspondent, Harold Robinson of the Agency for International Development, points out that escalator adjustments for inflation have been used in Israel, Bolivia, and Colombia, as well as Brazil.

Shultz' basic argument is that acceptance of indexing would be admission that the "extraordinary 10 per cent rate of inflation" that we've had for a year is "something we are willing to live with."

"I think it is more credible to say 'No, we're not going to have that here in this country' " Shultz said in an interview.

It appears to me that there are three alternatives to the indexing idea:

First, we can continue as we're going with the anti-inflation responsibility saddled on the Federal Reserve Board. The hope would be that with a mild recession, high interest rates, and no worse than 6 per cent unemployment, inflation could be checked.

Second, an even tougher kind of austerity could be enforced, with unemployment pushed to 9 or 10 per cent to break the inflationary cycle.

Third, there is Nathan's proposal for "a year or two of tough but flexible and fair controls to break the spiral."

Inasmuch as all signs point to continuing inflation despite the Fed's efforts; and because no one is ready to advocate a depression; and because even Nathan admits that current support is about zero for controls,

the demand for escalators—whether the solution is sensible or not—will grow. The climate is right.

NOTICE OF HEARING ON NOMINATIONS

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for Tuesday, May 21, 1974, at 9:30 a.m., in room 2228 Dirksen Senate Office Building, on the following nominations:

Robert M. Duncan, of Ohio, to be U.S. District Judge for the Southern District of Ohio, vice Carl A. Weinman, retired.

H. Curtis Meanor, of New Jersey, to be U.S. District Judge for the District of New Jersey, vice John J. Kitchen, deceased.

At the indicated time and place persons interested in the hearing may make such representations as may be pertinent.

The subcommittee consists of the Senator from Mississippi (Mr. EASTLAND), chairman; the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Nebraska (Mr. HRUSKA).

NOTICE OF HEARINGS ON OPEN GOVERNMENT LEGISLATION

Mr. RIBICOFF. Mr. President, I would like to announce for the information of the Senate and the public, 2 days of hearings on S. 260, Government in the *Sunshine Act*, which provides for open meeting of Government agencies and congressional committees.

The hearings will take place at 10 a.m. on May 21, in room 1124 Dirksen Senate Office Building, and May 22, in room 3303 Dirksen Senate Office Building.

Those Senators wishing to testify or those who wish to submit a written statement for the hearing record should write to the Reorganization Subcommittee, room 162, Russell Senate Office Building, Washington, D.C., 20510, or call 225-2308 or 225-5274.

ANNOUNCEMENT OF PUBLIC HEARINGS BEFORE THE SENATE INTERIOR AND INSULAR AFFAIRS COMMITTEE

Mr. JACKSON. Mr. President, I would like to announce for the information of the Senate and the public the scheduling of a public hearing before the Senate Interior and Insular Affairs Committee.

The hearing will be held on June 6, beginning at 10 a.m. in room 3110 of the Dirksen Senate Office Building. Testimony is invited regarding S. 3362, the so-called Bonneville Power Administration self-financing bill.

Those wishing to testify or who wish to submit a written statement for the hearing record should write to the Interior and Insular Affairs Committee, room 3106, Dirksen Senate Office Building, Washington, D.C. 20510.

NOTICE OF HEARINGS ON S. 1270

Mr. JACKSON. Mr. President, I wish to announce for the information of the Senate and the public that open public field hearings have been scheduled by the Subcommittee on Parks and Recreation on June 15, 1974, in Los Angeles, Calif., on the following bill:

S. 1270

To establish in the State of California the Santa Monica Mountain and Seashore National Urban Park.

NOTICE OF HEARINGS ON S. 3188

Mr. JACKSON. Mr. President, I wish to announce for the information of the Senate and the public that open public hearings have been scheduled by the Subcommittee on Parks and Recreation on May 31, 1974, at 2 p.m., in room 3110, Dirksen Senate Office Building, on the following bill:

S. 3188

To establish the Sewall-Belmont House National Historic Site, and for other purposes.

NOTICE OF HEARINGS ON JUNE 6 ON BILL TO INCREASE PER DIEM AND MILEAGE

Mr. METCALF. Mr. President, on Thursday, June 6, the Subcommittee on Budgeting, Management, and Expenditures will hold a hearing on S. 3341. This bill would increase from $25 to $35 the per diem expenses of Federal employees traveling on official business. It would increase from 12 cents to 14.5 cents the mileage rate of compensation for Federal employees who use their own car for official business. The bill would also provide for continuous study and quarterly reports on employee travel costs by the Comptroller General.

I am pleased to report that the distinguished junior Senator from Kentucky (Mr. HUDDLESTON) will preside at the hearings. It is my intention to convene a meeting of the subcommittee soon after the hearing, so that the members of the subcommittee may make their recommendation to the Committee on Government Operations

The text of S. 3341, the remarks I made upon introducing it, and a study by the General Services Administration regarding the present cost of operating privately owned automobiles appear in the CONGRESSIONAL RECORD for April 10, beginning on page S5583.

Persons or organizations who wish to testify or submit statements regarding the legislation should write or call the subcommittee, 161 Russell Senate Office Building, Washington, D.C. 20510. The phone numbers are 255-1474—majority, and 255-1481—minority.

ADDITIONAL STATEMENTS

PROSPECTS FOR GROWTH IN THE AMERICAN ECONOMY

Mr. BENTSEN. Mr. President, I ask unanimous consent that a very forceful and perceptive statement by the distinguished majority leader, Senator MANSFIELD before the Subcommittee on Economic Growth of the Joint Economic Committee on Wednesday, May 8, 1974, be printed in the RECORD at the conclusion of my remarks.

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

Mr. BENTSEN. Mr. President, I serve as chairman of the Subcommittee on Economic Growth of the Joint Economic Committee which was established to analyze the long-term prospects for growth in the American economy. Our purpose is to look ahead at what the potential roadblocks might be—shortages of raw materials, shortages of private and public capital investment, unrelenting inflation and continual high levels of unemployment, and other major issues which must be examined comprehensively as they affect the magnitude and pattern of long-term economic growth in the United States.

We conducted our first round of hearings on May 8 and 9, and were honored by having the majority leader as our first witness. I wish to commend Senator MANSFIELD for his awareness and thoughtful analysis of the serious problems on the horizon, and thank him for expressing his deep concern and interest in the objectives of this new subcommittee.

Senator MANSFIELD has shown great initiative in setting up a constructive dialog between the joint leadership of the Congress and several representatives of the executive branch on the disjointed government machinery we have to address the inter-related issues of long-range economic growth.

Those of us on the Subcommittee on Economic Growth share Senator MANSFIELD's concerns about the economic future of this Nation and I commend his excellent statement to my colleagues.

STATEMENT OF SENATOR MIKE MANSFIELD

Mr. Chairman: I appreciate this opportunity to appear before this Committee on what I regard as an issue of the most pressing national significance and concern. What you are embarking upon and what so many of us in the Congress, in the Executive and elsewhere in our national life have come to view with increasing alarm could be expressed no better than it has been framed by the enabling charter of this panel: A Subcommitee on Economic Growth: to think ahead, to think long range, to analyze in a very measured methodical way the full spectrum of problems that we as a nation confront in terms of capacity and employment needs, of raw materials and resource requirements. It is a charter, may I suggest, that has emerged out of a deep sense of frustration with the disjointed way government has tended for decades not so much to act but instead to react on a crash basis when a component of this gigantic, intricate machine of the American Economy gets out of whack in ways that impose both suffering and hardship upon great segments of the American public.

What we face may, in part, be characterized as follows: cartels, scarcity, diminishing sources, expanding usage, production restrictions, steep price rises and expedient remedies. What needs to be asked and what you, Mr. Chairman, and your committee with its new mandate are asking through these hearings, and what is being asked over in the Commerce Committee and in others is this: how are we as a nation equipped—or ill-equipped—to address the next crisis in resources or materials or commodities. Do we have at the highest level of national life an effective capacity to look at *all* of the information; to identify *all* of the potential areas of crisis and to have the benefit of assessments as to *all* of the various remedies available to avert the next crisis or to minimize its impact on the American people.

These questions are answered by the very

nature of what you are undertaking in this Committee, by what Senator Magnuson is undertaking in the Commerce Committee and by what others are doing in the Congress and in the Executive Branch, not to speak of the activities of private foundations and universities and corporate establishments. If I have read the signs correctly, therefore, what they point to is the emergence of a firm resolve that when it comes to basic economic needs, the nation must be better equipped and better able to provide more rational answers in the decision-making process.

For all of us, I think the issue was clarified a few months ago when long lines of automobiles accumulated to vie for short rations of gasoline. It is not only that a decision to build or not to build a new refinery or steel mill or chemical plant, or to start a mining operation can have major repercussions throughout a community, the nation or even abroad, it is also that a shortage of raw materials derived from petroleum can shut down auto plants in Detroit and manufacturers of recording tapes in Los Angeles.

It is not so much a lack of study or an absence of data and information. For a quarter century or more, experts have warned about coming crises with regard to vital basic materials and commodities. More important is that we simply have no systematized method of assessing information in order to determine our needs early enough and to move quickly enough to provide a reasoned answer, or even to make the attempt.

What if Government at any time in the past two decades had established a central information unit—a data bank so to speak—charged with compiling statistics on energy resources, analyzing on a continuing basis the status of supply and sources, projecting consumption rates, reporting refining capacity, evaluating current technology and future application and equipped to report anticipated deficiencies directly to Congress and to the President with specific recommendations. There is little doubt, I think, that had such an agency existed, there would have been no fuel crisis, and, certainly, no reason to have addressed the matter on a crash basis, establishing almost overnight a whole new federal bureaucracy so we could meet immediate requirements for heat, light and transportation.

And if it is energy today, of what will we as a nation be in dire need tomorrow? Three or four years ago, the Interior Department told us that there were at least thirteen basic minerals for most of which we depend upon sources outside the United States. The figure has grown to forty or more. They range from aluminum and chromium, to tin, lead, nickel and so on. For at least thirty of these materials, the nation has already become over 60% dependent upon other countries. In part, the dependence may be answered at some unknown future date by new technologies such as the recapture and recycling efforts that are just now barely more than an idea. For now, however, that dependence is with us and it is complicated by what happens when supplier nations gang together.

I realize full well that the President and Secretary Kissinger are trying to improve the bargaining strength of the consumer nations insofar as petroleum is concerned. But what happened with oil is very likely to happen with bauxite, or copper or nickel or zinc or tin or whatever, when the basic needs of heavy consumer societies must be met by sources beyond their national boundaries. Secretary Kissinger has now gone to the United Nations to stress that interdependence of developed and developing nations with regard to key resources was essential to global stability. But the international instrumentalities he envisioned to accommodate cooperation between producer and consumer nations can be established, it seems to me, only after there is constructed within our own nation a mechanism able to grasp what is needed for our own people not only today but five or ten years hence. It is to this precise task that this Committee has addressed itself. And you are to be commended for your efforts.

As you know, the problem goes well beyond metals or minerals and does not relate only to those in which we are in a dependent status. In 1973, the nation experienced the biggest boost in the cost of groceries in over twenty-five years. Prices for fibers have risen 93 percent. The story of how inflation continues to wrack our people on every front was written graphically in the double digit figures released two or three weeks ago—10½% from March of 1973 to March of 1974; 14½% for the first three months of this year.

And while Americans are made to pay more let us not forget that in some areas of the world, the basic commodities are not even available. The problem is worse in Europe, Asia and Latin America. A whole corridor spanning the African Continent is now caught in a struggle for survival under the twin burdens of drought and famine.

In the United States, however, I believe it is largely the question of basic shortages and related matters which will mandate the crises. And the crises, one after another, will pounce on us most assuredly unless and until as a nation we are prepared to adjust our government apparatus here in the Congress, as this Committee is doing, and in the Executive to meet the fundamental problem.

Let me say again, however, that this problem is not really so much one of the absence of information. At last report, more than fifty federal agencies and administrations were collecting and compiling relevant data and that was before any apparatus was set up to address environmental concerns or to monitor product safety or to perform a host of other recently legislated activities.

Take a specific example. In the Commerce Department there are some 160 professionals in the Office of Business Research and Analysis and twenty or thirty of them alone are dealing with information on industrial commodities. Look at it in broader terms. We find that for data on imports and exports, we can turn to the Agriculture, Treasury and Commerce Departments, the Council on Economic Policy, FEO, the Special Trade Representative and more; for production, there are the Interior and Agriculture Departments, HUD, FEO and more; for basic regulatory decisions, there are DOT, ICC, FTC, EPA, the Federal Reserve and more; and so it goes. While the Commerce Department appears to be tightening up on the exports of materials, Treasury is endeavoring to stimulate exports through the DISC incentives. (In some instances, two or three different agencies with overlapping responsibilities arrive at contradicting appraisals of the present state and future prospects of the same industry.)

The situation is not very different here in the Congress, except in magnitude. When it comes to our diverse and seemingly insatiable appetites for economic information, our Committees reflect the same fractured state as the Executive in terms of who is keeping track of what with regard to such matters as minerals, pesticides, fertilizers, timber and wood materials, tax policy, strategic materials, stockpiles, export policy, foreign trade, production, recycling, resource development, materials allocation, commodity controls, importation, mining and all the rest. It is, therefore, with enormous gratitude that I greet this Committee's efforts to look ahead and help us all to coordinate our efforts and actions in terms of long range implications regarding any one of these or a host of other concerns and actions we may take with respect thereto.

It is to this specific issue that I, along with the Republican Leader. Hugh Scott, and others, have endeavored to address ourselves recently. Before getting into these efforts, let me say that all of us, I believe, seek similar objectives. To that end, Hugh Scott and I are exploring whether or not on the basis of all of the studies and recommendations, there can be created as a part of our national life an instrumentality that would serve to coordinate and to interpret all information, to forecast upcoming problems in terms of shortages or other adversities and to provide meaningful assessments of courses that might be followed to avert catastrophe or help us to endure adversity as painlessly as possible.

After all, it was twenty-two years ago that the Paley Commission, after exhaustive analysis, recommended such a high-level agency to provide a continuing and coordinated analysis of the interdependence of government actions with respect to basic economic decisions. The adverse effects of the government's failure to provide such a capacity has been confirmed a number of times since—most recently by the report of the National Commission on Materials Policy filed last year and by the GAO report released a week or so ago.

It was on the basis of this record that has been so well documented, that the Senate Republican Leader and I put the question in these words in a letter to the President last February:

It is our suggestion that we consider bringing together representatives of the Legislative and Executive Branches of the government on a regular basis with those of industry and labor and other areas of our national life for the purpose of thinking through our national needs, not only as they confront us, today, but as they are likely to be five, ten or more years hence and how they are best to be met. If the government is to intervene in these matters, as it is now doing, an effort ought to be made to put that intervention, as far as possible, on a rational and far-sighted basis.

I think all of us here sense that there exists some kind of requirement to deal with questions of this kind or, I daresay, this Committee would not have undertaken for itself the task of long-range thinking. In the context of the current dialogue on the issue, insofar as my own participation is concerned, I would like to set forth certain questions which have occurred to me.

The first is: What kind of instrumentality, if any, might meet this requirement? To me, it should be one that is freely representative of the nation if it is to be effective; one, therefore, that would embrace representatives not only of the Legislative and Executive Branches but elements of industry, labor, agriculture and other significant segments of our national life. It should be a continuing instrumentality equipped, first, to draw on information from all sources on the status of resources, materials and commodities and other aspects of our economy—tasks performed now by dozens of agencies and organizations across the spectrum of national life, both public and private. Secondly, it must have the means to forecast the problems by drawing information out of the present massive but fragmented system. Thirdly, it must have the capacity to convert its projections into recommended policy options that might embrace such measures as conservation, research, stockpiling, allocation, modernization, manpower, export controls and whatever else may be necessary to keep vital, the nation's economy. Finally, it must be in a position to report its findings and an analysis of proposed remedies to the President and the Congress—the ultimate arbiters of policy and the sources of action for the federal government. In turn, the work product of such an instrumentality could be weighed and evaluated by this and other

interested Committees and by the agencies concerned downtown to the end that our overall approach is the most comprehensive and rational that can be devised.

In my view, what the nation needs and needs vitally is a full-fledged Council on Domestic Needs and Economic Foresight, staffed sufficiently and equipped fully to give the President and the Congress and the public the kind of integrated perception of our national requirements now and in the future which has heretofore been lacking.

I should stress, here, Mr. Chairman, that what the Joint Leadership of the Senate is pursuing in concert with the House Leadership and with the President's designees in the Executive, as a course of action similar in scope and magnitude to that upon which you and your Committee have now embarked. In the Commerce Committee and others, similar efforts have been undertaken. All of these endeavors should be pursued unrelentingly and without delay to the end that at the soonest time possible, as a nation, we have acquired a field of vision expanded by the capacity to view all of the effects of our action or inaction today not just in the context of tomorrow, but in terms of five or ten years hence.

Whatever the immediate results of any one of these pursuits, including those in which I am engaged, let us keep in mind our common concern: It is that we here in the Congress as the policy makers and those in the Executive as the policy implementors will be fully prepared and equipped to address the next major challenge to our national stability. Steps taken now, to be sure, could not possibly undo the damage of what has been thrust upon the nation with regard to energy. Steps taken now just might, however, keep the nation from stumbling headlong into the next crisis, and the next and the next, each contributing more to the irrationality of an already disjointed economic condition that, unless corrected, will lead us inexorably to our economic devastation.

Thank you, Mr. Chairman.

SENATOR HUGH SCOTT ADDRESSES AMERICAN ISRAEL PUBLIC AFFAIRS COMMITTEE

Mr. SCHWEIKER. Mr. President, my distinguished colleague from Pennsylvania (Mr. HUGH SCOTT) has long been a strong defender of Israel's struggle for self-determination in the Middle East. He recently reaffirmed that commitment in a speech before the American Israel Public Affairs Committee conference here in Washington. The speech was his first upon returning from the Soviet Union April 28.

Mr. President, I ask unanimous consent that Senator SCOTT's address be printed in the RECORD.

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

STATEMENT BY SENATOR HUGH SCOTT

We are celebrating the sense of consistency felt by those of us who helped formulate policies first urged by Governor Dewey of New York and then established by President Truman at the founding of the State of Israel in 1948. But I feel more than a sense of intellectual or political consistency, as I reflect upon my own involvement in more than a quarter century of American-Israeli relations. I agree with Emerson:

A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines.

Mr. Chairman, there are, obviously, no little statesmen, philosophers, or divines in our midst tonight. Emerson went on:

Speak what you think today in words as hard as cannon-balls, and tomorrow speak what tomorrow thinks in hard words again, though it contradict everything you said today.

I feel more than a sense of political or philosophical consistency about my own stand toward Israel. I feel profound emotional satisfaction, because I have been able to think and speak in the councils of our nation in "words as hard as cannon-balls," to act on deeply felt principles, to support legality, to be true to my natural preferences, and simultaneously to serve the national interest over both the short and the long term.

Until the Yom Kippur War, steadfast proponents of U.S. support for Israel were occasionally attacked from two, paradoxically opposed extremes. On the one hand, we were accused of knuckling under to high-pressure lobbyists and acting on grounds of purely domestic constituency politics. On the other hand, we were accused of a naive commitment to romantic principles which simply have no place in the world of Real-politik, principles put very clearly many years ago by the German philosopher Karl Jaspers (as recently quoted by Rabbi Stanley Rabinowitz of Adas Israel Synagogue in Washington):

The West cannot abandon Israel without abandoning itself. If Israel falls, so does the West, not because of losing a tiny power position and a few million people, but because of moral, political depravity.

The United States has been principled in the sense in which Irving Kristolf (Wall Street Journal, April 11) speaks of "an instinctive loyalty to a nation which recognizably does share our political values."

We have been principled also because, apart from the Netherlands, ours was the only government that did not give in to the blackmail of the oil embargo, and we were therefore about the only ones to retain our moral and intellectual integrity after last year's conflict.

The Arab-Israeli conflict has demonstrated, perhaps better than anything in our recent history, how finely calibrated our representative system is to elicit the expression of interests and—equally important—to produce acceptable policies: The President and Secretary Kissinger were accessible to groups like yours throughout the crisis. They conceived the brilliantly innovative policy which ended the war and launched the negotiations. Most important, this policy found overwhelming acceptance in the United States. We should not forget that there were many pessimists at the beginning of the oil embargo who predicted a massive backlash of antisemitism as a result of gasoline shortages. We can all be proud of the light cast on the political maturity of the American people by the polls which showed a stronger support for Israel after the embargo than before it.

The United States has done more than, in the words of the Declaration of Independence, show a decent respect for the opinions of mankind. Through Secretary Kissinger's persistent, energetic, tireless, and beautifully balanced diplomacy we have created, for the first time since 1948, a framework and a network of regional and global communications, in which the opinions of mankind can be engaged in, and responsibly brought to bear upon, efforts to resolve the Middle East's most explosive issues. In the course of accomplishing this, we have also improved opinions about the United States held by other nations involved in the conflict, thereby enhancing our potential as peacemakers.

This is of course one of several ways in which we have also served our own national interest, which can thrive best if we succeed, together with others, in building the lasting structure of peace to which President Nixon has dedicated his Administration. As I said in Pittsburgh three months ago:

"It was the United States, our President and our Secretary of State, that took the initiatives, who alone could talk to all parties, and who extended the foundations of the global structure of peace into the world's most explosive region. They did this without either recrimination or manipulation. They did it imaginatively, purposefully, and creatively. As a result, the evil of the Yom Kippur War has been converted into potential for the good of Israel and her neighbors, the Middle East, and humanity."

I firmly believe that we can be as sure of continued American support of Israel as we can be of anything in international relations, and for three main reasons:

First, we demonstrated by means of the virtually instant military resupply of Israel, through the global alert called by the President, and in other ways, how far we were willing and able to go, and that each step along the way was carefully calculated as to both moral principle and national interest (and did not constitute an undifferentiated global commitment of the kind that sucked us into Indochina).

Second, the Israelis themselves once more demonstrated the kind of courage, self-sacrifice, and determination which elicit admiration and support from Americans, and awe from their adversaries.

And third, the rare coincidence of the moral with the practical (not the moralistic with the opportunistic), of what we ought to be doing with what we want to do, presents the American people and our policy makers, up to the highest levels, in this otherwise morally ambiguous time, with an opportunity which we will not miss:

To be true to our traditions and to our promise;

To speak "in words as hard as cannon-balls," figuratively, and literally, to give cannon-balls and other armaments to Israel, for use in defending values we share, against unreasonable attack;

And to work together with other like-minded peoples and nations, toward building a structure of peace which will relegate cannon-balls, rockets, and other missiles to the realm of metaphors.

DEVEREAUX HOUSE—UTAH BICENTENNIAL MEETING HOUSE

Mr. MOSS. Mr. President, early next month the Senate Subcommittee on Parks and Recreation will hold hearings on the Meeting House Preservation Act (S. 2877) which makes grants available to each State to restore a historic site as a "Meeting House" to be used during the American Revolutionary Bicentennial celebration, and to serve as a focus for the preservation of the area's physical and cultural heritage thereafter. I am a cosponsor of this bill and lend my voice to that of its principal sponsor, Senator TOWER, in asking that it be passed quickly and without controversy. The Bicentennial will be upon us before we realize it.

I would like to give the Congress a brief preview today of the structure chosen by the Utah American Revolutionary Bicentennial Commission, with the concurrence of the Utah Heritage Foundation, to be Utah's "meeting house." I visited it recently. It is called the Devereaux House, and it is located in an old section of Salt Lake City not far from the stately Union Pacific Depot, which is also the object of a restoration and refurbishment movement to make it an art and cultural center. In fact, restoration of the Devereaux House is part of a grand plan to turn the west end of his-

toric South Temple Street, on which both it and the station are located, into an elegant promenade and cultural center.

The Devereaux House is well suited for the role planned for it. Built in 1857 for William Staines, it is the first mansion to be constructed in Utah. When one considers that the original large and spacious two-story section was built only 10 years after the Mormon pioneers entered what was then the wilderness of the Salt Lake Valley, the fact that it was erected at all is quite remarkable.

Furthermore, Mr. Staines deviated somewhat from the pattern established by city ordinance that all homes must be built in the center of a lot, and set back 20 feet from the frontage line. Mr. Staines set his house far back in the center of two lots, with his orchards in front.

In 1865, Joseph A. Young purchased the property and added a lot to it. In 1867 it was purchased by William Jennings, who enlarged the grounds to include more than half a city block. Thus the house early attained a commanding location in a city of one-lot houses, most of them set at the same distance from the street. Mr. Jennings enhanced the grandeur of the house by adding a large east wing to the original structure and gave the house its name, the Devereaux House, taken from the Devereaux Estates at Yardley, near Birmingham, England, where has was born.

The house is distinctively Victorian in style, with a cement plaster exterior scored to resemble stonework. The interior is elaborate with heavy carved pine woodwork in all major first floor rooms, grained in oak, mahogany, maple, and marble. There is a striking curved stairway with a magnificently carved knewel post rising out of the front hall, and much of the original wallpaper in the front stair hall and first floor rear corridor is still intact. The massive doorknobs, hinges and other interior detail is also in good condition.

For many years the Devereaux House was the center of Salt Lake City social life. On numerous occasions as many as 300 guests were entertained. Among the distinguished visitors who dined and danced in its palatial rooms were Second Territorial Governor Alfred Cummings, President and Mrs. Ulysses S. Grant, Secretary of State William Seward, and Generals Philip Sheridan and William Tecumseh Sherman.

After the death of Mr. Jennings, the house was used in various ways, including one period when it was a center for alcoholics. It is now an office for a distributor of mining equipment. It was placed on the Utah State Register of Historic Sites in January 1970, and on the National Register of Historic Places in March 1971.

Many historic and civic organizations in Utah view restoration of the Devereaux House as a most worthy and essential project, and I am confident that with the financial assistance made available through enactment of the "Meeting House" bill, its restoration would be assured.

Its elegant first floor could be used as a reception center for both public and private functions; its second floor for offices as headquarters for civic and professional groups, and its third floor for resident caretakers. With its grounds restored as gardens and public park, it would add immeasurably to the beauty and interest of an old and historic section of downtown Salt Lake City.

POLITICS AND TAX LEGISLATION

Mr. McCLURE. Mr. President, David Broder has once more written an entertaining and cogent column. This time he has zeroed in on how we play politics with our tax legislation on both sides of the Hill.

The Post, unfortunately, was unable to print this particular article so I ask unanimous consent that it be printed in the RECORD.

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

WASHINGTON.—Like flowers that bloom in the spring, tra-la, the Democrats are bursting with plans to spare you from the burden of taxes. Their biennial tax reform ballet is here—as spectacular, and predictable in its way, as lilac time in the capital.

Say what you will about the Democrats—they do know how to manage these bits of political pageantry. About a month ahead of show time, the Congressional Joint Economic Committee, Maestros Patman and Proxmire conducting, will whip up the overture, with a fanfare of brass in their annual report for "elimination of various tax preferences which favor the highest income families and a reform of the regressive payroll tax."

Such long-time favorite performers as Walter Heller and Arthur Okun are provided suitable Capitol Hill stages from which to serenade the virtues of a bit of stimulus for the economy and a jolt of equity for the old Internal Revenue Code.

By April 9 the stage is set for Speaker Albert to do one of his infrequent solo numbers—a formal statement and press conference on the economy and taxes.

Two days later, Sen. Edmund S. Muskie arranges a corps de ballet exercise for more than a dozen of his Democratic colleagues (and a handful of willing Republican handmaidens, many of them up for re-election this year), who fill the Senate stage with bassoon blasts at the unfairness of the tax laws they and their predecessors wrote.

On the weekend of the income tax deadline, a pair of Brookings Institution scholars, Joseph A. Pechman and Benjamin A. Okner, conveniently chime in with a study showing that in the U.S. tax system, the poor man is privileged to pay just as steeply as the rich, which is not exactly what the civics texts say.

Finally, on Deadline Day itself, none other than the master of the 1972 Democratic Tax Revels, George McGovern, announces that "he will shortly introduce a comprehensive tax reform bill patterned after the tax proposals he outlined during the 1972 presidential race."

Since McGovern has spent most of the last two years denying to his South Dakota constituents that he ever heard of the fellow by the same name who ran for President in 1972, his unpacking a proposal from that campaign kit is evidence that something big is afoot.

And it is. Encouraged by Mr. Nixon's personal tax troubles and the signs of voter revolt in the special elections, the Democrats really are about to revive the issue that looked so promising to so many of them in the 1972 spring primaries—the broadly shared feeling among American voters that they are being rooked on their taxes.

It's a good issue for the Democrats. Unlike so many others, it does not set them cursing each other. And it addresses itself to a genuine public concern, a sense of unfairness which Pechman and Okner, in their little book, "Who Bears the Tax Burden?," say is based in a genuine grievance with the lack of progressivity in the overall tax structure.

Among those who can taste the political succulence of the tax issue are those prospective 1976 rivals, Ted Kennedy and Walter Mondale. They happen to be the principal sponsors of the major alternative tax proposals the Senate will consider shortly after its return to work this week. Both want to cut the taxes of low and moderate-income workers, as a stimulus to what they see as a lagging economy.

They have different methods for doing so. And their efforts to attach one plan or the other on HR 8127, the innocuous tariff bill on certain ship repair equipment which Sen. Russell Long has served up as a vehicle for this exercise, will offer a polite preview of what may be a more serious competition two years hence.

Later on, impeachment permitting, the Democrats may attempt more ambitious tax reforms, building on the energy legislation, in which the House Ways and Means Committee has already taken a sizable bite out of the oil depletion allowance.

The chairman of that august committee, the redoubtable Wilbur Mills, is in a mood to play some tax law politics himself. He is busy defending his committee jurisdiction from a reform proposal which would strip him of control of health care and trade legislation.

Eager for allies in the Democratic caucus, Mills may well decide not to throw his body in front of the tax-reform express. In that case, the Democrats' baby may well wind up, as everything else seems to nowadays, on Mr. Nixon's doorstep.

The Democrats would dearly love to confront that gentleman with the prospect of having to veto a tax cut and/or tax reform bill just at the time he will be appealing to the public to help save him from impeachment.

It should be quite a show.

A LETTER FROM JOCELYN

Mr. ERVIN. Mr. President, during the hearing the Constitutional Rights Subcommittee held recently on criminal justice data bank legislation, S. 2963 and S. 2964, there was a lot of controversy about the proposal to seal the records of persons who have been convicted of crimes. The proposal is that if a person has no further contact with the law 7 years after he is released from custody, parole or probation, then his record would become unavailable for normal access by police or private groups.

This idea, which has as its justification the principle of forgiveness, was opposed by many witnesses. Senator HUDDLESTON has referred to me a letter from a 15-year-old junior high school student and her letter is a strong answer to that criticism.

I ask unanimous consent that the text of the letter be printed in the RECORD. I have omitted her last name and address to preserve her privacy.

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

APRIL 8, 1974.

DEAR MR. HUDDLESTON: I am just fifteen, and in junior high. But I am writing to you because I want you to do something to help

people who I know including my Dad, who has a record.

He is a good person, and he did wrong so many years ago. Could he have his record made so that nobody but the judge could see it?

He told me not to worry about it, but I can't help it. He is a very smart man, and it hurts to see him when he comes home from his job at the diner.

Many people cannot get good jobs because they were in jail. This should be changed so that they would have as much chance as anybody else.

Thank you very much.

JOCELYN.

PROPOSED RAIL ABANDONMENTS

Mr. CASE. Mr. President, according to recent press reports, the Department of Transportation has advised the Penn Central Railroad that future cash assistance will be conditioned on its submission of plans for abandonment of so-called uneconomic lines.

The cash assistance is available under a recently passed law providing for the restructuring of the Penn Central and other bankrupt lines in the Northeast and Midwest.

The purpose of the cash assistance is to keep the bankrupt lines running until the final plan of the new Northeast system is drawn up and implemented.

The law conditions the provision of such case assistance not on abandonment of service, but agreement of the recipient to maintain service "at a level no less than that in effect on the date of enactment" of the Northeast law.

Congress adopted this approach to be sure there will be something left to reorganize at the end of the long, complicated planning process now underway.

The Transportation Department's action in seeking abandonments by the Penn Central in return for cash assistance threatens to thwart the sensible approach taken by Congress and to undermine the planning work already done.

That the Department is out of line on this matter is made clear by a recent letter to me from the Rail Service Planning *Office of* the Interstate Commerce Commission. In that letter, Public Counsel A. Grey Staples, Jr., stated:

The Secretary (of Transportation) can and should insure the proper use and accounting of such (interim operating assistance) funds by establishing terms and conditions on their payment. This provision does not, however, contemplate the Secretary's using the funds to enforce compliance by the recipient with the Secretary's preconceived notions of an appropriate railroad system. Indeed, for the Secretary to request abandonment as a quid pro quo for the payment of emergency assistance funds contradicts Congress' expressed intention in the last phrase of Section 213(a) that the recipient maintain services existing on the date of enactment of the Act.

Mr. Staples also takes strong issue with any effort to circumvent the authority of the ICC in handling rail abandonments.

This comes up, because the Transportation Department apparently is trying to carry out the Penn Central abandonments under section 304(f) of the Northeast law, a provision providing minimal abandonment authority during the present planning process.

Under this section, abandonments are possible so long as they are authorized by the U.S. Railway Association, which was formed to plan and finance the Northeast system, and so long as State and local transportation officials do not raise "reasonable" objections to them.

Press reports indicate DOT may believe that under 304(f) the authority vested in USRA supersedes the ICC's traditional authority to approve or disapprove rail abandonments.

I believe any such interpretation to be erroneous and I am supported in this by the letter from Mr. Staples, who states:

(U)nder our interpretation of the Act, no railroad in reorganization may abandon any line or service prior to the implementation of the final system plan unless: (1) the line or service has been approved for abandonment under normal ICC abandonment procedures; (2) the (U.S. Railway) Association has authorized such abandonment; and (3) no State, local or regional transportation authority has expressed a reasonable opposition to the abandonment.

I believe the letter from Mr. Staples sets the record straight as to what is, and what is not, permissible under the Northeast law.

Further, I am glad to note Mr. Staples' determination to "make appropriate measures" to insure the interpretations provided me "are adequately represented throughout the rail reorganization process."

Mr. President, I ask unanimous consent that the full text of Mr. Staples' letter to me be printed in the RECORD at the conclusion of my remarks.

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

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., May 3, 1974.

Hon. CLIFFORD CASE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CASE: You have requested the opinion of the Rail Services Planning Office on certain matters pertaining to the Regional Rail Reorganization Act of 1973 ("Act"). Your inquiry pertains to: (1) the existing procedures for abandonment of rail lines by railroads in reorganization under Section 304(f) of the Act before the effective date of the "final system plan" and (2) the authority of the Secretary of the Department of Transportation to condition the payment of emergency assistance funds to a railroad in bankruptcy under Section 213 of the Act, upon the railroads' undertaking the abandonment of certain lines.

Section 304(f) of the Act requires railroads in reorganization desiring discontinuance of service or abandonment of any line after the date of enactment of the Act to do so in accordance with the provisions of the Act "unless it is authorized to do so by the Association and unless no affected State or local or regional transportation authority reasonably opposes such action."

We interpret this section to allow the continuance of abandonment proceedings before the Interstate Commerce Commission and state regulatory agencies subject to the veto of the Association and state, local or regional transportation authorities until the effective date of the "final system plan." At that time, such matters will be treated under the procedures found in Section 304 (a), (b) and (c).

Some have suggested that this provision grants the Association the exclusive authority, in addition to those powers granted to it in Section 202, to permit bankrupt railroads to discontinue service within the region prior to the adoption of the final system plan. Such an interpretation implies that Congress intended to abrogate all existing procedural safeguards and standards with respect to railroad abandonment and give the Association the plenary power to make such determinations with no definition of standards or procedures, save for the reasonable opposition of certain transportation authorities. No private part, shipper or passenger would be given any right to be heard or to present evidence.

We find the more logical interpretation of the provision of the Act, based on the context of the Act and its legislative history, to be a simple modification of existing Interstate Commerce Commission and state regulatory agency procedures that give organizations concerned with reorganization planning the opportunity to stop any abandonment that would conflict with their ultimate designs for railroad operation.

Therefore, under our interpretation of the Act, no railroad in reorganization may abandon any line or service prior to the implementation of the final system plan unless: (1) the line of service has been approved for abandonment under normal ICC abandonment procedures; (2) the Association has authorized such abandonment; and (3) no State, local or regional transportation authority has expressed a reasonable opposition to the abandonment.

With respect to the emergency assistance funds authorized by Section 213 of the Act, these funds are intended to keep the railroads in reorganization operating until the implementation of the final system plan. The Secretary of the Department of Transportation is authorized to make such payments "upon such reasonable terms and conditions" as he might establish as long as the recipients agree to maintain service "at a level no less than that in effect on the date of enactment" of the Act.

The Secretary can and should insure the proper use and accounting of such funds by establishing terms and conditions on their payment. This provision does not, however, contemplate the Secretary's using the funds to enforce compliance by the recipient with the Secretary's preconceived notions of an appropriate railroad system. Indeed, for the Secretary to request abandonment as a quid pro quo for the payment of emergency assistance funds contradicts Congress' expressed intention in the last phrase of Section 213(a) that the recipient maintain services existing on the date of enactment of the Act.

We believe that the above interpretations of the Act comport with Congressional intent and adequately protect the public interest prior to the adoption of the "final system plan." Please rest assured that the Public Counsel's Office will take appropriate measures to assure that these interpretations are adequately represented throughout the rail reorganization process.

Very truly yours,

A. GREY STAPLES, Jr.,
Public Counsel.

NASA'S EEO PROGRAM

Mr. MOSS. Mr. President, in recent months, NASA's Equal Employment Opportunity—EEO—program has been the subject of considerable criticism. In view of the importance of this subject to NASA and the Nation, I want to inform my colleagues of the reasons for this criticism and the most recent status of the NASA EEO program.

In 1969, the year of the lunar landing, only 4.6 percent of all NASA employees were from minority groups. During the decade of the 1960's, NASA's efforts had been directed toward achieving the goals

of the Apollo program, and the EEO function had been carried out by NASA's Director of Personnel, on a part-time basis. It was evident that this approach was entirely inadequate, and an EEO office was established at NASA in 1971. At that time, total NASA minority employment still consisted of 4.6 percent, and women made up 16.4 percent of the NASA work force. The EEO office established programs directed at increasing minority and female employment at NASA, but charges were made that these efforts continued to be inadequate.

The Committee on Aeronautical and Space Sciences conducted a hearing on January 24 to investigate these allegations. The hearing revealed that progress was being made, although somewhat slowly. At the time of the hearing, approximately 5.5 percent of the total NASA employees were minorities. The main obstacle preventing more rapid increase of minority employment has been the steady reduction of the total NASA work force. NASA employment has decreased from 34,000 in 1971 to 25,512 as of March 31. Thus, hiring by NASA has been reduced. However, there is still some hiring by the Agency and, therefore, some opportunity for minorities and females to accede to a NASA position. What has NASA's record been in this area over the past 3 years? In 1971, 10.3 percent of all hires were minorities and 43.6 percent of all hires were women. In 1972, minorities consisted of 13.2 percent and women made up 59.5 percent. Finally, in 1973, 16.3 percent of all hires were minorities and 50.8 percent were women. Thus, in spite of reductions in force, NASA was able to make some progress in minority and female employment. Equally as important as total employment figures are those figures which reveal the categories and professions for which persons are being hired. In fiscal year 1973, of professional hires, 7 percent were minority and 10 percent women. These figures are much lower than the total rate of minority and female hiring. The major difficulty is that 47 percent of all NASA positions are scientific and technical, while only 3.5 percent of scientists and engineers in the United States are minority and 9 percent are women. In NASA, 3.4 percent of the scientists and engineers are minorities, and 4 percent are women.

What plans did NASA have to improve upon this situation? NASA has several programs underway such as:

First. Goals and timetables for minority and women accessions in 1974. This includes achievement of 6.1 percent total minority employment, and placing 80 minorities and 80 women in professional positions.

Second. Upward mobility to bridge positions at the professional level.

Third. Cooperative education program to bring large numbers of minorities and women into science and engineering fields.

Fourth. Aerospace fellowship program to further help minorities and women embark upon a career in aerospace.

Aside from its internal EEO program, NASA also has a contract compliance program. NASA currently has responsibility for 252 contractors employing over 47,000 employees. Ever since 1970, NASA has had responsibility for the EEO compliance of NASA contractors operating on or near NASA centers. Over the past several years, there has been a continuous increase in the number of minorities employed in the contractor work force, through the overall work force has decreased. Minority employment went from 11.2 to 14.5 percent of the total while the number of jobs decreased 7.9 percent. The proportion of female employment increased continuously from 15.7 to 17.5 percent. The NASA contract compliance program office sets goals, reviews the progress of contractors, and provides training, guidance, and coordination to the field staffs.

I feel that continued oversight of NASA's EEO activities is necessary. Therefore, I have asked NASA to submit quarterly reports to the Committee on the progress of the NASA EEO program.

The committee recently received a report covering the first 3 months of 1974. The report indicates that, of the total accessions to NASA in the past quarter, 53.7 percent were female and 20.1 percent were minorities. In scientific and engineering professions, 5.4 percent were female and 8.9 percent were minorities. The total NASA employment figures show that women account for 16.9 percent and minorities 5.7 percent.

I look forward to continual improvement in these efforts.

Mr. President, I ask unanimous consent that a table setting forth the pertinent data, and a brief quotation from the report of my committee on the NASA authorization bill for fiscal year 1975, be printed in the RECORD.

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

NASA–EEO STATISTICS, JAN. 1 THROUGH MAR. 31

Minority action counts

	Percent of total
1. Accessions:	
Minorities	20.1
Female	53.7
2. Accessions by profession:	
Professional administrative:	
Minorities	22.4
Female	24.5
Scientific and engineering:	
Minorities	8.9
Female	5.4
3. Separation:	
Minorities	7.0
Female	32.7
4. Promotions:	
Minorities	10.8
Female	32.7
5. Downgrades:	
Minorities	5.3
Female	31.6
6. Quality increase:	
Minorities	3.5
Female	28.1

Minority strength distribution

[As of Dec. 31, 1973]

1. Agencywide:	
Minorities	5.5
Female	16.8
2. By profession:	
Professional administrative:	
Minorities	4.0
Female	15.1
Scientific and engineering:	
Minorities	3.7
Female	2.4

[As of Mar. 31, 1974]

1. Agencywide:	
Minorities	5.7
Female	16.9
2. By profession:	
Professional administrative:	
Minorities	4.7
Female	15.7
Scientific and engineering:	
Minorities	3.7
Female	2.4

COMMITTEE COMMENT FROM REPORT ON NASA AUTHORIZATION FOR FISCAL YEAR 1975

Earlier this year the Committee held a hearing to review NASA's Equal Employment Opportunity program. It became clear that NASA's performance in this area was less than satisfactory, a condition forthrightly acknowledged by the Deputy Administrator at this hearing and by the Administrator during the initial hearing on the FY 1975 authorization request. At the same time, however, these top management officials outlined a series of goals and timetables and committed NASA to an aggressive program to comply with national policy. While the Committe recognizes the highly technical composition of the NASA workforce, and the fact that this may in itself impose some recruitment and employment difficulties, and while the Committee is also aware that NASA has been in a reduction-in-force posture for the last several years thereby limiting the number of available openings for new recruitment, the Committee is not satisfied with NASA's performance to date and strongly urges that the top management move aggressively, taking such actions as may be necessary, including an increase in EEO staff, to assure that the goals and objectives presented to the Congress for its Equal Employment Opportunity program are realized. Further, the Committee expects that NASA will continue to furnish the Committee quarterly reports on its progress in its Equal Employment Opportunity program following the report already submitted to the Committee for the first quarter of Calendar Year 1974.

TELEVISION NEWS AS DOCUMENTATION OF U.S. HISTORY

Mr. McCLURE. Mr. President, it is clear that the role of the media is still evolving. The United States is still not sure what to make of its instant, visual, flash-on, flash-off television news. Radio was accepted as an extension of the written press—somebody read you what you otherwise would have read yourself. But television news is a performance in and of itself. At this time there is considerable discussion of the rights and responsibilities of the media. In the midst of debate about such matters as a press shield, it hardly seems helpful of the television networks to refuse to make their programs part of the permanent public record. It could also hurt them as they might lack the materials with which to make an appropriate defense against illfounded charges. But most of the network personnel, I am sure, feel that their programs are a genuine contribution to the accumulated documentation of U.S. history and should be delighted that their efforts are to be preserved.

Mr. President, I ask unanimous consent that article from Human Events be printed in the RECORD.

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

IN ERASING HISTORY?

Over the last half-decade, Nixon speechwriter Pat Buchanan noted in *TV Guide* recently, the networks have been accused of distorting the news, exacerbating racial conflict, undermining the home front during the Vietnam War and "consciously promoting the causes and candidates of the political left, of systematically discriminating against American business."

But future historians will be unable to either rebut or verify the charges if the primary evidence—the tapes of the network news shows—is lost or destroyed. But today, argued Buchanan, the Columbia Broadcasting System is threatening to erase the tapes.

Oddly enough, the networks have not maintained a library of the tapes of their evening news shows and until mid-1968, no collection existed. In August 1963, however, a Tennessee insurance man, Paul Simpson, began the nightly taping of the networks' news and painstakingly constructed a library of tapes, containing not only the evening news, but the political conventions of *1968* and *1972*, network 'specials' and the entire Watergate hearings.

Located in the Vanderbilt University Television News Archives, these tapes have more than 3,000 hours of news and are available for rent and study by scholars, journalists and media critics all over the country.

The collection of these tapes, writes Buchanan, has met with a curious and mounting hostility from CBS. On December 21 of last year, its Tennessee legal auxiliaries "marched into court to demand an end to the taping and renting, and the transfer of jurisdiction of the Cronkite tape, temporarily to the courts."

What is CBS' purpose? Val Sanford, a CBS attorney in Tennessee, stressed: "Probably the simplest way [to dispose of the tapes] would be for them to be erased." While CBS President Arthur Taylor denied this was the network's intention, the fact that the network systematically destroys tapes of the Cronkite show, said Buchanan, "is hardly grounds for confidence in CBS as the custodian for the Vanderbilt tapes."

In its suit, CBS conceded that Vanderbilt has not abused its tape library, and that "none of them have been reproduced for sale." What, then, asked Buchanan, is CBS afraid of? According to CBS, it finds, ". . . particularly outrageous and potentially damaging to our credibility and reputation the unauthorized editing and excerpting of our news product by those who are in no way connected to or responsible to the people who gather the news."

"This translates," Buchanan remarked wryly, "into a sweaty concern that some critics might use the Cronkite tapes to quote the Most Trusted Man in America out of context; or—in his selective choice of footage—do unto Brothers [Fred] Graham and [David] Schorr precisely what Brothers Graham and Schorr are charged with doing to their subjects."

CBS' apprehension, argued Buchanan, is no justification for denying scholars, journalists and media critics the full access to an invaluable part of recent history. Moreover, CBS' demands are "arrant nonsense."

What would the federal court say, asked Buchanan, if the editor of the New York *Times* demanded an end to all clipping and scissoring of the *Times* done at libraries, lest the *Times'* writers he quoted out of context?

CBS has finally come up with a compromise, *of sorts*. Vanderbilt would be permitted to continue to tape, but no longer to index, categorize and rent segments of the show by subject matter.

"But that is no compromise, said Buchanan, "it is a demand that Vanderbilt capitulate and sell out the American people's right to know what they saw and heard passed off as hard news to them two months and two years ago. It would effectively deny that library to journalists and scholars who might have the few dollars needed to rent, air-mail, back tapes—but who lacked the time and money to fly to Nashville and review them."

It is of interest to note, Buchanan continued, that Winston Smith, the protagonist in George Orwell's *1984*, who worked in the Ministry of Truth, "was engaged in dropping daily and irretrievably down the 'memory hole' all clippings and tapes that contradicted the party's latest version of history. Smith might have done his apprenticeship at CBS.

"More surprising, however, than CBS' raid on the Vanderbilt tapes is the silence with which it has been greeted. Instead of behaving like hairy-chested defenders of the 'people's right to know,' which they profess themselves daily to be, ABC and NBC, the Washington *Post* and the New York *Times*. *Time* and *Newsweek*, have reacted to CBS's assault with the indulgent silence of fellow signatories to the Warsaw Pact.

"Had the Nixon Administration slipped into federal court to demand 'safekeeping' of the tapes, hell would have broken loose. Why, then, the journalistic conspiracy of silence when the attempted rape of the people's right to remember is perpetrated by one of their own?"

JUSTICE REPORT—HEARINGS FOCUS ON PRIVACY LIMITATIONS ON USE OF FBI DATA

Mr. ERVIN. Mr. President, as many of my colleagues are aware, the Senate Subcommittee on Constitutional Rights, which I chair, is presently conducting hearings into legislation designed to control the use and dissemination of criminal justice information. As I have stated many times, this legislation is important because it is designed to protect our constitutional rights in the face of the rapidly increasing capabilities of computerized data banks, and of the growing needs of law enforcement.

Last December, I had the pleasure of inserting in the RECORD a copy of an article by Mr. Richard E. Cohen that appeared in National Journal Reports. Mr. Cohen's article traced the evolution of criminal history data banks and demonstrated insight and perception in dealing with the many important issues raised by the collection of data by criminal justice agencies. In a recent edition of the National Journal, a followup article by Mr. Cohen appeared that analyzes the content and development of the legislation presently under consideration by the subcommittee. Mr. President, I feel that Mr. Cohen's second article is as informative and enlightening as his first, and I 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:

[From National Journal Reports, February 16, 1974]

JUSTICE REPORT/HEARINGS FOCUS ON PRIVACY, LIMITATIONS ON USE OF FBI DATA

(By Richard E. Cohen)

The Senate and House Judiciary Committees soon will begin separate hearings on controversial proposals to legislate the first national rules on the quality, use and dissemination of criminal justice information.

Proposed legislation would impose significant restrictions on the operations of the Federal Bureau of Investigation (FBI) and the thousands of police departments across the country that exchange information with the FBI.

Congressional and public interest in regulating the data exchange has been aroused by the development of a national computerized system for exchanging criminal records, and concern that the lack of federal rules governing the traditional manual police records systems could result, with the use of more sophisticated technology, in a dangerous invasion and abuse of personal privacy.

Three principal bills have been introduced, two of them by the Members whose subcommittees will be forums for the hearings:

S. 2963, sponsored by Sen. Sam J. Ervin Jr., D-NC., chairman of the Senate Judiciary Subcommittee on Constitutional Rights;

S. 2964, a Justice Department bill introduced by Sen. Roman L. Hruska, R-Neb., ranking minority member on the Senate Judiciary Committee;

H.R. 9783, introduced by Rep. Don Edwards, D-Calif., chairman of the House Judiciary Subcommittee on Civil Rights and Constitutional Rights.

FBI regulation: Sponsors of the proposals have emphasized that the bills are designed primarily to ensure the "right of privacy." But they have been hesitant to say publicly that the legislation, which stands a good chance of being passed by Congress this year, would be the first significant statutory regulation of the FBI's record-keeping operations. Passage of the bill would also represent the first full-scale effort to impose standards on the bureau since its creation in 1908.

In introducing his bill Feb. 5, Sen. Ervin said the FBI's nationwide system of distributing criminal records "operates without formal rules." In imposing upon criminal justice data banks—both computerized and manual—"strict but manageable privacy limitations," the bill "would for the first time give firm statutory authority" for these systems, Ervin said.

Since its establishment, the FBI has kept records by its own rules pursuant to 28 USC 534, which give the Attorney General power to "acquire, collect, classify and preserve" criminal identification and other records, and to exchange them "with, and for the official use of, authorized officials of the federal government, the states, cities and penal and other institutions."

During the tenure of J. Edgar Hoover as the bureau's longtime director (1924–72), most of the rules—to the extent that they were written down—were set by Hoover and received the pro forma approval of a succession of Attorneys General. As an example, there is not available for public consumption, even for local police officials, a comprehensive listing of the procedures and restrictions on the use and exchange of criminal records with the FBI. The bureau's central files in Washington include 70 million criminal fingerprint cards representing 20 million persons. Each day, 3,300 new cards are added to the repository.

Rep. Charles E. Wiggins, R-Calif., ranking Republican on the House Judiciary Subcommittee on Civil Rights and Constitutional Rights, said in an interview: "Congress, as a whole, has been concerned with the relative insulation of the FBI from oversight.

"The personality and political clout of J. Edgar Hoover kept the bureau from previous regulation. He's gone now, and we revere his work, but review of the FBI's operations is desirable. We won't interfere with their proper functioning, but regulation of their use of criminal records is a proper legislative purpose."

Wiggins also expressed reservations about the scope of the bills under consideration.

Federalism: Ervin, who is retiring after this year, has gained a reputation in his 20 years in the Senate as one of its leading spokesmen for "states' rights" in the federal system. But he faces criticism that his bill would impose tough federal guidelines upon state and local governments in the area of law enforcement, which they traditionally, have regulated themselves.

Lawrence M. Baskir, chief counsel of Er-

vin's constitutional rights subcommittee, said the staff recognized the danger of federal control and searched carefully "for a device to unify national policy without giving it to the federal government." He said he could not guarantee that the Ervin formula would operate as conceived, but added: "If New Federalism has meaning anywhere, it should mean the states ought to be able to operate their own police forces. The last thing we want is a federal police force."

The solution proposed in the Ervin bill is the setting of broad federal rules governing the use and dissemination of criminal records, with enforcement lodged under the aegis of a federal-state mechanism. Both the Justice Department and Edwards bills provide for continued supervision of the FBI records by the Attorney General. In the past, the Attorney General has delegated this responsibility to the FBI director.

Martin B. Danziger, associate deputy attorney general responsible for the drafting of the Justice Department bill, said in a press briefing Feb. 1 that federal controls of the use and dissemination of criminal records are necessary because "as the technology of data collection has changed, it demands a control on the handling of the records. If you allow the 50 States to act on their own, the ability to exchange information in a positive sense will break down. Thus, there is a need for the federal government to enter the field."

Francis B. Looney, deputy commissioner of the New York City police department and president of the International Association of Chiefs of Police, said in an interview he hopes Congress will not pass legislation "that will prevent local police agencies from carrying out their functions."

FBI Director Clarence M. Kelley said in a Feb. 13 speech to a group of law enforcement officers: "My opinions and concerns on this issue must necessarily represent yours."

The chief inspector of the FBI's identification division, Beverly E. Ponder, predicted that "Congress will get much backlash from a wide variety of sources if it tries to restrict dissemination of records." Ponder, who has been one of the officials responsible for determining whether an applicant is entitled to access to FBI records, said that in addition to law enforcement agencies, other public and private agencies, such as banks, "consider this information vital."

White House stance: The Justice Department bill was introduced six days after President Nixon announced Jan. 30 in his State of the Union message a Cabinet-level review of government and industry practices relating to the right of privacy, and of steps that can be taken to ensure a balance is struck "between legitimate needs for information and the right of privacy."

However, neither the President's oral nor written statements to Congress made any reference to the Justice Department bill, which had been circulating within the Administration for four months, and was extensively reviewed by the Office of Management and Budget (OMB).

Geoffrey C. Shepard, associate director of the President's Domestic Council, told *NJR* that "the Justice Department bill is not the President's initiative, although it does have the normal OMB clearance."

Shepard said the Administration's review of privacy policies would take several months to complete, and it would be "silly to hold up the Justice Department bill that's been ready for two months."

One reason for the President's reluctance to give prominent endorsement to the bill may have been the continued opposition to parts of the bill from several other federal agencies, including the HEW and Defense Departments, Civil Service Commission and Small Business Administration.

Shepard said the report of the Cabinet-level committee will become "the program of the Presidency." He predicted that additional privacy legislation will be submitted later this year.

The study will follow on the heels of a report by an advisory committee of the HEW Department, which recommended last year broad steps for regulating both publicly and privately operated computer systems. (For background on the HEW report, see box, Vol. 5, No. 43, p. 1602–03.)

David B. H. Martin, executive director of the advisory committee, said he welcomes the President's action concerning privacy. He said that because no process has been established that would allow other agencies to react to the HEW report, "it might have been awkward to introduce legislation based solely on our report."

While emphasizing that the HEW report was "thorough," Martin said it did not address all federal problems. "You don't want to bite the bullet if it's going to explode in your mouth," he said.

Hope Eastman, associate director of the American Civil Liberties Union's Washington office, said she was pleased that privacy is "one of the President's top 10 issues," but that "the issue has been studied to death, the problems are fairly clear, and we need recommendations now."

BACKGROUND

The Feb. 5 filing of separate bills by Sens. Ervin and Hruska represented the culmination of parallel efforts to draft detailed legislative guidelines for the operation of criminal justice information systems. Ervin first became interested in the subject as the result of his constitutional rights subcommittee's hearings on privacy in 1971. Subcommittee assistant counsel Mark H. Gitenstein supervised the preparation of Ervin's bill beginning a year ago.

The Justice Department process was launched last summer by then Attorney General Elliot L. Richardson, and most likely would have been completed three months sooner had it not been for Richardson's abrupt resignation Oct. 20, when he refused President Nixon's order to fire the then special prosecutor Archibald Cox. Hurdles: Justice Department officials had to overcome a series of hurdles before Attorney General William B. Saxbe gave final approval to the introduction of the department's bill by Hruska. Conflicting sets of interests had to be considered, each of which will likely undergo further testing during congressional consideration of the bill. They include:

The relationship within Justice between the FBI and Law Enforcement Assistance Administration (LEAA);

The opposition to the bill by other government agencies;

An effort by new Attorney General Saxbe to foster a closer cooperation between Congress and the Justice Department under its new leadership.

In the meantime, the two Judiciary Committees marked time until the Justice Department bill was introduced. Two days of hearings were held on Rep. Edwards' bill by his subcommittee last year.

Justice Department: The key policy disputes within the department were resolved by Richardson before he resigned. The department's bill (S. 2964) generally reflects his goals, although the issues were reexamined twice following his resignation.

"For all intents and purposes, this bill was in the can before Richardson's resignation. It was his insight and support that have made this bill possible," said Danziger, the principal coordinator of the bill's drafting, who left Justice Feb. 8 to become director of the United Mine Workers Welfare and Pension Fund.

The nub of the policy dispute at Justice centered on the institutional differences between the FBI, which for the most part has represented the views of police departments, and LEAA, which acts on behalf of agencies throughout the criminal justice system. In particular, LEAA finances Project SEARCH, an interstate consortium evaluating the utility of criminal history data transfer. A 1970 Project SEARCH report was one of the early working papers in the use of such a system.

Although department officials will not discuss publicly the substance of the disagreements between the two agencies, Norman F. Stultz, chief of the bureau's computerized National Crime Information Center (NCIC), said the differences in viewpoint reflect the distinction between an "operational" agency and a "funding" agency.

LEAA Administrator Donald E. Santarelli said the FBI went to Robert H. Bork, who was acting Attorney General from Oct. 20, 1973, until Jan. 4, and then to Saxbe in an effort to reopen issues that previously had been resolved. Both Santarelli and Mary C. Lawton, deputy assistant attorney general (office of legal counsel) said there were no substantial changes between the Richardson proposal and S. 2964.

OMB: While the Justice Department was attempting to keep a united front on its bill, it also was working last fall through OMB to gain White House support of its plan. In addition to going through the normal routine of convincing OMB officials of the merits of their proposal, Justice officials had to overcome the objections to their proposal from agencies that stand to lose access to FBI files. (*For discussion of OMB's legislative role, see Vol. 5, No. 43, p. 1589.*)

The result of this process was that instead of receiving the traditional designation of being "in accord with" or "consistent with" the President's program, the bill went to Congress with a statement that OMB "has advised (the Justice Department) that there is no objection to the submission of this proposal from the standpoint of the Administration's program."

Also, OMB will permit objecting agencies to present their views to Congress.

Explaining OMB's action, general counsel Stanley Ebner called the proposal "an unusual piece of legislation which addresses a controversial area about which there is much to be learned." He said it was a "Justice Department bill" and that OMB allowed Justice to introduce the bill only after "a point of diminishing returns had been reached at OMB in resolving the issues."

Anthony L. Mondello, general counsel of the Civil Service Commission, said that "OMB neither tried to force the Justice Department bill down our throats nor allowed Justice to go its own way." Nor, he said, was there any effort to develop an Administration consensus behind the bill. He said the commission's basic objection to the bill is that it would be inhibited from continuing to perform its own background investigations on persons seeking federal employment.

Another agency that participated in the OMB review process and has objections to S. 2964 is the Small Business Administration (SBA). Its general counsel, H. Gregory Austin, said SBA favors limiting access to criminal records, but that it wants continued access to offender records.

Citing past incidents in which Congress and the public vigorously criticized SBA for making loans to organized crime figures, Austin said: "To prevent making loans Congress finds objectionable, we need access to information in the FBI data banks. If it was generally known that the SBA was denied access to this information, Congress might make open warfare on the SBA.

"SBA is not an investigatory agency; there is no way we can substitute for access to FBI information."

In a press briefing, Senate Constitutional Rights Subcommittee chief counsel Baskir predicted that "Sen. Ervin won't be sympathetic to giving exemptions to agencies."

Bill introduction: The Feb. 5 introduction of the Justice Department bill and of the Ervin bill marked an unusual degree of co-

operation between parties who have cooperated on few matters in the past five years, particularly in the year that Ervin has headed the Senate Select Committee on President Campaign Activities, investigating the Watergate scandal.

Ervin and Hruska co-sponsored each other's bill and both bills were co-sponsored by Senators covering a broad band of the political spectrum. They included Sens. Quentin N. Burdick, D-N.D., Robert C. Byrd, D-W. Va., Hiram L. Fong, R-Hawaii, Charles McC. Mathias Jr., R-Md., Hugh Scott, R-Pa., and Strom Thurmond, R-S.C., all members of the Judiciary Committee.

A Judiciary Committee aide, who did not want to be identified, said the bipartisan congressional cooperation as well as the cooperation with the Justice Department, resulted from having "a new kind of Attorney General, one who is willing to deal with Congress, and who cares about legislation."

The Democratic aide said he was referring to both Richardson and Saxbe. He said the Nixon Administration's previous Attorneys General, John N. Mitchell (1969–72) and Richard G. Kleindienst (1972–73), "cared more about publicity than substantive legislation." He also said Sen. Hruska, the committee's ranking Republican member, played a "key role" in bringing the two sides together.

Regulations: Contemporaneous with the Justice Department's effort to prepare legislation for regulation of criminal justice data banks was a departmental effort to establish interim regulations for the use of LEAA-funded data systems. The regulations were required by an amendment to the Crime Control Act of 1973 (87 Stat 197).

In the proposed regulations issued Feb. 14, Justice requires each state to submit to LEAA by July 1 a plan for the maintenance of criminal records, and to implement the plan by July 1, 1976. The proposal would require each state to set rules on dissemination of criminal records and to ensure that each element of an individual's record be listed within 30 days of the transaction. Public hearings will be held beginning March 1 prior to final enactment of the regulations later this spring.

PROPOSALS

The scope of coverage of the Ervin and Justice Department bills is broad. Also, both bills would impose comprehensive federal rules on the files that would be regulated. (The Edwards bill is less comprehensive and detailed than either of the others. Its provisions are closer to the Ervin bill than to the Justice Department bill.)

"It would be hard to find a criminal history information system not covered by this bill," said Danzinger of the Justice Department bill. Not only would it apply to any system operated by the federal government or participating in an interstate system, but it also would include any system operated by a state or local government, which either receives some funding from the federal government or exchanges information with a federal or federally funded system.

Key issues: Among the provisions in the bills that would most significantly affect current practices, and stir opposition from hitherto participating agencies, are rules on who may receive FBI criminal records, criteria for what records may be disseminated, requirements that those records be complete and how the rules shall be enforced.

Dissemination.—The issue of who may exchange criminal records with the FBI is treated separately for law enforcement agencies and non-law enforcement agencies.

With some exceptions, the Ervin bill would permit only the dissemination of complete conviction records—information disclosing a plea of guilty or a conviction—while the Justice Department bill would apply the less rigorous standard of "criminal offender record information," which includes a factual summary of each event of the criminal justice process. In short, the Ervin bill would require a conviction, while the Justice bill would require only the listing of a disposition to the complaint.

Each bill would permit use of these records only for the administration of criminal justice, except where there is a federal or state statute, which specifically authorizes the dissemination.

Arrest records.—Dissemination of arrest records, those on which no disposition of a pending complaint is listed, would be strictly limited by each proposal. The Ervin bill would permit use of such data only if the individual has applied for employment at a law enforcement agency, the matter about which the arrest record pertains has been referred to the agency for prosecution, or if an individual has been arrested and there has been a prior arrest less than one year before the latter arrest which is pending.

The Justice bill would permit dissemination of arrest records under court order, in cases of the appointment of judges or civil officers by the President, or if the Attorney General determines that the matter affects the national defense or foreign policy.

Intelligence.—The Ervin bill would prohibit maintenance of criminal justice intelligence information—which is primarily investigative data—in a criminal justice information system. Baskir called use of intelligence data a "much more dangerous abuse of privacy" than the use of arrest records.

The Justice Department bill would permit storage of intelligence files in accordance with regulations to be developed under the act. An agency would have the burden of establishing its need for the intelligence data.

Updating.—Each bill would require contributing agencies to keep criminal data complete and accurate so that there would be a full record, especially on the disposition of a complaint.

Sealing.—Each bill would require the removal from the data systems of information concerning an individual who has not been convicted of a felony offense in the previous seven years. In an NJR interview, FBI Director Kelley called the seven-year limitation "unrealistic" and said "it needs more consideration reflecting the views and needs of law enforcement officers."

However, Senate and Justice Department individuals familiar with this issue, who did not want to be identified, said that the problem may not be so great as it appears, because the FBI uniform crime reports for 1972 indicate that the average criminal career lasts only five years.

Enforcement.—The Ervin bill would establish a complex federal-state administrative system. General responsibility for administration and enforcement of the new law would rest with a Federal Information Systems Board. Each of the board's nine members would be appointed by the President, and it would include three federal officers, three representatives of state government, and three private citizens well-versed in constitutional law and information systems technology. Also created would be an advisory, committee composed of one representative from each participating state who would be appointed by the Governor.

The Justice Department bill retains for the Attorney General power to regulate the act. In the past, this power has been delegated to the FBI director and the bill does not appear to prohibit such a practice.

Norman Stultz, head of NCIC, the FBI's computerized criminal history system, said that while the bureau would work under whatever system the Congress creates, he would "hate to see too many layers of authority."

Sen. Ervin said the purpose of the federal-state board is to "create an agency, which is outside the present law enforcement community and without vested interests in present law enforcement data banks, to administer the act." He also said the mechanism would give the states "their proper role in the development of policy."

Rep. Wiggins was in some agreement with Ervin on this point, saying he "questioned the extensive power given to the Attorney General in the Administration bill."

Reaction: Detailed responses to the proposals will be presented during the hearings to be held by both the House and Senate Judiciary Committees in the next month. In preliminary comments, officials of agencies utilizing the FBI records raised doubts about the bills while advocates of greater protection of privacy generally expressed satisfaction.

Anthony Mondello, general counsel of the Civil Service Commission, said he objects to any bill to the extent it would cut off the commission from FBI records. He said these records are used by a large number of federal agencies.

Clarence A. H. Meyer, Nebraska attorney general and chairman of the criminal law and law enforcement committee of the National Association of Attorneys General, favored keeping criminal records in the criminal justice community: "Law enforcement records are now out of hand because individual police don't have the power to resist giving records to outsiders."

A view that possibly reflects that of many local police departments was expressed during a hearing before the House Civil Rights and Constitutional Rights Subcommittee Oct. 11, 1973, by Allen W. Sill, chief of police in West Covina, Calif.

". . . If there are instances of abuse practiced by local law enforcement agencies," Sill said, "then it seems only reasonable to me that local legislation, not federal, is the answer."

However, Andrew Klein, aide to Massachusetts Gov. Francis W. Sargent, R, who has led that state's effort to establish the nation's most comprehensive state law on privacy, called the proposals "a minimum safeguard of constitutional rights which the federal government has a responsibility to protect." Klein said the legislation might cause a problem for a state like Massachusetts, which might have tougher standards than does the federal proposal, if it seeks to protect its citizens' records when they are given to another state.

OUTLOOK

Forecasts on the possibility of passage of criminal justice privacy bills this year range from cautious to optimistic.

The resolution of the privacy issue will affect not only the FBI and other criminal justice system operations, but may be the first step taken by the federal government in regulation of all data banks and their information.

Senate: The Constitutional Rights Subcommittee will hold six days of hearings on the Ervin and Justice Department bills the first two weeks in March.

Baskir, the subcommittee's chief counsel, said witnesses will include representatives of federal and state government, the public, the police and government employees.

He said the legislation may be "a grindingly slow process and we want to get the subject before Congress before Sen. Ervin retires."

LEAA Administrator Santarelli said he doubts legislation can be passed this year because Ervin would continue to be busy with the work of his Watergate committee. Baskir vigorously disputed that contention.

House: The situation is somewhat less clear in the House Judiciary Committee, which will be spending much of its time in the next few months on its inquiry into the impeachment of President Nixon. Although Chairman Peter W. Rodino Jr., D-N.J., has ordered the committee staff to proceed with the normal legislative workload, the work of

the committee may be held up if members lack time to invest in other legislation.

Beyond that point, there is less enthusiasm for the privacy legislation among the Republican members of the committee than appears to be the case in the Senate. When the Justice Department bill was introduced in the House (HR 12574) Feb. 5, it was done as a courtesy by two Democrats, Rodino and Edwards. (They also introduced the Ervin bill as HR 12575.)

Rep. Wiggins, the ranking Republican on the Civil Rights and Constitutional Rights Subcommittee, which has jurisdiction over the bill, said Feb. 7 he would file an identical bill. He explained the delay in an interview by saying "I was not fully satisfied with the bill but I recognize the desirability of having some initial Republican support." Wiggins did say, however, he hoped the committee could report a bill to the House this year.

Rep. Edwards, chairman of the subcommittee, has invited Saxbe, Santarelli and Kelley to testify before the panel later this month. He expressed hope that his subcommittee will be able to produce this year "a piece of legislation tailored to the delicate balance necessary in this area."

FBI'S 70 MILLION FINGERPRINT FILES FACE SCRUTINY, RESTRICTED USE

Enactment of proposed legislation to regulate the use of criminal records would cause a tremor-like reaction in the identification division of the FBI. The division's criminal files hold 70 million cards with the fingerprints of 20 million persons, with cards on approximately 3,300 new persons added to the files each day.

An FBI brochure describes the collection as "The world's greatest repository of fingerprints."

Bills introduced in Congress by two Democratic subcommittee chairmen with jurisdiction over the subject matter, as well as a separate Justice Department bill, would impose outside controls on the bureau and open its processes to a public scrutiny unparalleled in the FBI's 66 year history. The changes proposed in FBI operating procedures would affect the contents of its criminal records, agencies entitled to receive them and review of the setting and enforcing of the division's rules.

In an interview a week before the release of the Justice Department's bill, Beverly E. Ponder, chief inspector of the division, said: "Our experience since 1924 leads us to believe there is no reason for us to conduct a review of how FBI records are used by police agencies."

But the identification division's data collection process was termed "out of effective control" by Judge Gerhard A. Gesell of the U.S. District Court for the District of Columbia in his June 15, 1971, decision in Menard v. Mitchell. (For background on the Menard decision and congressional reaction, see Vol. 5, No. 43, p. 1607.)

The pending legislation, which would regulate all criminal justice information systems, originally was prepared in response to concern over the developing computerization of police records by the FBI. But the effect of the proposal, if enacted, would be to impose similarly tight restrictions on the FBI's manual record-keeping operation, which has approximately 17 times more entries than the computerized system, which so far includes only six states.

Operation: The identification division operates today much as it did in 1924, when it was created to serve as a national repository of criminal identification data in the reorganized FBI. Fingerprint identification is a laborious process based on a one-by-one examination of the prints; Ponder said the division hopes to have a computerized scanner in operation by 1978.

The division's 3,300 employees work around the clock cataloguing 11,000 new entries each day—70 per cent of them on individuals with a prior record—and disseminating approximately 10,000 "rap sheets" to the 7,000 "contributing agencies" entitled to exchange records with the FBI. All but 800 of those agencies are local law enforcement units; the others are federally chartered banks, and federal and state agencies that are authorized by statute to exchange records.

In exchange for sending the bureau a fingerprint card that includes the individual's name and physical characteristics, the date of arrest, charge and disposition, if any, the contributing agency receives the "rap" sheet listing all recorded incidents of the individual's criminal activity anywhere in the nation.

(The division's separate civil file houses 88 million fingerprint cards on 38 million persons. The civil file includes records on individuals such as military personnel, federal employees, aliens and Boy Scouts who have received a merit badge in fingerprinting. The file, established by various Presidential and Cabinet-level orders and kept as a repository for noncriminal identification purposes, would not be regulated by the proposed legislation.)

Ponder said that when the division was established "the idea of the criminal file was to assist law enforcement by exchanging information about interstate criminals." He said only Congress can limit what information the bureau may collect. (Current law, 28 USC 534, gives the FBI broad authority in data collection.)

Menard.—Following the *Menard* decision in 1971, in which Judge Gesell banned further dissemination of criminal data outside of law enforcement agencies. Congress gave the FBI temporary authority to exchange records with federally chartered banks and authorized government agencies upon approval of the Attorney General.

A Jan. 17, 1972, order by Attorney General (1969–72) John N. Mitchell delegated to the FBI power to approve such exchanges. Since that time, "there have been no steady checks on the bureau, but they have called us when they have a question about the authority of the state statute, and we check it," said Mary C. Lawton, deputy assistant attorney general (Office of Legal Counsel), who has acted as the Justice Department liaison officer with the FBI on the issue.

Ms. Lawton acknowledged that there have been "relatively few" referrals to her since she refused five requests in 1972 on the basis that the statutes were not specific enough. She said this action established a pattern of policy and that the FBI "responds positively" to most specific state statutes. "The bureau doesn't like to exercise discretion, and I'd rather it not do so," she said. "There is a need for tightening up the system with legislation."

State statutes.—A 1972 FBI "compilation of fingerprint legislation" shows that state laws require agencies to exchange fingerprint checks for a wide assortment of professions.

Among the persons subject to fingerprint checks in New York are private investigators, securities and insurance agents, and hospital and medical school employees. Florida statutes include fire fighters, bail bondsmen and applicants for real estate licenses. District of Columbia statutes require the fingerprinting of auctioneers, bowling alley operators and hackers, among others. The number of such groups has been reduced considerably since the 1971 *Menard* decision, according to Ponder.

Criticism: Critics of the identification division focus primarily on its lack of formal procedures and enforcement. Sen. Sam J. Ervin Jr., D-N.C., chairman of the Senate Judiciary Subcommittee on Constitutional Rights, said: "Custom and several letters from the director of the FBI to local police departments seem to be the only limitation on access to the information," and that "in all too many cases, (the rap sheets are made available) to private employers." (Ervin's bill prohibits such dissemination.)

Ervin criticized the bureau's practice of disseminating a rap sheet even if it does not show how the arrest case was disposed of. He said, "There are probably several million so-called criminal records on persons who were never prosecuted or convicted of the charge for which they were arrested."

Ralph J. Temple, an attorney with the Washington chapter of the American Civil Liberties Union (ACLU), said that while "the FBI knows its records and their exchange with local businesses are dear to the heart of local police, the FBI has made no effort to make any kind of showing of improper conduct of local police officials." He called "phony" the FBI policy to enforce its restriction on secondary dissemination.

John H. F. Shattuck, national staff counsel with ACLU, said, "The bureau responds to every possible request even though nothing requires it to give out the information."

Response: Norman F. Stultz, chief of the FBI's computerized recordkeeping operation, responded that law enforcement officers "recognize the need for some privacy regulations." Also, he said, "(state) legislatures and the Congress have set additional requirements for the use of criminal records, which police haven't asked for."

In an interview, Stultz said that these officials are concerned about uses outside of law enforcement because "they don't want to destroy the effectiveness of these records which were intended for law enforcement purposes."

Ponder said he agrees with Ervin that arrest records should show the disposition of the case. He said the FBI would welcome legislation forcing local authorities to provide mandatory reporting of dispositions.

THE MINIMUM WAGE LAW

Mr. THURMOND. Mr. President, a recent editorial which appeared in the Aiken Standard of Aiken, S.C., graphically describes the economic folly imposed on this Nation by the new minimum wage law.

It points out that the law which was presumably passed to aid people at the lower rungs of the economic ladder will, instead, impose hardships on them. Many working mothers, for example, as noted in the editorial, will be unable to pay domestic employees who will now be making salaries to rival their own.

The result, according to the Aiken Standard, will be that many such working mothers will leave their jobs. That would mean, of course, that many domestic employees will lose their jobs. Reliance on welfare and food stamps will grow, a situation we do not need in this country.

While salaries will be increasing all along the financial scale, prices will be rising accordingly, even as unemployment rises at the lower levels.

This is the economic folly we have imposed on ourselves and the Aiken Standard has described it so well.

Mr. President, I ask unanimous consent that the editorial entitled, "Our New Economic Blessing, The Minimum Wage Law," which appeared in the Aiken Standard, Aiken, S.C., May 1, 1974, be printed in the RECORD.

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

OUR NEW ECONOMIC BLESSING, THE MINIMUM WAGE LAW

Today should go down in United States history as some sort of high water mark for economic insanity.

Hardly does our government take the lid off the controls which held wages down before we have new legislation which will surely increase wages.

On its surface, the new minimum wage law is intended to raise the income of our lowest economic segment. In dollars and cents, it will. It seems apparent, however, that inflation will quickly negate the newly increased buying power.

And obviously, the new minimum wage law will force pay increases all along up the line. This was the very thing that the economic controls, just lifted, sought to halt.

With this sort of stop-and-go helmsmanship, is it any wonder that we find our country in economic chaos?

The new law will probably find the most telling effect in the area of domestic employees. It will cover the vast majority of domestic employees. Two tests indicate its all-inclusive nature. Domestic workers are covered by the new law which became effective today if they are paid at least $50 by an employer in a calendar quarter, or if they work as little as eight hours a week.

The economic result is sure to be felt first by working mothers.

State Labor Commissioner E. L. McGowan estimates that South Carolina's working mothers average about $100 a week. The new minimum wage will require payment of $76 a week to a 40-hour domestic employee. Thus the working mother in effect nets $24 a week for working away from home.

Look a little closer.

Many of the nation's estimated 13,017,000 working mothers are going to reason, "It's not worth it!"

Many working mothers are likely to give up jobs away from home and dismiss their domestics.

By this action, two taxable incomes have been wiped off the books.

The domestic very well may go on welfare and food stamps, creating a heavier burden for taxpayers.

There is another solution which may be offered by some of our socio-economists: child care centers. Working mothers could drop off children at child care centers and keep right on working.

This is hardly new. State-operated nurseries have been provided in China and Russia for many years. Are we being led into this same pattern?

Social security retirement benefits are rigged so as to discourage elderly citizens from working to supplement their retirement incomes. They constitute a work force deliberately shunted aside by our "system." Many of these would like to work, in preference to sitting idle, just for the satisfaction of feeling useful.

This latest tampering with the economy comes at a time our nation's economic activity is declining at the steepest rate in 16 years, and inflation is accelerating more than any time since 1951.

We have just witnessed the failure of federal controls. Inflation seems to be growing worse, as amply demonstrated by the sharp rise in interest rates recently in the money market.

The economic outlook is confused.

Now we seem determined to reduce the number of domestic employees throughout the country and in the same stroke of economic genius, reduce the number of able and intelligent working mothers from the work force, and add to the taxpayer load.

We seem determined to do anything to keep that inflation spiral spinning ever skyward.

COMMENCEMENT ADDRESS BY MR. PAUL DUNCAN

Mr. ALLEN. Mr. President, earlier this month the Atlanta College of Art held its 44th annual commencement exercises with Paul Duncan of Washington, D.C., as the commencement speaker.

The Atlanta College of Art, as you may know, is a part of the Atlanta Memorial Arts Center, which brings together music, drama, and the visual arts into a magnificent community enterprise.

The College of Art, its faculty and its students are a constant resource for strengthening and enriching Atlanta's cultural life through their contributions to art education, their own artistic production, and their participation in the social and aesthetic growth of the city.

I ask unanimous consent that the commencement address be printed in the RECORD.

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

REMARKS BY PAUL DUNCAN

It has been the fashion lately to use long titles for plays, books, movies, and the like. This is the Helen Gurley Brown influence.

So I am taking the liberty of talking tonight on this subject: "If Charles Ives Were a Printmaker, How Would He Handle a Problem? or, The Wayward Path of the Creative Impulse."

You are entitled to wonder why I should choose Charles Ives, a composer of very difficult music when he was not acting as a Wall Street businessman.

That combination is perplexing enough, you might say, without compounding it by trying to consider him as printmaker, as well.

Now, this is not so frivolous as it might seem. What we are trying to do here is to examine the creative process, to look inside the creative mind at work, and to see what's going on.

What better mind to use, then, than the energetic, inquisitive, and fermenting mind of Charles Ives? And what better way to take a refreshing look at your own work than by taking yourselves outside the visual arts, where you are at home and perhaps a little too comfortable, into the abstract world of music?

Charles Ives was a composer who in only twenty mature years put down a whole new world of music, prophetically suggesting or developing aspects of music whose later "discovery" by other men was to make them famous for years to come.

Another reason for turning to Charles Ives is that his was a uniquely American genius.

Ives was determined to break away from the weak and Europe-dominated composition of the time. And he was determined to speak from the native American spirit.

He deliberately turned to unsophisticated music for his sources. He committed himself to the American vernacular in seeking the grammar of a new symphonic speech.

His music had its roots in the New England church, in the dance hall, and in the Sunday parlor of a small-town American family.

Ives' music reflects the patterns of activity he saw around him. And it records, therefore, not a thing that happens, but the way it happens. Because events do not move on one plane, but carry memories and forecasts with them, colliding and conflicting with other events, Ives' music moves in many directions at once. It is built on many levels, in the same way that experience takes place on many levels of the mind.

Think of this in visual terms, for a moment, and imagine what kinds of graphic images you might produce.

When we turn to the non-musical aspects of Ives' mind, we find again a peculiarly American combination of wit, very often like that of Mark Twain; a moral and religious intensity that derives from his transcendentalist New England church; a political awareness that often drew him away from his music; and a practical understanding of the need for financial security.

This last, I believe, was a part of his Yankee stubbornness—his insistence that if he were dependent on selling his music, it would destroy the music that he wanted to write.

Charles Ives' father was a Civil War band leader and town musician, who finally took a job as a bank clerk to support his family. Ives' mother sang in the church choir.

This can be called a musical background, but we would hardly expect it to produce a musical genius.

But there are clues in the early life of Charles Ives.

His father was a lively jack-of-all musical trades, a man filled with intense musical curiosity. He had a sound musical training, but he considered conventional music theory as merely a point of departure for his own thinking. He was fascinated by accidental rhythmic and tonal collisions, and tried to capture the counter-rhythms of such things as a whistler in the street and the hymn his wife was singing in the kitchen. He often set up these collisions, once by having two bands march in opposite directions, to meet and pass, each blowing away at its own tune.

These experiments by his father remained permanently in Charles Ives' mind, and the germ of every new type of musical behavior that he later developed can be found in them.

Undoubtedly the memory of these experiments had a strong influence, but could this alone have provided sufficient foundation for the revolutionary artistic independence he achieved? Perhaps the key may be found in the transcendentalist influences of his New England environment, principally from Ralph Waldo Emerson and Henry David Thoreau.

Emerson provided the philosophical support for Ives' artistic independence. "The objection," he said, "to conforming to usages that have become dead to you, is that it scatters your force . . . But do your work, and I shall know you. Do your work, and you shall re-inforce yourself."

Thoreau influenced Ives' approach to living. We can understand why. Ives looked on Thoreau as a great musician, not because he played the flute, but because Thoreau knew how to listen to the rhythms of Nature and to enjoy the harmony of her silences.

Ives was quite conscious of the fact that the source for his music was Nature—men and the things of Nature—and he recognized the problem of expressing them in music.

"How far is anyone justified," he asked, "in trying to express in terms of music the value of anything material, moral, intellectual, spiritual? How far afield can music get? Can a tune literally represent a stone wall?"

He never had any doubt that subconscious inspiration—intuition—was at work, but as he said, "We are trying to consider music made and heard by human beings, not by birds or angels, (and) it seems difficult to suppose that even subconscious images can be separated from human experience."

Ives was not reluctant to explore the processes of intuition. But he was a composer and hence always confronted with the need, the compulsion to produce.

How typical was his experience?

Jacques Maritain, in the Mellon Lectures at the National Gallery of Art, defines and refines at some length the "intellectuality of art." He talks of the practical intellect and the speculative intellect, the reason of logic and the reason of intuition, and many other things concerning the preconscious activity of the human spirit.

Maritain is a philosopher and thereby entitled to dwell upon these things. But when he finishes, the essential message of Maritain, to me at least, is this:

". . . A poetic intuition can be kept in the soul a long time, latent (though never forgotten), till some day it will come out of sleep, and compel to creation. At that moment, there is no need for any additional element, it is only a question of application to actual exercise. Everything was already there, contained in poetic intuition. Everything was given, all the vitality, all the insight, all the strength of creativity which is now in act . . . The totality of the work to be engendered was already present in advance . . ."

I believe we can agree then, that the creative process is the release of long-stored impressions, sensations, insights, and experiences—organized by training and discipline—that have accumulated in the mind and the psyche of the individual.

They have become the storehouse of an artistic arsenal—the gunpowder of the mind—periodically triggered into creative explosion.

We can agree too that the trigger is intuition, which comes as a flash from Divine Providence. But we can't simply sit back and wait for Providence, placing a primitive reliance on emotion or intuition. As Aaron Copland says: "What's the use of all these emotions if you don't have the technique to express yourself?"

So we arrive at what looks dangerously like a cliche: the creative process is a lot of hard work. This need not disturb us. Cliches are the Eternal Verities, arrayed in everyday garments so as to cause no alarm.

The important thing is that we should be prepared for that moment when the Divine Providence points his finger. We must have developed the techniques Aaron Copland speaks of. We must sharpen both our wits and our skills. And when the flash of inspiration comes, we are ready.

In the words of one of the old hymns that Charles Ives' mother used to sing—

Work for the night is coming.
Work till the break of day.

PRESIDENT MUST VETO CONFERENCE BILL ON LEGAL SERVICES

Mr. HELMS. Mr. President, the conference has agreed upon a bill reported as H.R. 7824, a bill establishing an independent legal services corporation. Some people are already saying that this bill is a compromise between the House and Senate versions.

Mr. President, this is language we have heard before. The Senate bill itself was labeled a compromise by those who wanted a bill even more extreme. But it was hardly a compromise when compared with the administration bill, or with the bill for true reform sponsored by the distinguished Senator from Tennessee (Mr. BROCK) and myself. It was so far from a compromise that even the eminent newspaper columnist, Mr. James Jackson Kilpatrick, who has often been quoted in favor of the concept of a legal services corporation, felt obliged to call upon the President to veto it in its final form.

Now this new bill, this new so-called "compromise," has emerged from the conference. It is already being touted as the House bill, and sports the number of the House bill. But it reflects the House bill only where the House bill was more permissive than the Senate bill; so the new result is a bill that is worse than either of its predecessors, if possible.

I call upon the President to veto this new bill as lacking in the necessary safeguards, and completely unresponsive to the real needs of poor people in regard to the delivery of legal services.

One standard of measurement for gauging whether the safeguards demanded by the House have been honored may be obtained by a review of the 24 amendments which had been voted onto the bill in the House. Seventeen of the 24 have been either eliminated or altered in such a manner as to destroy their original meaning and impact.

For example, the following amendments have been eliminated entirely:

The Green amendment to prevent the funding of backup centers for nonresearch activities—amicus briefs, cocounsel work, assistance to activist organizations, issue advocacy publications and travel, law reform non-client-generated test cases, policy lobbying, et cetera;

The "congressional accountability" amendment which would have limited the power of the American Bar Association to assume primary responsibility for project employee behavior and performance, and obligations via modifications in the Code of Professional Responsibility and Canons of Ethics;

The two Green amendments requiring annual appropriations and barring multiyear appropriations without congressional review.

Mr. President, of at least equal importance, other vital safeguards were completely vitiated by cleverly worded modifications which destroyed the original meanings of House-passed amendments:

The prohibition on aid to "any picketing, boycott, or strike" is wiped out with the phrase "except as permitted by the law", since such activities are clearly legal, however undesirable it may be to subsidize them with public funds.

The House prohibition against assigning personnel or resources in connection with campaigns to affect the outcome of State ballot issues—like Governor Reagan's proposed tax ceiling plan, the attempted recall of Governor Williams in Arizona, and the sales tax referendum in Montana—has been rendered meaningless by the proviso that such ballot campaign activity is permitted when it takes the form of representation for "eligible clients with respect to such clients' legal rights". The catch is that every group which alleges to concern itself with poverty issues can be an eligible client under the proposed act—thus, whether the cause relates to the elderly, National Council of Senior Citizens; or women, National Organization for Women; or the "right" of the poor to abortions, Planned Parenthood; or Cesar Chavez, United Farmworkers; or Indians, American Indian Movement; or whatever, the prohibition is without effect.

The Green amendment which stated that "(i)f an action is commenced by the corporation or by a recipient and a final judgment is rendered in favor of the defendant and against the corporation's or recipient's plaintiff, the court may, upon proper motion by the defendant, award reasonable costs and legal fees . . ." has had its intent altered by a conference proviso that such relief to innocent private parties ensued at the discretion of legal aid employees would be available only "upon a finding by the court that the action was commenced for the sole purpose of harassment . . . or a recipient's plaintiff maliciously abused legal process."

Thus where a guiltless victim of a legal services suit could not prove harassment or malicious abuse, such victim, however poor or aggrieved, would have to sustain the full financial cost of legal services assault.

The requirement that full-time staff attorneys be subject to corporation laws and regulations at all times and devote full professional attention to their tax-subsidized responsibilities was rendered ineffective by addition of language that such "outside practice" activities were fully permissible if not entered into for purposes of financial compensation—A standard legal services defense against evidence of impropriety has been the disclaimer that the incident to which objection had been made occurred on one's "own time," or in connection with "outside practice" of law.

The very important antilobbying ban imposed by the House on a 200–181 rollcall vote—which had prohibited lobbying on State or Federal issues, except to permit statements or testimony—has been replaced with language authorizing legal services efforts "to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies" whenever one "member thereof . . . requests personnel of any recipient to make representations thereto;". Furthermore, continuation of the practice of having registered legal services lobbyists in State legislatures is fostered by permission of lobbying "representation by an attorney for any eligible client." "Eligible clients" would include lobbying organizations concerned with issues as diverse as passage of the Equal Rights Amendment and gun control.

The intention of the House amendment to bar aid to public interest law firms is wiped out by another tricky semantic change. Where the House would have denied Corporation aid to any such Nader-style firms which expended 50 percent or more of its resources and time litigating issues either in the broad interests of a majority of the public or in the collective interests of the poor, or both, the carefully worded conference bill, by deleting the phrase: "or in the collective interests of the poor, or both" in effect authorizes use of Government funds to support any radical cause which claims to be acting for the poor as a class.

The very important House amendment limiting the authority of project attorneys to represent persons under 18 without parental approval has been divested of meaning through a smooth rewrite job permitting such representation—whether with respect to abortion, school discipline, or similar issues—"where necessary . . . for the purpose of securing, or preventing the loss of . . . services under

law, or in other cases not involving the child's parent or guardian as a defendant or respondent."

Also eliminated was the Mizell amendment relating to institutions of higher education, which many had hoped would serve as a barrier to pro-quota briefs of the sort filed by legal services projects in the DeFunis case.

The anticommingling amendment adopted by the House—to prevent involvement of corporation-subsidized programs in prohibited activities under cover of the argument that local share funds or State funds were involved in the improper activity—is knocked out of the proposed act through a conference-devised loophole asserting that "this provision shall not be construed . . . to prevent recipients from receiving other public funds . . . and expending them in accordance with the purposes for which they are provided." If tax-exempt Ford Foundation grants were defined to be public funds—as a careful reading of the relevant provision can imply—the entire section has been rendered meaningless.

Mr. President, it is not just in its disregard for 17 House-passed amendments that the conference committee cast down the gauntlet to those who favor limits on the power of freewheeling attorney activists to determine what is best for the poor and for the country. The conference bill also retains some other very unfortunate aspects of the Senate-passed bill, while erasing important original parts of the legislation adopted by the House on June 21.

Objectionable aspects of the Senate version which have been grafted on to the almost totally ignored House plan include:

Making the corporation authorization part of the Economic Opportunity Act—an ill-disguised effort to promote exclusive control of confirmation of corporation board members by the Senate Committee on Labor and Public Welfare.

Adopting a preamble which affords the statutory presumption of continuation to *current grantees* and administrative policies of the present vital legal services program and which strongly implies that staff attorneys supported by the program should have full freedom from accountability to the American people who pay the bills. The Senate bill, to which House conferees deferred, has an ominously sweeping provision allowing the corporation to make such other grants and contracts as necessary to carry out the purposes of the title. Given the very broadly defined purposes of the conference plan that means simply "anything goes"—all not specifically prohibited is consequently allowed. For example, as now written, corporation officials could fund almost any group of their choosing, so long as it was not involved in directly aiding candidates for office.

Denying the President authority to designate the chairman of the corporation's board of directors, except in the first instance.

While denying the importance of existing influence of ADA and the National Lawyers' Guild-oriented values in the present control and management of the legal services program, future changes in a more moderate or conservative direction are blocked by the convenient requirement that hereafter "No political test or political qualification be taken into account in personnel policies for the $100 million per year program."

The astonishing assertion that, though federally funded, "the corporation shall not be considered a department, agency, or instrumentality of the Federal Government."

At the same time, however, while denying Federal accountability, Corporation employees are given all the benefits of Federal employment, including the right to remain eligible for social security benefits, without paying additional social security or self-employment taxes, while building up a Federal retirement nest egg.

Requiring a special determination by the Board before program control can be assigned to elected State and local officials, while at the same time permitting the lowliest legal services employee with control of grant money to fund private organizations of his choosing.

While purporting to prevent employees from acts which would intentionally identify the Corporation with party or candidate-related political activity, section 1006(e) of the conference plan would define project employees themselves as "deemed to be State or local employees for purposes of chapter 15 of title 5, United States Code." Title 5, "does not prohibit political activity in connection with * * * (2) a question which is not specifically identified with a Nation or State political party. For the purpose of this section, questions relating to constitutional amendment, et cetera * * * are deemed not specifically identified with a National or State political party." Thus, while personnel cannot identify the Corporation with partisan—and perhaps even nonpartisan—political activity, they can do virtually as they please in organizing for noncandidate or nonparty related issues like, for example, those concerning taxation or education or socialized medicine.

Mr. President, Senate language in the conference bill encourages perpetual funding for presently funded projects and contractors by compelling the Corporation to insure that every grantee, contractor, or person or entity receiving financial assistance under this title or predecessor authority under this act which files with the Corporation a timely application for refunding is provided interim funding necessary to maintain its current level of activities until: First, the application for refunding has been approved and funds pursuant thereto received; or second, the application for refunding has been finally denied in accordance with section 1011 of this act. Section 1011 reads: "Financial assistance under this title shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than 30 days, unless" the procedural requirements defined in this act and by court precedent have been fully satisfied. In brief, there is just no way to cut them off.

The conference plan also defers to the Senate in its stipulation that the "President may direct that appropriate support functions of the Federal Government may be made available to the Corporation in carrying out its activities under this title to the extent not inconsistent with other applicable law." While less blatant than the original Senate language, this proviso would still make it possible for a President of the United States to give private organizations aided by the Corporation the benefit of a full range of Government services and equipment free of charge. This could include everything from Xerox machines to motor vehicles to long-distance phone service.

Given the political nature of many groups previously aided and prospectively eligible for aid by legal services, this remains a very dangerous section, which was wisely absent from the more moderate House bill.

Another Senate victory lies in the conferees' agreement to transfer present OEO legal services career employees and to perpetuate the radical OEO union agreement, at the corporation.

Another area which particularly highlights the disingenuous modus operandi practiced in drafting the final conference language is a special section which purports to deal with widespread concerns about political manipulation and control backup centers in behalf of liberal causes. In an effort to reduce opposition to the bill, the conferees suggest that the centers will not continue beyond 1977, unless there is affirmative action by the Congress for their continuation. The conscious misrepresentation of this section lies in the fact that it deals only with backup center "research" activities, omitting even that mild restraint on more obnoxious backup center activities entirely unrelated to research—for example, information clearinghouse, training, lobbying, group representation, and issue explanation. These neutral phrases have long served to cover up and excuse many backup activities much more closely related to political causes than poverty representation.

Right-to-life groups are particularly outraged by continuation of the backup centers, since several of them—National Health Law Project, Bureau of Social Science Research, National Juvenile Law Center, and so forth—have been in the forefront of successful drives for liberalized abortion laws and regulations.

In choosing the House ban on legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion, as opposed to the Senate version which barred such assistance on abortion unless the same be necessary to save the life of the mother, the conferees were playing into a trap well set by pro-abortion legal services activists.

The April publication of OEO's National Clearinghouse for Legal Services, and a cover story by Patricia Butler of the National Health Law Program—a backup center—says:

> Any abortion which a woman requests is medically necessary, since the very request for the procedure indicates the importance of terminating the pregnancy to the woman's health, whether physical, mental or emotional.

Thus, there is no such thing as a non-

therapeutic abortion in the official view of the legal services backup center which is most prominent in dealing with abortions. Accordingly, the conference prohibition would be without force.

Even if the bill really did establish restrictions on the backup centers, the gradual conversion by national OEO officials of neighborhood law offices to local law reform units would negate much of its value.

There are still other weaknesses to be found in the conference plan, when it is compared with the House bill:

The House bill gives Governors a free hand in designating State advisory committee members; the Senate conference plan requires Governors to wait for recommendations from the organized bar before acting.

A House provision intended to limit aid to militant prison groups by barring assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act connected with the criminal conviction and is brought against an officer of the court or against a law enforcement official has been materially changed to preclude such cases only where they challenge the validity of the criminal conviction.

While the conference did make a few prearranged changes in the Senate bill, like dropping specific provisions for a National Advisory Council—still permitted, but not structured into the bill—and deleting some of the more objectionable language in the Senate section barring Federal control of the new entity, those who take the time to study the final plan, in comparison with the House and Senate versions, will clearly observe an almost total Senate victory over the House. Furthermore, where the House did prevail, it was often because its language was as permissive or more permissive than that of the Senate. In some cases, as with regard to the ban on aid to Selective Service law violators, the conferees had no choice, since the prohibition was included by both House and Senate.

To give credit where due, the one real victory scored by the House was the personal achievement of Kentucky Congressman CARL PERKINS who had insisted that local attorneys be given preference in filling project staff vacancies. Yet all of this explanation does not even begin to remind the reader that the House bill, vastly better than the conference result, was itself more liberal in 13 key respects than was the administration plan announced last May 15. And of course, that plan was also a compromise, redrafted post-Watergate in a vain attempt to appease liberal demands.

Mr. President, I call upon those who were looking for true reform in the delivery of legal services to the poor to examine this bill closely when the conference report comes to the floor, and to reject the conference report. And if the conference report should not be rejected, I urge the President to veto it forthwith.

ALBERT COATES: THREE NORTH CAROLINIANS WHO HAVE STOOD UP TO BE COUNTED FOR THE BILL OF RIGHTS—SAM SPENCER, ZEB VANCE, AND SAM ERVIN

Mr. McCLELLAN. Mr. President, one of North Carolina's most distinguished citizens is Albert Coates, of Chapel Hill, longtime professor in the Law School of the University of North Carolina at Chapel Hill and founder of that most unique institution, the Institute of Government at the University of North Carolina at Chapel Hill. On Thursday, evening, October 18, 1973, Dr. Coates made a speech at a meeting of the North Carolina Democratic Club of Washington, D.C., in which he paid tribute to three of North Carolina's sons, Judge Sam Spencer, Governor and Senator Zeb Vance, and our colleague, Senator SAM ERVIN, as "three North Carolinians who have stood up to be counted for the Bill of Rights."

I ask unanimous consent that a copy of this speech be printed in the RECORD.

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

THREE NORTH CAROLINIANS WHO HAVE STOOD UP TO BE COUNTED FOR THE BILL OF RIGHTS

(By Albert Coates)

I thank the leaders of the North Carolina Democratic Club in Washington for this opportunity to talk to you. There are many things I have wanted to say, and I cannot think of a better time and place to say them. I want to talk to you about the historic tradition of North Carolina and the Bill of Rights as we know it today.

If I had to pick out three North Carolinians who have stood up to be counted for the Bill of Rights at critical moments in our history, and limit the picking to three, I would pick out Sam Spencer of Anson County in the 1760's, Zeb Vance of Buncombe County in the 1860's, and Sam Ervin of Burke County in the 1960's. Let me tell you why.

Sam Spencer of Anson County, in 1788 in the Constitutional Convention in Hillsborough Courthouse:

Our rights are not safeguarded. There is no declaration of rights, to secure every member of society those unalienable rights, which ought not to be given up to any government. . . . I know it is said that what [power] is not given up to the United States will be retained by the individual states, I know it ought to be so, and should be understood; but, sir, it is not declared to be so . . . there ought to be something to confine the power of this government within its proper boundaries. . . . The government is proposed for individuals. The expression "We the People of the United States" shows that this government is intended for individuals. There ought therefore to be a Bill of Rights.

I.—SAM SPENCER

Who was Sam Spencer? He was born in Connecticut in 1738; graduated from Princeton University around 1758; moved to North Carolina and became Clerk of Court in Anson County in the 1760's.

The rule of Law and the Bill of Rights got into the mind of Sam Spencer as he read and studied the Charter from the Crown in 1663, guaranteeing to settlers in the Province of Carolina, the rights and privileges of Englishmen living in England. As he learned that these rights and privileges had been spelled out in Magna Carta in 1215 and the Petition of Right in 1628, and promised to "the freemen of England and their heirs forever." As he learned that they had been reaffirmed and expanded in the Declaration of Rights in 1689.

They became more than words to him in the 1760's, 70's, and 80's and got into his bloodstream as he saw the King and Parliament denying these elemental rights to North Carolinians—vetoing act after act of the Colonial Assembly in the growing conflict of interests between the Colony and the Crown. As he saw Cornelius Harnett lead five hundred angry citizens to the doors of the Governor's palace to protest against the Stamp Act. As he saw the Royal Governor flee the Colony to the protection of a British Warship in the Wilmington harbor in the 1770's. As he marched with the Anson County militia in the American Revolution and became their fighting colonel.

He stood up to be counted for them as a delegate to the Provincial Congress in North Carolina which drew up the Halifax Resolves, authorizing "the delegates for this colony in the Continental Congress to concur with the delegates of the other colonies in declaring independency."

The American historian, George Bancroft, wrote this about the Halifax Resolves: "The first voice for dissolving all connection with Great Britain came, not from the Puritans of New England, the Dutch of New York, or the planters of Virginia, but from the Scotch Presbyterians of North Carolina."

He stood up to be counted for them again as a delegate to the Convention which met at Halifax from November 12 to December 18, 1776, and wrote into the State's first Constitution the relevant rights and privileges of the people which had been spelled out in Magna Carta, the Petition of Right, and the Declaration of Rights.

To make assurance of these rights and privileges doubly sure, he was one of the delegates who added the provision: "That the Declaration of Rights to hereby declared to be part of the Constitution of this State and ought never to be violated on any pretence whatsoever."

He stood up to be counted for them again on the floor of the State Convention in Hillsborough Courthouse in 1788 as a delegate from Anson County, and refused to vote to ratify the United States Constitution, drafted in Philadelphia the year before, because it did not include a Bill of Rights, such as he had helped to write into the North Carolina Constitution in 1776.

Here is what he said in debate on the floor of the Convention in Hillsborough Courthouse:

"Our rights are not safeguarded. There is no declaration of rights, to secure every member of society those unalienable rights, which ought not to be given up to any government. . . . I know it is said that what [power] is not given up to the United States will be retained by the individual states, I know it ought to be so, and should be understood; but, sir, it is not declared to be so . . . there ought to be something to confine the power of this government within its proper boundaries. . . . The government is proposed for individuals. . . . The expression 'We the People of the United States' shows that this government is intended for individuals. There ought therefore to be a Bill of Rights."

He foresaw

Sam Spencer did not share the view of James Madison and his associates, who believed the people could do no wrong, that the rights of the people were safe in the people's hands, and therefore did not need a Bill of Rights in the United States Constitution.

He foresaw the abuse and the dangers of raw power in *anybody's* hands. He foresaw the doctrine of Lord Acton that "All power corrupts and absolute power corrupts absolutely." And he might have had some sym-

pathy for the latter day observation that it is "being out of power that corrupts absolutely."

He foresaw what we have lived to learn in the hundred and eighty-six years from 1787 to 1973: That the commonwealth may be plundered by favorites of the people as well as by favorites of the King. That to the victor belong the spoils may be the slogan of elected office holders as well as hereditary rulers. That shades of the ancient spoilsmen may gather in the modern sheriff's eyes. That remnants of the divine right of kings may still crack down in a policeman's billy. That the aristocratic doctrine that some men are not as good as other men may be changed into the democratic doctrine that "every man is as good as every other man, and a damn sight better."

If he had lived a few years longer, he would have felt his foresight was vindicated when the General Assembly of North Carolina in 1807, tried to deny a seat to a duly elected member because he was a Jew, and this Jew saved his seat by invoking the provision Sam Spencer had helped write into the Declaration of Rights guaranteeing to every citizen the "right to worship God according to the dictates of his own conscience."

So much for a thumbnail sketch of Sam Spencer of Anson County, how the Rule of Law and the Bill of Rights got into his mind and bloodstream, and why he stood up to be counted for them in North Carolina in the 1760's and thereafter.

In 1862 in a letter to the President of the Confederacy on learning that forty citizens of North Carolina had been taken from their homes and put in prison without a hearing:

As Governor, it is my duty to see that the citizens of this state are protected in whatever rights pertain to them, and, if necessary, I will call out the State Militia to protect them and to uphold the principles of Anglo-Saxon liberty—trial by jury, liberty of speech, freedom of the press, the privileges of Parliament, habeas corpus, the right to petition and bear arms; subordination of military to civil authority; prohibition of *ex post facto laws*.

II.—ZEB VANCE

One hundred years later, in the 1860's, Zeb Vance stood up to be counted for the Rule of Law and the Bill of Rights in critical moments of its life in North Carolina.

Zeb Vance was born in Buncombe County in 1830, went to the University of North Carolina in 1850–51; practiced law; went to the State Legislature in 1852; went to the National Congress in 1854, at the age of twenty-eight; became Governor of North Carolina in 1862, at the age of thirty-two, while he was fighting in the Confederate Army; became Governor again from 1876 to 1878; went to the United States Senate in 1878 and stayed there until the 1890's.

The Rule of Law and the Bill of Rights got into Zeb Vance's mind while he was a student in the University of North Carolina in the 1840's. He took a course given by David Lowry Swain, President of the University, and described in the catalogue in these words:

"A regular course of lectures is delivered on the History of Constitutional Law, presenting an analytical review in chronological order, of the Magna Carta of King John; the Petition of Right; the Charters of Carolina; the Fundamental Constitutions (by John Locke); the Habeas Corpus Act; the Bill of Rights; the Declaration of Independence; The Articles of Confederation; the Treaty of Peace with Great Britain, and the Constitution of the United States."

In later years Zeb Vance wrote this description of one of President Swain's lectures in this course:

"I entered the University in 1851 and joined the senior class as an irregular. The first lesson was in Constitutional Law. A single general question was asked and answered as to the subject in hand and from these, [he] went back to the men and the times when the great seminal principles of Anglo-Saxon liberty were eliminated from feudal chaos, and placed one by one as stones polished by the genius of the wise, and cemented by the blood of the brave, in the walls of the temple of human freedom. He told us of the eloquence of Burke, of the genius of Chatham; he took us into the prison of Eliot and went with us to the death-bed of Hampden; into the closet with Coke and Seargent Maynard; and to the Forum where Somers spoke. . . ."

If the Rule of Law and the Bill of Rights got into Zeb Vance's mind through his college course with David Lowry Swain, they got into his bloodstream in his fight against secession by the General Assembly of North Carolina in 1860 and 1861.

He stood up to be counted for them as Congressman in 1860. Glen Tucker tells the story of a statewide rally of the Whig forces in Salisbury in 1860 to proclaim to the world "their stand for the preservation of the Union." Zeb Vance, a thirty-year-old Congressman from western North Carolina, "little known to the leaders of North Carolina politics . . . was called to the platform . . ." Any sentiment for secession which might have prevailed in the large gathering was swept aside by the words which poured from this young man's lips, as he said: "We fight for the Constitution, for the Union, and the Laws. We fight within the Constitution for the Union and the Laws. We will not be led off by seceders." He went on to say that:

"If they [the people] choose to undo the work of their wise and heroic ancestors, if they choose to invite the carnage to saturate their soil and desolation to waste their fields, they cannot say their public servants precipitated them into it! The people must and should rule, but we must see to it that we do our duty in warning, instructing, and advising them."

Under this sort of leadership the people of North Carolina voted down even the suggestion that a convention be called to look into the advisability of secession. In his own words: "I was canvassing for the Union with all my strength. I was addressing a large and excited crowd . . . and literally had my arm extended upward in pleading for peace and the Union of our fathers when the telegraphic news was announced of the firing on Fort Sumter and the President's call for seventy-five thousand volunteers, and my arm fell slowly and reluctantly to the side of a secessionist."

He stood up to be counted for them again as Governor in 1862. Glen Tucker tells the story:

"General French moved into eastern North Carolina in the latter part of 1862 and officers under his command arrested forty citizens on the suspicion that they were disloyal and sent them to a military prison at Salisbury for safe keeping—without notice or a hearing."

Vance wrote to the President of the Confederacy in Richmond, saying that as Governor of North Carolina it was his duty to see that these citizens were protected in whatever rights pertained to them, and that if necessary, he "would issue a proclamation recalling the North Carolina soldiers from Virginia and call out the state militia to protect the liberty of its citizens" and to uphold "the principles of Anglo-Saxon liberty—trial by jury, liberty of speech, freedom of the press, the privileges of Parliament, the right to petition and bear arms; subordination of military to civil authority; prohibition of ex post facto laws.

"If, in short, the merest citizen in all the land cannot instantly command for his protection in the commonest, simplest personal right, the entire physical and moral weight of the Republic . . . then, indeed, it is no more entitled to your reverence and attachment than is the autocratic splendor of the Czar or the idle magnificence of the Grand Turk."

He advised President Davis to go slow in suspending the writ of habeas corpus, "before shocking all worshipers of the common law throughout the world by hounding freemen into sheriffless dungeons for opinion's sake."

He knew what Sir Edward Coke meant when, in the debates involving the Petition of Rights in 1628, he said that "the greatest inheritance that a man hath is the liberty of his person, for all others are accessory to it."

He knew that the writ of habeas corpus was the protector of other rights in the Constitution, and while it was suspended in Northern states by President Lincoln, and in Southern States by President Davis, Zeb Vance refused to suspend it at any time in the state of North Carolina.

He stood up to be counted for them again on May 11, 1863, when he issued a proclamation to militia officers "not to arrest any man as a conscript or deserter who had been discharged under a writ of habeas corpus issued by a Supreme or Superior Court Judge of the State" and to "resist any such arrest by any person not authorized by the legal order or process of a court or judge having jurisdiction of such cases."

HIS PROUDEST BOAST

In later years he said that the "proudest boast" of his governorship was that "the laws were heard amidst the roar of cannon. No man within the jurisdiction of North Carolina was denied the privilege of the writ of habeas corpus, the right of trial by jury, or the equal protection of the laws, as provided by our Constitution and the Bill of Rights."

Sam Spencer would have thrilled to this record.

So much for this thumbnail sketch of how the Rule of Law and the Bill or Rights got into the mind and bloodstream of Zeb Vance, and why he stood up to be counted for them in the 1860's.

Sam Ervin, of Burke County, in 1973, in a speech to the Student body of the University of North Carolina at Chapel Hill:

"So long as I have a mind to think, a tongue to speak, and a heart to love my country, I shall deney that the Constitution confers any arbitrary power on any President, or empowers any President to convert George Washington's America into Caesar's Rome."

III.—SAM ERVIN

A hundred years later, in the 1960's, Sam Ervin stood up to be counted for the Rule of Law and the Bill of Rights in critical moments in the history of the United States.

I have talked about Sam Spencer and Zeb Vance from a background of reading and research. I shall talk about Sam Ervin from a background of observation and experience. I have known him since college days at the University of North Carolina in 1914.

He was born in Morganton, Burke County, North Carolina, in 1896; graduated from the public schools in 1913, and from the University of North Carolina in 1917; went from college campus to training camp and World War I in the spring of 1917; graduated from the Harvard Law School in 1922; began practicing law and went to the General Assembly of North Carolina in 1923; became judge of the Burke County Criminal Court in 1935; Judge of the Superior Court of North Carolina in 1937; Congressman in 1946; Justice of the Supreme Court of North Carolina in 1948; and United States Senator from North Carolina in 1954.

The Rule of Law and the Bill of Rights got into Sam Ervin's mind by way of his lawyer-father who put him to reading Blackstone's Commentaries on the Laws of England when he was fifteen years old, and by way of teachers in the University of North Carolina just before and after World War I.

In talking to the University faculty in Chapel Hill in the spring of 1973, here is what he said about Dr. de Roulhac Hamilton's course in American Constitutional History: "He made it plain that if one is to understand the fundamental principles of the Constitution he must know the history of the events which brought those principles into being. I cannot overmagnify the benefits which I received from his instruction." Here is what he said about Dean Lucius Polk McGehee's course in Constitutional Law: "Dean McGehee was one of the greatest lawyers as well as one of the greatest scholars I have ever known, and he emphasized above all things the necessity of being thorough in one's studies and endeavors, and being completely honest intellectually. I cannot adequately express my appreciation of the aid which his instruction has given me through all the intervening years."

They become more than words to him as he sat in the assembly of students in Chapel Hill in the spring of 1917, when college seniors were leaving the campus for the training camp in World War I, and President Edward Kidder Graham called the roll of great landmarks in this history of liberty—Magna Carta, the Petition of Rights, the English Declaration of Rights, the Declaration of Independence, the United States Constitution, and the First Ten Amendments, and said: "Young gentlemen, these are not empty phrases. Cut them and they bleed."

He stood up to be counted for them in the 1950's in a speech on the floor of the United States Senate, involving a provision in the United States Constitution, saying, "that . . . for any speech or debate in either House [Senators and Representatives] shall not be questioned in any other place."

Senator Joseph McCarthy had been using this provision as a cloak of immunity from prosecution while he was smearing the reputations and characters of American citizens whom the Bill of Rights was designed to protect. Sam Ervin spoke in support of a Senate Resolution censuring Senator McCarthy for this abuse of a Senator's privilege. In my opinion that speech was his finest hour up to that time.

He has stood up to be counted for the Rule of Law and the Bill of Rights again and again and again throughout the 1960's and 1970's, as he has spoken out on the floor of the U.S. Senate:

In protest against a bill before the Senate permitting police to break into a man's house by day or night "without knocking," on mere suspicion that he had "dangerous substances" in his possession which he might destroy if he was not taken by surprise.

In protest against bills permitting the courts to deny the right to bail to persons whom police and judges "suspect" might commit new crimes while out on bail.

In protest against regulations of the Post Office Department that would permit the opening of sealed letters from abroad without notice to the writer or addressee, if it is "suspected" that the letters contain pornographic pictures, lottery tickets, or narcotics.

In protest against regulations of the Census Bureau and other government agencies permitting data collecting programs, sophisticated surveillance techniques, and the use of the computer and data banks in ways violating the individual's historic right of privacy.

In protest against regulations of government employment agencies permitting probing questions about religion, family, and sexual matters. Questions calling for the disclosure of personal finances and creditors of employees and their relatives. Practices coercing employees to buy bonds and support political parties and participate in community activities having nothing to do with their jobs, and to conform their personal behavior and associations outside the office to agency rules and a supervisor's whim.

In protest against activities of military agencies operating a data bank "collecting files on private citizens" and spying on the lawful pursuits of Americans in public and private assemblies throughout the country.

Reminding privileged students on college campuses, as well as the underprivileged inhabitants of slums and ghettos, that the freedoms guaranteed in the U.S. Constitution do not go so far as to provide a cloak of immunity for such crimes as "treason, felony, or a breach of the peace" committed by anybody, anywhere, at any time.

Sam Spencer and Zeb Vance would have thrilled to this record.

Sam Ervin and the Senate Select Committee in 1973

The portals of the National Department of History and Archives carry this legend: "What Is Past Is Prologue." "What does that mean?" asked a tourist of a taxi driver, and got this answer: "It means you ain't seen nothing yet." That legend is true of Sam Ervin today as he stands at the threshold of his greatest challenge and his greatest responsibility as Chairman of the Senate Select Committee, appointed on the fifth day of February 1973, "to conduct an investigation and study of the . . . illegal, improper, or unethical activities . . . engaged in by any persons, . . . in the presidential election of 1972, or any campaign, canvass, or other activities related to it."

North Carolina can take pride in the fact that one of her sons, coming to the United States Senate in 1954, in nineteen years of intimate association won the confidence of his fellow Senators in his ability, integrity, and fairness, to the point that the Senate Majority Leader, Mike Mansfield said in appointing him Chairman of this Select Committee, "We are looking for a good, fair, impartial investigation, and Sam Ervin is the only man we could have picked on either side of the aisle who would have the respect of the Senate as a whole."

The Senate Select Committee comes at a time when men who ought to know better believe that loyalty to a candidate for political office is more important than loyalty to the laws, the Constitution, and the Bill of Rights, and carries more weight than the ten commandments. At a time when men distort the Golden Rule into saying: "Do unto others what you think they are going to do unto you and do it first." "Thrice armed is he who feels his cause is just," these men are saying, "but thrice times three who gets his licks in fust."

At a time when the Rule of Law and the Bill of Rights are being called into question as never before in the twentieth century. Let me illustrate my meaning.

Old liberties in new settings

The 39th Article of Magna Carta, written in 1215, promised to "the freemen of England and their heirs forever", that:

"No freeman shall be arrested, or detained in prison, or deprived of his freehold, or outlawed, or banished or in any way molested . . .; and we will not set forth against him, unless by the lawful judgment of his peers and by the law of the land."

This provision was brought forward in the Constitution of North Carolina in 1776, and in the Constitution of the United States in 1791. It takes on fresh and vivid meaning in the setting of 1973, as we listen to testimony that governmental agencies are being used to harass citizens by politically motivated audits, "quickie" investigations, and other tactics prostituting normal governmental activities to partisan political ends.

The 40th Article of Magna Carta reads like this:

"To no one will we sell, to no one will we deny or delay right or justice."

This provision was brought forward in the North Carolina and United States Constitutions. It takes on fresh and vivid meaning in the setting of 1973, as we listen to testimony about slowing down the processes of the courts in civil litigation, and suggesting a prestigious appointment to a judge while he is trying a criminal case—by an administration interested in the outcome of cases before the court.

A provision in the Petition of Right in 1628 reads like this:

"That no man be hereafter compelled to make or yield any gift, loan, benevolence, or tax, or such like charge, without common consent by act of Parliament."

This provision was brought forward in the Constitutions of North Carolina and the United States. It takes on fresh and vivid meaning in the setting of 1973, as we listen to testimony about political pressures for campaign gifts from competing corporations. Testimony about rulings increasing the price of products in return for campaign contributions. Testimony about shifting profits from producers to middle-men by withholding information about massive sellings in the offing. Testimony about mergers of business influenced by proffered donations to subsidize the site for political conventions.

A provision in the Declaration of Rights in 1689 read like this:

"That election of members of Parliament ought to be free."

This provision was brought forward in the Constitutions of North Carolina and the United States. It takes on fresh and vivid meaning in the setting of 1973, as we listen to testimony about uncounted millions of dollars used to manipulate elections by the fraudulent devices of lying, concealment, and non-disclosure, and the calculated use of "dirty tricks" without stint or limit.

A provision in the Declaration of Rights in 1689 reads like this:

"That it is the right of the subjects to petition the King . . . and that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, Parliaments ought to be held frequently."

This provision was brought forward in the Constitutions of North Carolina and the United States, and the first amendment to the United States Constitution guaranteed "the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

It takes on a fresh and vivid meaning in the setting of 1973, as we listen to testimony about military agencies operating data banks, collecting files, and spying on American citizens attending lawful assemblies.

The fourth amendment to the Constitution of the United States reads like this:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the places to be searched, and the persons or things to be seized."

It takes on fresh and vivid meaning in the setting of 1973, as we read of the practice of "no-knock" entries into homes to take the occupants by surprise, preventive detention of suspected persons, electronic surveillance, and burglaries of dwellings and business establishments, whenever possession of "a little brief authority" requests it.

Buildups and let-downs in the flow of freedom

The flow of freedom from the Establishment to the People throughout the centuries has not been uniform or smooth. It has been irregular and disjointed. Many times it has gone under in the undertow, and later come to a new advance with a returning wave—adding a new beachhead to the main, and expanding our liberties by slow and gradual accretion. Let me illustrate my meaning:

On April 19, 1783, the Governor of North Carolina wrote to members of the North Carolina General Assembly that

"His Britannic Majesty having acknowledged the United States of America free, sov-

ereign and independent, . . . Nothing new remains but to enjoy the fruits of uninterrupted Constitutional freedom, the more sweet and precious as the Tree was planted by virtue; raised by the toil and nurtured by the blood of Heroes."

With this invitation to rest on their oars, thirteen "free and independent" states began withdrawing from each other. They withdrew long enough to find that they could live *in* liberty but they could not live *on* it, long enough to find that they could not "go it alone," long enough to find that every state could not do as it pleased and let every other state do as it pleased, long enough to understand that they must pull together "in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty for ourselves and our posterity."

This experience of build-up and let-down has been repeated throughout our history. The let-down followed Magna Carta, and the build-up came with the Petition of Right. The let-down followed the Petition of Right, and the build-up came with the Declaration of Rights. The let-down followed the Charter from the Crown, and the build-up came with the Declaration of Independence.

This let-down and build-up in the flow of freedom from one generation to another is a little like the flow of oil in a pipe line—starting out strong, and slowing down almost to a stop from the friction and erosion of the surrounding pipe, until a booster station pumps new life and vigor into the flow. It was in this way that Magna Carta, the Petition of Right, the Declaration of Rights, the Charter from the Crown, and the Declaration of Independence became "booster stations" in the flow of freedom. And so with the 13th, 14th, and 15th amendments in the 1860's, the Segregation Decision in the United States Supreme Court in 1954 and the decisions triggered by it, the Civil Rights Act of 1964 and the Voting Rights Act of 1965 in the United States Congress.

Flowing through the centuries like some magic gulf stream these historic documents have changed the climate and tempered the habits, customs, and manners of men wherever the current has gone. They are joints in the backbone of our liberties. The fluid in the spinal column. The marrow in the bones. The spark of life in the customs, laws, and Constitutions of North Carolina and the United States. Let the spark of life go out of the human body and the human body goes to rot. Let that spark of life go out of our customs, laws and constitutions, and our customs, laws and constitutions go to rot.

I believe it was a vivid awareness of this tragic flaw of build-up and let-down in human nature and in the body politic which caused Sam Spencer and his associates to write Section 35, Article 1, into the North Carolina Constitution in 1776, saying: "That a frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty."

I believe it was this vivid awareness which caused them to follow-up Section 35 of Article I with another provision, saying that the North Carolina Declaration of Rights is "hereby declared to be part of the Constitution of this State and ought never be violated on any pretense whatsoever."

Revelations going on around us today demonstrate with all the stinging freshness of demonstrated truth that "a frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty." This is simply another way of phrasing the well-worn observation that "eternal vigilance is the price of liberty."

The task of the Senate Select Committee

The task of the Senate Select Committee is both simple and profound. It is (1) to find the facts, (2) inform the people, and (3) recommend laws and procedures to correct the evils they uncover.

It is well on its way to finding the facts, and it will keep on going until it finds them. It is well on its way to informing the people, and it will keep on going till it informs them. It will then propose legislation to strike at the roots of the evils it uncovers.

I do not know how many paragraphs and pages it will take for the Senate Select Committee to spell out the grievances of the people in 1973, as the predecessors spelled out the grievances of the people in 1215, 1628, 1688 and 1776. But I do know that its report must begin with a reaffirmation of the "ancient rights, liberties and inheritances," promised by Magna Carta to "the freedom of England and their heirs forever." Reaffirmed and expanded in the great historic documents which have punctuated the flow of freedom from one generation to another throughout our history.

If the Senate Select Committee draws up a document reaffirming and expanding our "ancient rights and liberties and inheritances," in this day, as their predecessors have done before them.

If it strikes at the roots of our grievances today, as its predecessors struck at the roots of the grievances of their day.

It will give the American people something to celebrate as the 200th anniversary of American Independence arrives in 1976; something above and beyond anything that any Bicentennial Commission is likely to propose; something that will help to turn "the Watergate Affair" into another "booster station" in the flow of freedom from the Establishment to the People.

What will the people do?

Mary McCarthy, writing in the New York Review of July 19, 1973, says this of Sam Ervin and his leadership of the Senate Select Committee: "It is the old America which Senator Ervin believes in. This house, he feels, can be cleansed, and restored to its semi-pristine condition. That is why he is stubbornly convinced that the hearings will arrive at their destination—the truth.

"But if it doesn't come out that way," I said to him. "If they fail? Just take it as a hypothesis." "I refuse to entertain the thought," was Sam Ervin's answer. "As though the thought was a felon seeking entry into his mental house. He is becoming a folk hero, because of that stout old-fashioned attitude."

Mary McCarthy goes on to say:

"I hope that Senator Ervin is right, but if he is right and nothing happens—a strong possibility—then we are worse off than we were before. If we know, that is, and don't act, can find no frame for action, then the powers that be, knowing that we know and won't do anything, will have nothing more to fear."

Sam Ervin is old fashioned enough to believe that the people will act. He knows that "the boughs of the Tree of Liberty have been swayed this way and that" throughout our history. He knows that "their strength to withstand the wind comes from the depth and toughness of their roots in the past. He knows that "the greatest danger to the people is that they themselves may erode these roots by forgetfulness and indifference,—the slow smokeless burning of decay."

He also knows that in 1973, the people are seeing these revelations of what has been going on around them—revelations on their television screens by day and by night, reading about them in their morning and afternoon papers, and talking about them wherever they are. They are becoming as much aware of the pollution in the body politic as they are aware of the smog which obscures the sun and the waste which fouls their streams. As much aware of the gradual erosion of their liberties as they are aware of the general erosion of their top soil and the blighting of their landscape. Aware of the smug and arrogant complacency of a witness under oath recognizing their erosion and bragging about his part in it.

He is old fashioned enough to believe that a self-respecting people will not listen to seductive and self-serving cries from those who would stop the hearings before the truth comes out, any more than he believes that a self-respecting dentist will put a cement filling in a decaying tooth before rooting out the rot. He does not believe the American people are willing to be a party to the stultifying process of covering up the "cover up".

Commonsense and mother wit

I think there may be something to Mary McCarthy's suggestion that he is becoming a folk hero because "of his stout old-fashioned attitudes." There are in him qualities giving color of title to his talk.

He is himself and nobody else. He moves in his own orbit, along inner directed courses. He is full of common sense and mother wit. Whether he is quoting the Bible or the Constitution he is illustrating his own philosophy and religious thinking and beliefs. He is all of a piece—not a lot of planks nailed together, but a growing tree with the sap of life flooding through it.

A great compassion

It surfaced at a hearing of the Senate Select Committee the other day, in saying that the Watergate affair may turn out to be a greater tragedy than the Civil War. Ed Yoder points out in the Greensboro *Daily News* that Sam Ervin is using "tragedy" in its precise and classical meaning:

"Those who recall its ancient resonances, as discussed by Aristotle, may feel that it fits the Watergate matter very precisely. Tragedy, said Aristotle, is the calamity of the man of overwhelming pride, neither exceedingly good nor exceedingly bad, who is betrayed by a tragic flaw and punished for his lapse by the gods. In King Oedipus the flaw was anger; in some of the Watergate principals—one thinks, for instance, of former Atty. Gen. John Mitchell—it was a dangerous mixture of cynicism and arrogance; in others, a misplaced, almost mindless, loyalty. . . .

"When one feels, as Senator Ervin seems to feel, that the frailty of pride has undone the men of Watergate, and reflects that this frailty is universal, the natural response is indeed pity and fear—or what we mean when we think, "there but for the grace of God go I." One may not agree with the Senator that Watergate, in the scale of delinquency or present retribution, rivals the Civil War. But both, equally, were collisions of arrogant men "dressed in a little brief authority" that constitutes tragedy.

"Senator Ervin, as usual, has defined the matter with a precision his critics do not grasp."

In the twisted lives and tortured reputations of witnesses unfolding in succession before the Senate Select Committee, Sam Ervin has seen and heard and felt the "still sad music of humanity, not harsh nor grating, but with ample power to chasten and subdue."

He knows what the Grecian poet was talking about twenty-five hundred years ago when he wrote of the "God whose law it is that knowledge comes through suffering. . . ." How "Sorrow falls, drop by drop upon the heart, until, against our will, and even in our own despite, comes wisdom to us by the awful grace of God. . . ."

Along with these qualities of common sense, mother wit, and compassion, he brings to the leadership of the Senate Select Committee another all important quality—which was pointed out in a Memorial Day address in 1884 to Union Veterans of the Civil War, by Mr. Justice Holmes: "Above all, we have learned that whether a man accepts from Fortune her spade, and will look downward

and dig, or from Aspiration her axe and cord, and will scale the ice, the one and only success which it is his to command is to bring to his work a mighty heart."

In a speech on the Senate floor supporting the resolution to censure Senator Joseph McCarthy in the 1950's, Sam Ervin said in answer to a question, that if his name was called in question as Senator McCarthy's was, while he was on the other side of the Potomac as Senator McCarthy was, and if the Potamac was a river of fire instead of water he would somehow cross it to appear in defense of his name.

I call your attention to the fact that Sam Ervin said he would walk through fire. He knew he could do this, because he had done it before when he belonged to Company I of the 28th Infantry, selected as the first regiment of American troops to go "over the top" at the Battle of Cantagny—the first engagement fought by American troops in World War I. His part in the battle is described as follows: "Private Samuel J. Ervin, with exceptional courage and perserverance, led a carrying party through heavy fire; he made several trips from the rear to the front until he was wounded."

In the Battle of Soissons, on the 18th day of July, the 28th Infantry was halted by machine gun fire from an emplacement one hundred yards ahead. Most of the officers of the Company had been killed. At this point, twenty-two year old Sam Ervin called for volunteers to help silence the enemy gun. Four men responded and they charged the gun. Here is an affidavit of one of those men: "One man was mortally wounded. Another was killed. Ervin was knocked down by a shell fragment in front of the gun. The two remaining reached the machine gun, killed its crew, seized the gun," and the troops went on to victory.

The affidavit goes on to say: "We went back to Ervin and bandaged his wounds to stop the flow of blood and wanted to carry him back to safety, but he refused to be assisted and told us to go back and join the other soldiers if we could.

"It was only due to Ervin's initiative and gallantry that the gun was captured. Throughout the engagement he directed the fire upon the machine gun, and after being wounded he urged us to capture the gun and showed himself unmindful of his own safety. Though wounded so severely he was unable to walk, he refused to go to the rear, but crawled back and organized an advance automatic rifle post where he remained on duty until all danger of a hostile counter attack was over."

In speaking to five thousand students at the University of North Carolina in Chapel Hill some days ago, Sam Ervin said: "As long as I have a mind to think, a tongue to speak, and a heart to love my country, I shall deny that the Constitution confers any arbitrary power on any President, or empowers any President to convert George Washington's America into Caesar's Rome."

Anyone who knows Sam Ervin knows that he will live and die fighting on this front—fighting with his face to the enemy and with his wounds to the fore. Anyone who knows Sam Ervin knows that in 1973 he is doing this as instinctively, as deliberately, and as knowledgeable as he charged the machine gun firing on his comrades in the Battle of Soissons on the 18th day of July, in 1918.

A love letter to Sam Ervin

When I read what I had written up to this point to my wife, she said, "It reads like a love letter to Sam Ervin," As indeed it is. Let me tell you how we came to know Sam Ervin.

He was in the Class of 1917 and I was in the Class of 1918, in a University with a thousand students who knew each other—always by sight and nearly always by name. We felt the accuracy with which he was characterized in the college annual by one who knew him: "Everything he meets responds, and at once a sympathetic friendship ensues. Like Midas, he has that magic touch which makes everyone he meets his friend; and consequently he is liked by all."

He became a dramatic figure in the eyes of my wife and myself when the classes of 1917 and 1918 held a joint reunion in June 1929. This incident occurred as one returning alumnus after another stood up around the table giving his name and telling what he was doing in post-war years—until a ten-year-old boy was introduced as the son of Oliver Ransom of the Class of 1917.

At this point in the proceedings, my wife saw a tall and slender young man, elegant in dress and bearing, come to his feet in tribute to this ten-year-old boy's father, and the spirit that had moved him to:

> . . . pour out the red,
> Sweet wine of youth; give you the years to be
> Of work and joy, and that unhoped serene
> That man calls age.

My wife had come to Chapel Hill from Virginia as a bride the year before, and had never seen Sam Ervin until that night. She marvelled at his power to stir a cynical post-war generation in 1929 with the poetry of Rupert Brooke—until I told her that Oliver Ransom was Sam Ervin's friend and classmate, who had gone to war with him in the spring of 1917, and was killed in action early in the War and left behind him a bride who had become a wife, a widow, and a mother within a year, and this ten-year-old boy was the son that Oliver Ransom had never seen.

We followed Sam Ervin's career in the years after this 1928 reunion as the morning paper brought to our breakfast table the news of his election as Congressman, his appointment and election as Superior Court Judge, Supreme Court Justice, United States Senator. Each time my wife and I have interrupted our breakfast to call him on the phone to tell him of our delight and to wish him well.

We have voted for him in successive elections, not because of how he stood on any one particular issue—we never asked him—but because he was the sort of man he was; and we knew without his telling that he would vote and act from forces welling up within him and not from any outside force or external pressure, and because we felt he was headed in the general direction we wanted to go.

We have never had any fear that he would get lost along the way. There is a story told to us by Miss Beatrice Cobb, editor of his hometown paper, that Sam had been reported "missing in action" in World War I and continued on the missing list for a long time. When he finally turned up the whole worried community came together in a sigh of relief that "little Sam" had been found. "I was never lost," he told them. "I knew where I was all the time." And so it has been from that day to this. Sam Ervin is all there, all at once, and all the time.

Let me bring this love letter to a close by saying that my wife has read all that I have written, and begs exemption from the common law doctrine that man and wife are one and the man is the one, long enough to sign her own name to this letter.

The great tradition

I have heard it said from boyhood days that one could pick up a seashell, hold it to his ear and hear the sound of ocean waves beating upon the shore. Not long ago I ran across this notion in a poem:

> The hollow sea-shell, which for years hath stood
> On dirty shelves, when held against the ear
> Proclaims its stormy parent, and we hear
> The faint, far-off murmur of the breaking flood.

This poetic folklore is a matter of fancy rather than of fact, but I have no doubt that imagination may call up the "far-off murmur of the breaking flood" to ears familiar with the sea.

As North Carolinians, we can take pride in the fact that when our freedoms have been in danger here in North Carolina, there have been among us men who have held the historic documents of our liberties to their ears and heard their music and gone into battle in their defense.

Sam Spencer in the 1760's, Zeb Vance in the 1860's, and Sam Ervin in the 1960's and 70's take their places in the great tradition of Stephen Langton and his associates in the Magna Carta, Sir Edward Coke, Sir John Eliot and John Somers and their associates in the Petition of Right, and the Declaration of Rights; Thomas Jefferson, in writing the Declaration of Independence in 1776; James Madison and his associates in drafting the First Ten Amendments to the U.S. Constitution in 1791. Men who stood up to be counted for the Rule of Law and the Bill of Rights. Men who were, in Stephen Spender's words:

> Born of the sun, [and] traveled a short while toward the sun,
> And left the vivid air signed with their honor.

LAND USE PLANNING: A NATIONAL ISSUE

Mr. PACKWOOD. Mr. President, very few citizens claim not to support sound land use planning. We all recognize the need to instigate some changes in present land use practices, many of which show little or no regard for our Nation's vast natural resources. One would think that a strong Federal land use policy would garner overwhelming support from legislators and citizens alike. Unfortunately, the Federal Land Use Planning Act has met with some resistance in the House.

The Senate managed to pass its own version of the bill June 21, 1973. It is therefore with some disappointment that I make note of the delays encountered in the House. We cannot afford the kind of procrastination which has accompanied discussion of land use planning. It is imperative that an effective Fedral land use policy be enacted at the earliest date if we are to avoid what Mr. Hurlon C. Ray, Assistant Regional Administrator for Management, EPA Region X, terms a "Land Use Crisis."

Contrary to popular belief, the measure which was adopted by the Senate did not provide for Federal control of State and local land use decisions. In its final form, the Senate bill was basically a grant-in-aid program to assist States in developing land us programs. The emphasis throughout the bill was on local control and implementation of land use decisions.

I think the remarks of Mr. Ray are worth noting. He discusses the need for sound land use planning and describes the important role which would be played by a strong Federal land use policy. As Mr. Ray points out in his statement, such a program could lend impetus to those efforts already underway in several States and would provide the needed support for continuation of those efforts.

Mr. President, I ask unanimous consent that Mr. Ray's remarks be printed in the RECORD.

There being no objection, the state-

ment was ordered to be printed in the RECORD, as follows:

SOME IMPACTS OF FEDERAL ACTIVITIES AND LAND USE DECISION NEEDS ON ENVIRONMENTAL QUALITY

(By Hurlon C. Ray)

(An address before the Workshop on Land Use Planning and Management of Federal Programs, sponsored by the Portland Federal Executive Board, Portland, Oregon, May 8, 1974)

I consider it a real privilege to meet with and talk to the First Meeting on Land Use Planning and Management, sponsored by the Portland Federal Executive Board and to have the opportunity to discuss some impacts of Federal Activities and on Land Use.

In two years our country will be 200 years old. Unless a Federal Land Use Brake is applied soon to the 7,000 acres of land lost daily to some type of development, we will so soon have a "Land Use Crisis." We are not only killing the land, (For example: Strip *mining* may soon claim 75,000 square miles of land.) we are running out of land. (Example: 1,200 people move to Colorado weekly.) Land Use talk is a time-honored tradition and nobody wants it to be regulated by the Federal Government. I believe there is a great future for local initiative and citizen participation in all environmental planning matters.

The pendng National Land Use Policies and Planning Assistance Act is another "NEPA" (National Environmental Policy Act) in the high ranking Congressional environmental laws to defend the exhaustible natural resources from rank and reckless exploitation.

Nothing has invigorated my faith in America so much as the new einvironmental ethic which has evolved during the past five years as a result of the provisions of NEPA. The environment belongs to all of us. NEPA has proved to be an effective and reasonable way to curb pollution and disruption of the great Northwest environment. I think our environment has been well served by the provisions of NEPA.

There is, in my judgment, no more important legislation before the Congress than the land use bill. Its importance does not lie in the fact that it would have any immediate or earthshaken impact upon land use patterns or practices in this country. The bill is a thoroughly modest measure where importance lies in the fact that it would give new force and focus to efforts already underway in a number of states (Oregon) to give the citizens of this country a real say in determining the course and quality of our physical growth. It is a bill that would help us build upon these efforts and that, by making it harder for isolated groups and individuals to make so many of the critical decisions that shape our human environment, would go a long way toward restoring the rule of democracy in this land.

There is hardly a social, economic, environmental issue before this country that is not somehow deeply and directly bound up with questions of land use—with questions of how and where we organize our activities in space. And we cannot hope to really come to grips with these other issues—of housing, of transportation, of air and water pollution, of equality of opportunity as well as quality of life—until we *begin to* devise effective and democratic ways of dealing with our patterns of growth and development.

Our environmental programs cannot be carried out without major impacts upon patterns of land use, and our environmental goals cannot be achieved without real progress in land use. Our present statutes force us into land use. But they are inadequate. Present statutes did not give us—or anyone else—a sound framework to cope with the problems of unwise land use. . . .

What is required is a full-scale national focus on land use. We need a statute with stiff provisions as in NEPA to deal with land use as bold, as comprehensive and as far-reaching as the 1970 Clean Air Act or the 1972 Water Pollution Control Act. But first, to obtain such a statute and such a commitment cannot come from a small handful of leaders nor from a quick legislative maneuver. They can come only from a broadly based keenly felt and forcefully advocated national concern for the issue. The complexity and magnitude of the challenge absolutely require a comparable magnitude of public support.

Public support resulting in many major court decisions has made NEPA work. NEPA has vanguarded new values in the Northwest; values which give priority to quality of life and long-term ecosystem stability. We have neglected the warnings too long, and now we have begun to pay the high price of corrective action. In many cases, crimes of the past have caught up with us.

Environmental concern is not a passing national fancy. NEPA has set in motion events that will have a long-term impact on our environment. Environmental problems have taken on the national agenda alongside traditional concerns of social justice and quantitative prosperity. Growing is exciting, but the American people want controlled growth to safeguard the national heritage and maintain an ecological balance not jeopardized by imprudence. For engineering expertise to be the means for developing a quality life is a massive challenge. It is a challenge worthy of the highest dedication, and it is a challenge which must be met if we are to secure a liveable world for ourselves and for future life. One reason why NEPA is working in the Northwest is its requirements for full exposure, public involvement, conviction, coordination, integrity, participation, and partnership: no silent partners, no secrets, no deals.

Today, and what we do today, constrains what we can and cannot do tomorrow and determines what tomorrow will be like. Profit, economic growth, and technological expansions are not good, at the expense of a lower environmental quality of life. There are ethical and aesthetic premises that may equal, if not transcend, economics. NEPA has been instrumental in bringing to public awareness the complexity of the pattern of relations between people and their environment.

We cannot develop projects in the Northwest haphazardly or misuse land without regard to the consequences. We must concern ourselves with the prevention of ecological disasters so that costly clean-up will not be necessary.

NEPA has limited effectiveness in the field of land use planning. Its application is generally made on a project-by-project basis over the short range and does not address projects which may be undertaken many years hence, but rather projects which are about ready to be gotten underway.

Federal activities impact land and the environment in many ways. The influence of Federal actions and ways of doing things have a great deal to do with the condition—good or bad—in which we find our environment today.

Federal decisions, activities and actions, however, come about as a result of public demands, many of which are diversified and often conflicting, resulting sometimes in bad decisions. It is somewhat ironic that Governmental decisions which are designed to serve the public interest, sometimes result in a disservice in terms of environmental damage.

There are two major areas in which Federal activities impact land use and the environment. These are:

1. Environmental impacts resulting from direct management of Federal lands.

2. Indirect impacts resulting from regulatory influences on non-Federal lands and natural resource development, including influences on shorelines, wetland, and aquatic and marine environments.

We have seen considerable Federal impact on the environment in the Northwest in relatively recent years—say the past 20–25 years.

Federal management activities on Federal forest, mining and range lands have had profound effects on rivers and streams in terms of sediment deposition and turbidity. Road building, clear cutting logging and grazing practices have been the dominant factors. The designation of wilderness areas has been a plus factor, however, in this regard.

Federal activities have impacted field crop agriculture in terms of dry land conversion to irrigation, resulting in excessive stream depletions and degraded return flow quality.

Federal public works projects and financial assistance programs have impacted land use for highways and power transmission right-of-ways, causing destruction of habitat, increased soil erosion and stream sedimentation. Shoreline and river bank alterations for ports, industrial sites and navigation have produced environmental degradation in terms of waste discharges, dredging and filling and spoils disposal.

Subtle but significant also are indirect impacts of Federal resource and conservation policies, guidelines, and practices on air, water and land, including effects on public health where pesticides, fertilizers, or other hazardous or toxic materials may be used. Policies and guidelines for controlling their own actions in many of those fields, however, are being adopted by Federal agencies themselves.

Environmental legislation at the Federal level has been strengthened considerably in recent years, not only to combat pollution originating from municipal and industrial sources, but to require close examination by the Federal Government of its own effects on the environment.

Executive Order 11752, signed by the President last December, charges Federal agencies with the responsibility of complying with all environmental quality standards, and to recognize and comply with whichever standard at the local, State or Federal level may be the most stringent.

It is being recognized more and more that land use decisions are basic to the preservation of environmental quality. The Clean Air Act addresses siting problems under Section 110, for example, requiring the establishment of State Implementation Plans for meeting National primary and secondary ambient air quality standards.

The Federal Water Pollution Control Act Amendments similarly contain provisions for review of siting and for land use controls, most notable in Section 208, which provides for area-wide waste treatment management plans.

The Federal establishment and its facilities are as much a part of these plans as any other entity. Federal agencies are not complacent about their environmental responsibilities and I am confident that, given the proper direction, they will welcome being a partner to the task.

The trend, most appropriately nowadays, is towards stronger and stronger State control over environmental matters. Strong land use planning legislation at the State level, therefore, is urged. Last year, the Oregon Legislature passed a statewide land use bill. The concern and action by Oregonians regarding her natural resources and environment have long received national attention.

What is needed now is individual action and deliberate appraisal and a growing national momentum of the unique attitude toward land use by Oregonians under the statewide leadership by Governor Tom McCall. If the Oregon story and philosophy can multiply and spread then it is possible that the swelling tide of uncontrolled growth may be halted or even revised. Generally, most people are tired of having their land raped,

want to protect the environment and are interested in land use. The big problem is when there is interference with private property rights. Some believe that the land belongs to the living—to treat, trade, sell, etc., in any way we want, if we will be here forever. So! it is expedient to do little or nothing now and let others at a later time handle the problems.

The American public, which includes the Oregonians, hold title to a remarkable acreage of Federal land in Oregon. (32,089,000 acres or 52% of total land area.) I don't think we are taking a risk in that the Federal family join together and present an effective land use plan now. It is timely that the Federal agencies in Oregon join hands with State officials to come up with a land use venture.

I believe now is the time for the Federal agencies in the Northwest to really face up to what non-degradation really means and produce a land use plan that is significantly against degradation in the long haul.

In closing, I believe that the urgent demand of our natural resources should not be used to frighten or scare the public into hasty and ill-considered programs. No earth-shaking action is called for in the land use bill introduced by Senator Henry Jackson in January 1973.

We have got to get moving now—this year. There isn't even a rough blueprint for land use in this country, let alone a master plan. It is my expectation, however, that by the end of this session we shall have a Federal land use law. Such legislation is essential to protect the Oregon initiatives and to back them up with certain basic criteria that will apply uniformly to all jurisdictions in the United States.

With passage of the Land Use Bill, the States will be provided with funds to help them pay for land planning costs. They would be encouraged to assert jurisdiction over land use decisions in cases where assets of State-wide importance were to be developed. The vast preponderance of such decisions would, of course, be made at the local level where they belong. The people are a unique resource that has been neglected as our country grew bigger and more complex.

I know full well many communities are frightened of the prospect of State-wide land use planning. It flies in the face of short-run convenience and age-old traditions. But by failing to act today, we foreclose future options and guarantee the imposition of some form of massive Federal controls on land exploitation.

EXPANDING THE USE OF SCHOOL FACILITIES

Mr. MONDALE. Mr. President, maximizing the use of educational facilities should be a matter of first concern to all. Communities invest a large portion of their revenues in school equipment and buildings, facilities which go unused for the most part in the evenings, on weekends, and during the summer months.

Many localities already use their schools in the evenings for adult education classes, or as summer recreation sites during the long vacation period. In most areas though, the use of these educational resources is not being maximized. The local school building is ideally suited as a true community center, a place available for recreation and cultural activities, educational, and health-care services. Families can benefit greatly from the expanded use of their schools as local residents are drawn to the school as a center for a wide range of activities.

Minnesota has taken an important step toward opening the schools in that State to greater use by more people. In 1971, Minnesota passed a community schools act designed to encourage local schools to increase the use of their facilities. A variety of programs and services have been established in the schools since then to become part of a coordinated community education program. Dr. Jerome M. Hughes, Minnesota State Senator and chairman of the Minnesota Senate Education Committee, testifying before the U.S. House of Representatives General Subcommittee on Education thoughtfully described the need for expanded use of school facilities and the role Minnesota has taken in this endeavor. I ask unanimous consent that Dr. Hughes' testimony be printed in the RECORD, along with material detailing the community school programs in Minnesota.

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

TESTIMONY OF DR. JEROME M. HUGHES

Mr. Chairman, members of the committee, during the preparation of this testimony, I realized that when I came before this committee, I would fill a number of character roles—Chairman of the Minnesota Senate Education Committee; Chairman of the State Advisory Council on Community Education; a certified professional educator for over twenty years; and a father of six, concerned with the direction education will take in the coming decades. And, I am encouraged by the fact that the testimony I will present will allow me to fill my responsibilities in all four roles with no conflict of interest. I want to try to explain to you today what it means to a community; to the people in the community; to the institutions in a community; to the problems of a community; to have a community education program.

The United States has, in the past, faced educational crises. In the late 1950's, we faced the enrollment bulge of the post-war baby boom. We reacted with an emphasis on large group education, which not only force fed every student the same educational prescription regardless of need, but also isolated the school from the community.

The pupil load was so high, the educational leaders so overburdened, that the school (often a community center in the early 1900's) became an institution—albeit an institution dedicated to education. Perhaps, and it appears to be so, that was the wrong decision. Today, any high school teacher, or college English professor, will be quick to lament on the reading proficiency of the students our "mass education" has turned out. The community and family have declined in importance in our society, which may be at least partially due to the decline of the school as a community center. We now have a transient or, if you prefer, mobile society with loose community, church and family ties. A situation which I believe has worked to the detriment of "American life" as a whole.

Shortly after we "solved" the baby boom problems with huge class loads (30 to 40 students in each class) we were beset with another crisis—the scare of being behind the Russians in technical education. Suddenly in high school and college new emphasis was placed on specialization, especially in engineering and the sciences. It worked; we caught up—as evidenced by both our medical and space programs and the large number of unemployed scientists and engineers.

It is evident from these two reactions that we have not considered the overall picture when responding to educational problems; and later I will also relate this to our neglect to deal with the overall individual in the educational system. Now we face new problems—declining enrollments and a way of life advancing in complexity so fast that continuing education is a necessity—not a luxury of the upper classes. And *that*, gentlemen, is where community education comes into the picture.

But before I go any further, let me make three assumptions—to which I am sure you will agree—first, today we are more aware than ever that education must be a life-long process if we are to achieve the optimum of human development for each individual and the highest quality of life; second, the schools are the best mechanism we have to meet this challenge but they cannot provide this type of learning opportunity on their own; and, third, we must maximize the use of our educational resources, both human resources and facilities (which represent the highest commitment of our local and state budgets) if we are to provide comprehensive and coordinated education.

Dealing with that first assumption, we now know that a child's education and character begin to develop in the pre-natal period. Further, the basic growth which takes place before age six, when formal education normally begins, is at least as important as the development which occurs after age six. Certainly these findings point out a tremendous need for early childhood education, as well as pre-natal education for the family. Motivation and early education have up to now been the product of early home life. This means that, although the child's early character may very well be affected by his parents' love, the motivational and educational base he must acquire to successfully continue his education may not be provided because his parents lack the knowledge to deal with it. Perhaps the answer here is two-fold. The child must be provided early educational experiences. The family also must be instructed in family life and in child raising, as well as in the basic approaches necessary to deal with early physical, mental and social needs of the child.

This approach to education, both of parents and children, must be directed towards developing a sturdy physical, intellectual, social and psychological foundation for the child to build upon. We now know more about the process of education and learning than ever before. We need to put this knowledge of the professional educator into practice in order to make a difference in people's lives. This means education for living, beginning very early and continuing all through life—comprehensive education which will require the cooperation of many specialists, community groups, agencies and individuals. Here we begin to see why (as in assumption two) the school cannot do it alone. It is obvious that an undernourished child, a socially disadvantaged child, or a psychologically disturbed child is unprepared to compete in the education world of today. In fact, each of these "disadvantages" is related and will show up in later life in success, crime and welfare statistics. Currently, our health care, welfare, criminal justice, and educational systems are trying to deal with these areas separately—a mistake. They are inter-related. That fact calls for coordination of the resources of all our social service systems with the educational system. The activities of these groups, now each dealing with its special aspect of the individual's character, must be coordinated so that their efforts neither duplicate nor contradict each other. This is what community education can do for our people and our communities. Every community has a school and through community education that school can become identified by everyone as a place to come for a variety of services and information, for many kinds of education and assistance. Schools could become centers of human development, of community action and coordination. A community school can and should be a center for education, culture, recreation, social activities, neighborhood and community life, social services, health care and services, family life,

family needs of all types and for all ages, and perhaps even more.

Let me now thrust upon you another assumption, and as an elected official, I realize how wary you may be of assumptions. But I would like to have you assume that the misapplication of any of these services—health care, the social worker, psychological counseling, education—or the improper coordination of them, can lead to a disadvantaged child—a child with fewer opportunities to "reach his potential" and achieve a satisfying life. A child who may very well, statistics indicate, end up as a number in our correctional system, or a statistic on our welfare roles.

Assuming this, the education of the child and his development can be compared to the process of a hospital. The child goes in for a physical, tests are taken, the results determined by a variety of specialists located in the hospital. Each deals with his own particular portion of the child's health, but the results of specific tests are combined and acted upon by the doctor. Now if each specialist were allowed to act independently, there is a distinct possibility that one specialist may undo the other's work. For example, a nutritionist without knowledge gathered from another specialist may prescribe a sugar-based medication for a diabetic. That is why the doctor coordinates the treatment. He may choose to send the child to a specialist if problems are present, but even then the activity of the specialist will be monitored by the "family" doctor.

People in positions of educational leadership must understand the interdependence of the physical, psychological and socio-economic factors and their effects on total human development. This development requires the service of any one or a combination of parents, doctors, dentists, nurses, social workers, teachers, clergy, psychologists, technicians, therapists, non-professional aides or community workers.

The child deserves the same efficient and organized care in all areas of development. There should be a central administrator—a sort of "family doctor" to coordinate his early development and ensure that the child's overall foundation is the product of directed and coordinated assistance—to both the child and his family. This type of coordinated education can produce a person who will learn to live in society. This can be preventive education; lowering our crime and welfare statistics. This can be education of the child in the context of the total society—even as the whole community educates the child; we can educate the whole community. This can be education of the whole person at all ages, addressing the total environment. We can provide a place for people to start working together to solve problems; to assess the needs of the individual children in the community and of the community as a whole. We then will bring the community together with the leadership and coordination provided by the school as a catalyst to meet the needs of the community. Thus a cooperative atmosphere is created.

And where would all this cooperation take place? If we look at resource use (assumption three), we see that our schools represent an extreme case of American extravagance—doors closed in the evenings, on weekends, and through much of the summer. Schools represent an unrecognized source of space for such coordinated programs. The development of the school as a community center could provide the impetus for a better utilization of these resources, and as long as they are available, we are mistaken, even foolish, not to use them. In Minnesota we have taken a strong first step toward the total utilization of these expensive school facilities. Our investment in local elementary and secondary school buildings and other facilities amounts to over $1.397 billion in Minnesota. Legislators have recognized that unless we maximize the use of these facilities throughout the state, there is a great amount of economic waste in this large investment. Therefore, in 1971 Minnesota passed our community schools act—an effort to encourage local school districts to increase and coordinate the use of their facilities. The act provides funds for up to $5,000 of the salary of a community schools director for 67 of our 436 school districts. This legislation had strong bi-partisan support in our legislature and this support has continued as programs have been established in the local schools. An indication of the success of the community education program is the fact that in the 1973 legislative session local school districts were authorized to levy $1 per capita exclusively for community services.

We also expect to be able to expand the state funding for community school directors to 100 school districts. This combination of state and local dollars provides a strong commitment to community school programs in Minnesota. Despite this commitment at the state and local level, we cannot begin to provide the kind of comprehensive programs and use of facilities that I have been describing to you this morning. A level of Federal commitment that would equal what we are doing in Minnesota is becoming necessary. We are prepared in Minnesota to use a Federal contribution to the fullest in a most efficient manner—we have facilities; we have trained professional people; we have established local and state advisory councils of citizens and professional people who are willing, even anixous, to take the time and make the effort to advise and make recommendations to elected officials. As you can see, we are proud of our system; but we know that we are not doing the whole job. Minnesota ranks among the very top of the 50 states in quality of education; yet, we still have approximately 845,000 adults who have not finished high school; we have individuals on welfare who are looking for productive lives, who want to assure that their children have a good home and community environment, and we have school facilities standing unused in the evenings and during the summers. We believe that with an additional investment we can begin to solve some of these problems through good community school programs and we believe that an investment now in community education will save money in the long-run through lower dollar needs for crime, welfare, and social service areas—all we are lacking is dollars. With a larger commitment of money for community education we will be able in Minnesota to continue the story of the school as a community center, maximizing the use of our total range of resources. We have made a major step with local dollars for our buildings. Only with a match of federal funding can we make this effort significant.

And with that use, the student would develop a new tie—his school, has *community center*, would become a central force in his life. It would be where his parents came for prenatal counseling, or nutritional instruction, where he has gone for early childhood education, where families continue to come for counseling and services—a location that has become important to his entire family. It would be the place where there are bridges available between the home, the school, the church, and the society—a place where there can be an extended family of people helping themselves and each other. Here the elderly and the young can come to make a contribution to the school and the community. The lack of sense of community and family which we experience in our mobile society can be diminished because the community in the traditional sense of people working together would be found in the school.

And, when the child enters the traditional education system, K–12, with this earlier background, it would not need be so traditional. By age six, the integration of social, physical, psychological and intellectual development would provide educators an accurate picture of what the child needs to reach his potential. His education and counseling could continue to be patterned toward what he, as an individual, needs if he is to function in society.

But the question can be asked, "Can we provide that individual training?" The answer seems to be "yes." Declining enrollments indicate classes are now smaller, teachers are more plentiful (many, in fact, are unemployed, a tremendous underutilized resource, and could be used gainfully with funding for the community concept) and classrooms are more often empty. Once again, we see that education can be advanced merely by using what we have on hand to widen its scope.

And we must not lose sight of the fact that education going onward is still development—that the physical, social, psychological and intellectual character of the student (even in adolescent years) must continue to be coordinated. We have the human resources to continue that counseling and declining enrollments and empty classrooms indicate the space is also available. *But* we are not using those resources to the fullest.

And, what about jobs? Here again, the community education concept calls for more direction. Development is a combination of many factors designed to fulfill a need. Planning toward fulfillment of each individual's ambition includes among its counseling services, job counseling and special education based on the desires, abilities and needs of the individual and of the community. We can provide that special education.

But, education cannot stop there. In the past, once a person had the basic Latin grammar skills, he could begin to function in society satisfactorily. Today, with our more complex society, the formerly simple act of grocery shopping requires basic knowledge in economics, science, nutrition and psychology. In short, if we are to advance people's ability to achieve potential, we must continue their education so that they may keep pace with the continually changing "American way of life."

Early education must be provided to new families—both for the parents and as assurance that the children will have a "real opportunity" toward reaching their potential. And this continuing education ought to apply to our more senior citizens who, slowed by age, must strive even harder and have even more knowledge to keep pace with the fast moving, changing society we all call "home."

And the educational system again provides the most available resource for such activity. Many college campuses have space available, many high schools and grammar schools have space available—and educators and educators and counselors are available at all levels. By using presently available facilities, we can save taxpayers the added expense of duplicate buildings such as youth centers, meeting places, libraries, cafeterias, gymnasiums. By eliminating duplication, we can provide each community, and therefore the individuals that are part of that community, with the educational, social, psychological and health care services they need. To do less is to cheat at least a portion of the population out of an equal opportunity to achieve "success" by any definition of the term. What we are envisioning, then, is a community education system that not only teaches the Justinian Code and United States history, but also equips our citizens to cope with and take fullest advantage of what is available in the most prosperous nation in the world. We are envisioning total education, cutting across all barriers from age to income, to clinic background, based in a strengthened community and strengthened family. We are envisioning total use of resources, morning through evening, throughout the year. The 1970's ushered in an era of alcoholism, drug abuse, family instability, promiscuity, and a transient pop-

ulation. With the proper application of our available resources through continuing education, widened in scope—we can usher those times out again. As far as the one room school house (formerly the hub of the community) goes, we can truthfully say, "they don't build 'em like they used to." Let us use that to our advantage, rather than our disadvantage.

ADDENDUM TO TESTIMONY OF DR. JEROME M. HUGHES, STATE SENATOR, MINNESOTA

At the very time that we are attempting to meet the needs discussed in the preceding paper, the following describes the situation in our capital city of St. Paul with regard to Federal funds that have been used for basic continuing education. Because of funding cutbacks at the Federal level, the following programs have been eliminated:

(1) Evening classes at Hammond School serving about 130 adults who did not finish grade or high school.

(2) Evening classes at Retreat House, a half-way house for former prison inmates.

(3) Evening classes at East Consolidated School, serving about 150 adults who did not finish grade or high school.

(4) Morning classes at Oneida Community College, serving about 50 adult Mexican-Americans in English as a second language class and about 50 American born adults who needed to complete grade or high school.

(5) A home management class for AFDC mothers, serving about 60 people.

(6) Three WIN continuing education classes for about 100 Welfare recipients needing grade or high school training.

(7) An American Indian basic education program serving close to 100 American Indian adults needing grade school education.

(8) Three basic and GED preparation classes for AFDC mothers enrolled in the Ramsey County Welfare Department Work and Training Project.

COMMUNITY SCHOOL PROGRAMS

121.85 Purpose. The purpose of sections 121.85 to 121.89 is to make maximum use of the public schools of Minnesota by the community and to expand utilization by the school of the human resources of the community, by establishing a community school program.

[*1971 c 900 s 1*]

121.86 Administration. There is hereby created within the department of education the position of state director of community school programs who shall administer sections 121.85 to 121.89 subject to the control of the state board of education. The director shall prepare and submit to the board recommended rules and regulations defining program areas, reimbursement procedures, and any other requirements relevant to the promotion, implementation, and operation of community school programs throughout the state. The board shall adopt such recommended rules and regulations as it deems necessary and appropriate to forward the purposes of sections 121.85 and 121.89.

[*1971 c 900 s 2*]

121.87 State Community School Advisory Council. Subdivision 1. A 25 member state community school advisory council shall be established for the purpose of promoting the furtherance of sections 121.85 to 121.89, and the advancement of educational, recreational and social opportunity through the maximum utilization of public school facilities throughout the state of Minnesota. The council shall be appointed by the governor and shall consist of two lay members from each congressional district and nine members selected at large who shall represent government and professions most closely related to community school activities, functions and school administrative jurisdictions. The term of office of said council members shall be for a period of four years except that for purposes of implementation, the term of office of one member from each congressional district and four members at large, so designated at the time of appointment, shall expire December 31, 1972 and the term of office of all other original members shall expire December 31, 1974; however, every member shall continue in office until his successor has been duly named and qualified.

Subd. 2. Immediately after appointment, the council shall meet to organize, at a time and place designated by the state director of community school programs who shall serve as temporary chairman for said meeting. The council shall elect a chairman and such other officers as it deems necessary except that the state director of community school programs shall serve as the executive secretary of said council.

Subd. 3. Council members shall serve without pay or remuneration, but shall be allowed travel expenses to and from meetings at the rate of ten cents per mile not to exceed four meetings in any given year. Clerical, mailing, printing, and other justifiable expenses incurred by the council shall be paid from funds set aside for the administration of the office of the director of community school programs.

[1971 c 900 s 3]

121.88 District Programs; Citizens Advisory Council. The board of education of each school district of the state is hereby authorized to initiate a community school program in its district and to provide for the general supervision of said program. Each board may, as it considers appropriate, employ community school directors and coordinators to further the purposes of the community school program. The salaries of the directors and coordinators shall be paid by the board. Each board shall provide for a citizens advisory council to consist of members who represent the various service organizations, churches, private schools, local government, and any other groups participating in the community school program in the school district. The council shall function in cooperation with the community school director in an advisory capacity in the interest of promoting the goals and objectives of sections 121.85 to 121.89.

[1971 c 900 s 4]

121.89 Reimbursement by State. Subject to the limitations imposed by section 121.87, subdivision 2, the state board of education shall reimburse each school district operating a community school program in compliance with the rules and regulations established by the state board an amount which is equal to one-half of the salary up to $5,000 of each community school director and coordinator employed by the district. During the fiscal years 1972 and 1973, no more than 67 directors and coordinators positions shall be subject to reimbursement, no more than one-third of which may be allocated to school districts in each one-third of the total number of school districts ranked according to size of enrollment, provided that any such positions remaining unfilled may be reallocated at the discretion of the state board. In order to insure the maximum use of school facilities and insure the efficient application of funds appropriated by Laws 1971, Chapter 900, the department of education is encouraged to give priority to the funding of those community school programs which have been jointly planned and developed under the terms of a cooperative agreement or program between the school district and the park board, recreation department or other similar agency having jurisdiction within the school district.

[1971 c 900 s 5]

MINNESOTA LAWS 1973

CHAPTER 683, SECTION 19

(8) In 1973, and each year thereafter, for a district which has established a community school advisory council pursuant to section 121.88, whether or not the district receives reimbursement from the state pursuant to section 121.89, an amount of money raised by the greater of (A) $1 per capita, or (B) the number of mills not to exceed the number of mills necessary in 1973 to raise $1 per capita in 1973 for community services including summer school, nonvocational adult programs, recreation programs, and programs contemplated by sections 121.85 to 121.89.

The population of the district for purposes of this clause is the population determined as provided in section 275.14 or as certified by the department of education from the most recent federal census.

TIMELY PASSAGE OF BILL TO EXTEND GI BILL BENEFITS

Mr. CRANSTON. Mr. President, 13 days ago, the Senate Committee on Veterans' Affairs, on which I serve, met in executive session to consider a number of important bills. Under the able and dedicated leadership of its chairman, Senator HARTKE, the committee reported several bills of great importance to veterans.

I was especially pleased that we were able to move quickly on one measure, S. 3398, a bill to extend for 2 years—from 8 to 10—the delimiting period for the pursuit of educational programs by veterans, wives, and widows. At that time, I asked Senator HARTKE to do everything possible to move this bill swiftly through the Senate. I want to take this opportunity to thank Senator HARTKE for his efforts in bringing this bill to the Senate floor and securing its passage yesterday. I congratulate my colleagues in the Senate for their prompt action on this important measure.

Mr. President, this bill will make it possible for almost 285,000 of the 1.5 million veterans currently in training to use their GI bill benefits beyond this May 31. Under present law, eligibility for up to 36 months of educational assistance benefits ceases at the end of 8 years from the date of a veteran's last release from active duty after January 31, 1955; with those veterans released from active duty before June 1, 1966, being so eligible until May 31, 1974. The World War II and the Korean conflict GI bills contained similar time limitations. The primary purpose of these bills was to assist veterans in their readjustment from military to civilian life. Accordingly, a time limitation was set which would provide veterans with a reasonable amount of time to take advantage of their educational benefits and complete their education.

I am very well aware, however, that the readjustment problems facing today's returning veterans are different from those of his father and older brother after World War II and the Korean conflict. Aside from the very basic, very serious problems caused by the inflated economy, the scarcity of jobs, and the lack of adequate GI bill benefits until very recently, Vietnam-era veterans have had to face other very complex and very different readjustment problems. The United States is an immeasurably more complicated and confusing society now than it was then, and the very war these veterans fought contributed substantially to this confusion and complexity.

Mr. President, I believe these factors

make an extension of the 8-year readjustment period absolutely essential. Additionally, the ongoing problem, in recent years, of the VA's inability or unwillingness to administer and operate the educational benefits program in an efficient and effective manner has resulted in many veterans being forced to drop out of school.

Mr. President, I hope that our colleagues on the House side will take immediate action on this most important measure so it can become law before the 1966 and pre-1966 eligibility of many veterans expires.

A comprehensive measure concerning veterans educational assistance has already been passed by the House with this same provision to extend the delimiting date by 2 years. The Senate committee's bill, S. 2784, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, which would provide a 23-percent GI bill rate increase and make numerous other readjustment assistance improvements, is under active consideration in committee. Hearings have been completed, and we should be starting executive session within a week. Our goal is to bring the comprehensive bill to the floor by the end of this month. In the meantime, however, the 2-year extension of the delimiting period, passed unanimously by the Senate yesterday, will prevent any unnecessary disruption in the education or training of veterans whose benefits would cease on May 31.

THE QUALITY OF MEDICAL CARE

Mr. KENNEDY. Mr. President, it has become clear to me during the many years of my interest in health care that, in some respects, our health care system is the finest in the world. We have centers of unparalleled excellence in health care. However, evidence is accumulating rapidly that the quality of health care throughout the United States is not uniform. The frequency of hospitalization varies from one part of the country to another, and even within communities. In many instances, general agreement upon the indications for a specific therapeutic procedure, a specific drug, on other forms of medical intervention does not exist.

The professional standards review organization law, enacted in 1972, establishes a mechanism to review the quality of health care services provided to medicare and medicaid recipients. But problems of quality are not limited to beneficiaries of Federal programs, and the law does not address the important issue of the best way to determine both the effectiveness and appropriateness of particular medical services.

I believe those of us responsible for the formulation of public policy also have responsibility to make certain that the appropriate techniques are available to implement that policy.

Public Law 93-222, the Health Maintenance Organization Act of 1973, contains a provision directing the Secretary of Health, Education, and Welfare to contract for a major study of methods for assuring the equality of health care provided to the American people. The requirement for this study resulted from very careful consideration by the Senate and House committees in developing that legislation. In my view, this study has very great potential significance. Assurance of the quality of care is a complex and controversial matter, subject to much political pressure by those forces within the medical profession who seem to be motivated more by their own self-interest than a desire to consider the issues and develop sound approaches to the assessment and assurance of health care quality.

It is imperative, therefore, that this study be conducted by an organization that has access to technical competence, but also has a reputation for objectivity and high respect from the many organizations and individuals in the health system who are truly interested in seeking methods to improve the health of the public. The Institute of Medicine of the National Academy of Sciences is clearly such an organization. The Institute has a distinguished membership drawn from all of the disciples relevant to this issue. It has achieved a strong reputation in the last several years for competence and objectivity in the conduct of complex studies on issues of interest to the Congress. The Institute has recently prepared a policy statement on the subject of quality assurance, soon to be released, which demonstrates its interest in and understanding of this field. I can think of no other organization which is so uniquely suited to the difficult task set forth by the Congress in this study.

I have been disappointed that the Department of HEW has not yet proceeded to implement the contract as directed by the Congress. I strongly urge that the Department turn now to the Institute of Medicine for the conduct of this study that must provide guidance in a vital area for years to come.

Mr. President, I would like to ask unanimous consent that a recent Washington Post article, reporting the concerns of a number of prominent physicians, be printed in the RECORD.

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

STUDIES SHOW DOCTORS FORGET OLD RULE: FIRST, DO NO HARM

(By Stuart Auerbach)

The cardinal rule of medicine, dating back to ancient times is, "First, do no harm."

Yet a series of scientic studies, published in the nation's most respected medical journals, indicates that doctors are harming their patients with too much surgery, irrational prescribing of powerful drugs and failure to keep up with the latest concepts of medicine.

These studies show that as many as a half-million Americans are hospitalized each year because of adverse reactions to medicines prescribed by their doctors and that parts of the country in which there are high rates of surgery—some of it unnecessary also have high death rates.

"It's a pox on the profession to let this kind of foolishness go on," says Dr. John H. Knowles, former director of Boston's Massachusetts General Hospital and current president of the Rockefeller Foundation.

The issue of the quality of American medicine—and what doctors can do to improve it—will be the focus of hearings today and Thursday by the health subcommittee of the Senate Finance Committee.

The subcommittee, headed by Sen. Herman E. Talmadge (D.-Ga.), will be studying Professional Standard Review Organizations (PSROs)—a mechanism, passed as part of last year's Social Security amendments, that compels doctors to monitor the quality and the cost of medical care given Medicaid and Medicare patients.

Doctors insist they are the only ones who can judge the quality of care, and some of them say they cannot do it under the gun of government regulations as represented by PSROs. Yet as Medical World News reported recently, they have not done a good job of policing themselves.

"When I was in Massachusetts," Knowles said at a recent meeting of Medical World News' editorial board, "the medical society was alerted to a guy doing about 80 (spinal) disk operations a year. That was as many as Mass. General with a stable of the finest orthopedic surgeons in the world was doing. And every doctor in the guy's community knew he was doing it. Yet no one had complained."

Dr. Henry E. Simmons, deputy assistant secretary for health in the Department of Health, Education, and Welfare and the man in charge of the PSRO program, says:

"We do know there are significant problems in the way we are delivering medical care today that need to be addressed and can be addressed through the PSRO mechanism.

"If the existing system could have done it, it would have done it."

Several scientific studies support that conclusion.

Dr. Thomas C. Chalmers, for example, told the American College of Physicians last month that many American doctors ignore scientific reports showing that traditional methods of treatment don't work.

Chalmers, former director of the Clinical Center at the National Institute of Health and now dean of Mount Sinai School of Medicine in New York, said doctors continue to prescribe anti-diabetes drugs that were shown to do no good and to cause heart disease.

Similarly, he said, doctors used stilbesterol as a drug to prevent miscarriages for 20 years after studies showed it was useless. They stopped prescribing it in 1971, after the Food and Drug Administration banned its use for that purpose as a result of studies showing it caused cancer in daughters of women who were given it during pregnancy.

Other studies show that doctors prescribed antibiotics far more than they are needed and for ailments such as colds and viral infections, where they do no good.

Evidence of unnecessary surgery, and the lack of knowledge among doctors as to when an operation is justified and when it is not, is even more dramatic.

Summarizing a series of studies, Drs. John P. Bunker and John E. Wennberg of Harvard medical school wrote in the New England Journal of Medicine:

"Operation rates in the United States are double those in England and Wales. Residents in some geographic areas of Kansas are two, three and four times more likely to undergo elective surgery than residents of other areas of the same state. The same phenomenon has recently been demonstrated to occur in Vermont. And now Dr. Eugene Vayda has again demonstrated that there are large differences in the rates at which operations are performed on either side of the Atlantic.

"We still do not know whether it is better to have more operations or fewer," Bunker and Wennberg wrote.

"But Vayda does make the interesting suggestion that for at least one operation, cholecystectomy (gall bladder removal), there may be an adverse correlation between operation rate and one important index of quality—namely death. . . . He cautiously suggests that some excess mortality may be attributed to the increased surgery."

"The most spectacular finding" of Bunker's study, reported in the current New England Journal of Medicine, is that half of all the

doctors' wives will have hysterectomies by the time they are 65.

He said that half of those hysterectomies "would be considered unnecessary by conventional medical criteria."

"It is comforting to know," he concluded, "that doctors use the same criteria for their own care that they use for their patients."

TRANSCENDENTAL MEDITATION AND DRUG ABUSE

Mr. SCHWEIKER. Mr. President, the Subcommittee on Alcoholism and Narcotics of the Committee on Labor and Public Welfare held hearings in Philadelphia on April 23 and 24, 1973, on the drug and alcohol abuse crisis. Mr. Raymond J. Monahan, a counselor at the Philadelphia Psychiatric Center drug treatment program and teacher of transcendental meditation at the Students' International Meditation Society provided the subcommittee with testimony to be included in the record, but, by error, his testimony was not included in the printed record of the hearings. Therefore, I ask unanimous consent that Mr. Monahan's statement on transcendental meditation and drug abuse be printed in the RECORD.

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

TRANSCENDENTAL MEDITATION AND DRUG ABUSE: A REVIEW OF THE LITERATURE AND RECOMMENDATION FOR GOVERNMENT SUPPORT

(By Raymond J. Monahan, A.B.)

Other witnesses have testified to the epidemic proportions of the drug abuse problem in the Philadelphia area and in the nation as a whole. Causes of the problem have been put forth on psychological, sociological, economic, and pharmacological levels and elaborate theories have been developed to explain the magnitude of the current crisis situation. My purpose here today is not to add another hypothesis to the literature of probable and possible causes of wide spread drug addiction in modern American society. Let's not concern ourselves so much with investigating the problems, let's concern ourselves with implementing the solutions. Specifically, the Senate Subcommittee on Alcoholism and Narcotics should take a serious look at a recent development in the field of treating addictive diseases—Transcendental Meditation.

In the late 60's, researchers in the United States noticed an interesting phenomenon for the first time—that most drug abusers who learned and practiced the technique of Transcendental Meditation (TM) spontaneously discontinued the use of illegal chemicals. (24, 25) One study by Benson of Harvard Medical School on 1862 meditators who had formerly been involved in drug abuse to some degree showed that, following the start of TM, there was a marked decrease in the number of abusers for all drug categories from cigarettes and coffee to barbiturates and heroin. Of those who had been engaged in drug selling activities, during only the first three months of meditation, 71.9% had stopped selling entirely and 12.5% had decreased the amount of selling.(5) As the practice continued, the subjects progressively decreased all aspects of their illegal drug behavior until after 21 months, 95% had completely stopped both use and sales. A high percentage of these subjects felt that TM was a very important influence on their behavioral modification. A further study by Otis at the Stanford Research Institute on 570 subjects verified the Benson findings and also noted that meditators decreased their usage of prescription drugs received legally from a physician.(17) The idea that drug users are merely providing themselves with chemotherapy on the street and the fact that the prescription chemicals in the Otis research were primarily for pain, sleep, or nervousness implies that TM somehow deals directly with the very cause of drug taking behavior whether legal or illegal. These and subsequent findings prompted the Illinois House of Representatives to pass a resolution last May which says, "Transcendental Meditation offers an alternative to drug abuse . . . and shows promise of being the most effective drug prevention program being presented in the world today" and that the state's ". . . mental health department incorporate the course in TM in the drug abuse program."(19)

The term "Transcendental Meditation," when first heard, sometimes conjures up an occult impression—an obscure religion, a mystical philosophy, strange physical exercises, or a life of negation and denial—the picture of an ascetic monk living in seclusion on a mountain top or in a jungle forest in foreign lands. TM is none of these things. TM is a simple mental technique. It is not a lifestyle. The process of TM is purely mechanical and requires no predetermined religious or philosophical belief. TM bypasses traditional ethnic and religious barriers, as well as those of age, sex, attitude, intelligence, and physical health. (7) Anyone who is capable of having a thought can meditate.

What, then, is TM? "Meditation" means thinking and "transcend" means to go beyond. Transcendental Meditation is this by definition, a way to go beyond thinking. TM is an effortless mental technique derived from the Vedic Tradition of India and made practical for life in the modern western world. Representative of this ancient tradition and chief exponent of TM in the world today, Maharishi Mahesh Yogi, defines the technique as a method of "turning the attention inwards toward the subtler levels of a thought until the mind transcends the subtlest state of thought and arrives at the source of thought." (8) The practitioner simply sits in a comfortable position with the eyes closed for two 15 to 20 minute periods in a daily routine—once in the morning and once again in the early evening. By a systematic method which he has been taught, he perceives a suitable thought or "sound" and, without attempting to concentrate on it, he allows his mind to experience it freely and his awareness goes to a subtle and more refined and creative level of mental activity in an easy and natural manner. (21)

The Students' International Meditation Society (SIMS) and Maharishi International University (MIU), both non-profit, tax-exempt educational organizations, have been formed for the sole purpose of making this technique available throughout the nation and the world. TM and its theoretical framework, the Science of Creative Intelligence (SCI) are taught exclusively by qualified teachers who have attended intense and extensive residential training courses with Maharishi. The practice has so far spread almost exclusively by word-of-month although the Science of Creative Intelligence is offered for credit at a number of colleges, including Yale and Stanford, and in the Eastchester, New York, public school system with good results. (7) TM has also been given the Army's low-key, informal blessing in voluntary programs for addicts.

The most comprehensive scientific data accumulated at this time has been on the physiology of meditation, indicating a profound state of deep rest during the practice of TM—much deeper than in a night of deep sleep. There is a reduction of oxygen consumption and carbon dioxide elimination; a reduction of the rate and volume of respiration; there is a slight increase in the acidity of the blood and a marked decrease in blood lactate level; a slowing of the heart rate and cardiac output although there is an increase of bloodflow in the forearm; a considerable increase in galvanic skin resistance which is a measure of anxiety (sometimes as much as 400%); and an electroencephalographic pattern of intensification of slow alpha-wave and occasional theta-wave activity. (21) Meditation generates an integrated response, or reflex, that is mediated by the central nervous system and appears to be the opposite of the familiar "fight or flight" response. The physiologic changes during TM differ from those during sleep, dreaming, hypnosis, autosuggestion, and the ordinary waking state of consciousness. These changes characterize a wakeful hypometabolic state and correspond the meditator's subjective experience of restful alertness. (22) Significant is the fact that the meditator is trying for none of these responses, he simply practices the effortless mental technique and all these results follow spontaneously.

In the introductory lecture on the vision of possibilities through the regular practice of TM, teachers of transcendental meditation explain the basic operating principle in these terms: the qualitatively unique state of deep rest achieved during TM releases deep rooted stresses. That the body tends to heal and regenerate itself is a truism and this specific level of rest in TM may well be responsible for the good health reported by meditators. (14) A life of stress which results in a general feeling of tenseness at all times inhibits healthy functioning of the body and the mind. A large number of psychosomatic diseases have been associated with the chronic activity of the sympathetic nervous system. (18) This activity is associated with tension and anxiety. TM has been found to stabilize autonomic functions and reduce resting levels of the sympathetic nervous system activity. (14) Thus we see that TM may be useful in eliminating the cause of most psychosomatic diseases—anxiety. The change in function of the nervous system in meditators is in a direction associated with higher evolution and greater maturity according to some experts in the field. (14)

On the basis of this effortless activity of gaining deep rest on a daily basis and in a systematic manner, some interesting psychological and sociological developments are seen to occur. The subjective testimonials of meditators would seem to indicate that TM is a panacea for all the cares and woes of life in the modern technological society. In fact, psychological testing has shown that experienced meditators are more internally controlled and less anxious than similar groups of non-meditators. (6) Studies of individuals before and again after about ten weeks of meditating regularly show significant differences in the direction of self-actualization. (12, 13) Research in the Netherlands gives evidence that the practice of TM can increase intelligence and lower neuroticism as measured by psychological testing. (20) Maharishi himself states that "Crime, delinquency and the different patterns of anti-social behavior express the tensions which arise from a deep discontent of the mind," and that, ". . . the practice of transcendental meditation has been found to relieve all kinds of tensions and to change a hard, cruel nature to one of tolerance and compassion." (9) While TM may not be a panacea, there is certainly enough scientific documentation accumulated to warrant serious consideration of the technique and its application to a variety of individual and social ills of the nation today.

Unlike Zen Buddhism and Hatha Yoga, which can take up to 15 years to produce similar physiologic readings which correspond to a state of "enlightenment", TM can be learned by anyone in a week. (23) It takes only four or five sessions of about two hours each to learn TM (and for the teacher to feel certain that the student has learned correct meditation) and practitioners spend only 15 to 20 minutes in the meditative

state twice a day, not altering their life in any other way. (3) TM must be learned in approved classes, there is no way to learn in a do-it-yourself home study course. And although there is a continuing program of advanced lectures and other services offered by SIMS, it is not necessary to ever attend a formal meeting after those first four sessions. Emphasis is not on the meditative state itself but on life in the world. Practitioners find that instead of dropping out, they feel better prepared to handle the rat race. (23) Teachers of TM say: we don't meditate for the sake of meditation but because of the dynamic effects meditation has in enhancing the quality of our day to day life.

Concerning the application of TM to mental health and drug abuse treatment, it would seem that the general reduction in anxiety and increased alertness would complement any psychotherapeutic process. (11) Although the general approach in TM is nonspecific, it has been found to succeed as the tool for systematic desensitization where a more established relaxation technique had failed. (1) The high percentages of drug free behavior in the earliest reports does deserve some qualification. First of all, teachers of TM, as a routine policy, ask new students to voluntarily refrain from the use of recreational chemicals for a period of 15 days before personal instruction begins. This procedure may screen out a large number of people who would rather continue using drugs. (3) In fact, however, there is no way of enforcing this policy, such as urinalysis, and some people do start TM without meeting this requirement. Secondly, the Benson study mentioned above, measured only those who continued regular meditation and were motivated enough to attend a special training course offered by SIMS. There is no way to tell how many drug abusers began meditating and eventually stopped, choosing to live on in the drug subculture instead. Thirdly, it may be the case that those who are interested in TM are prone to spontaneous recovery. (2) Now that the literature is so well known and the word is out, we can suppose that any drug abuser who attends classes in TM must have some prior motivation to discontinue illegal use of drugs. It would not be fair, though, to imply that other drug rehabilitation statistics are not distorted by the same type of bias. Anyone who is involved in a drug program has some motivation to stop, whether it is a positive desire to improve some aspect of his individual life or some negative motivation such as avoiding a prison sentence. Quite often, when a client first steps through the front door of a community outreach center, he hasn't the faintest intention of giving up drugs forever. He knows that something is not right with his life and would like help with that specific problem while being able to continue drugs. It is the skill of the clinician to take this vague feeling of discomfort and to develop the client's motivation until there is a desire to alter the style of life.

Programs in TM and SCI have applications in two areas of a comprehensive national attack on the epidemic of drug abuse—prevention and treatment. By promoting physical and psychological health in the adolescent through the regular practice of TM, we will develop a population less susceptible to the disease of addiction. My own concern and area of expertise is clinical. I see both immediate and long term advantages to the use of TM as a therapeutic modality. The meditative state itself is essentially anxiety free. From the viewpoint of providing a nonchemical alternative means of immediate gratification TM has impressive possibilities. A large part of drug seeking behavior has its roots in feelings of discomfort-tension, nervousness and anxiety. The addict often converts this emotional experience into something he is more familiar with—withdrawal symptoms—and initiates drug seeking behavior as a way to deal with these unpleasant feelings. TM can diminish if not remove these feelings entirely. And after meditation, practitioners report a feeling of relaxation and well-being which lasts for some time. (10) A study of 12 narcotics addicts at La Tuna Federal Penitentary in Texas showed very definitely that the more a subject meditates, up to the prescribed number of twice daily, the more he simultaneously gains in physiological stability, and behavioral flexibility; and that these results are accompanied by an increased social out-goingness. (15) Physiological stability was measured by fewer spontaneous galvanic skin responses which indicates less anxiety. The increase in behavioral flexibility is important because addiction is a compulsive behavior and in order to recover, an addict must find some new behavior patterns. The increase in social outgoingness is a distinct contrast to the clinical impression of most addicts—withdrawn alienated, loners. These data indicate that the meditating drug user is getting well. It is clear from this data that the effects of meditation are cumulative. Statistics from earlier research showed that of those who continued to use drugs after learning TM 55% had been irregular and 25% had stopped meditating for a week or more. (5) Therapeutically then, there are now two apparent benefits from TM: the immediate lessening of anxiety and other such feelings which can lead to drug use; and the cumulative effects of regular meditation over a period of time which lead to a healthier mental state . . . more stabile, more relaxed and confident in the midst of the normal trials of daily activity.

Also, the idea of becoming a meditator is an acceptable alternative role for the young drug abused. Rather than becoming "straight" the young "junkie" or "freak" finds a less traumatic identity transformation in becoming a "meditator." TM is usually presented as a program for personal development and the decline in drug use is seen as only a side effect. Therefore, there is no threat to the value system of the committed and dedicated drug user. (5) In Sweden, a controlled research project found that most of the subjects who were trained in TM became completely drug free within a few months. The experimenters hypothesized three reasons for their success:

(a) the subjects who began TM felt that life became more joyful and fulfilling,

(b) TM opened up up new social contacts without drugs,

(c) TM offered an opportunity to break with previous role expectations and find a new role—mediator. (2)

Interestingly enough, although this study was originally scheduled to run for six months, after only three months the control group insisted on learning TM themselves, were trained and began to show the same results as the experimental group. The conclusion of the report was that therapy consisting of TM and supported by regular social group contact with other young meditators could be expected to have a "good effect" on chronic drug abusers. It is admittedly a long way from Sweden to the inner-city American ghetto, but emotions such as anxiety are common to both locales. It seems that TM will become an essential therapeutic tool for at least a certain part of the addicted population.

In response to the pressing needs of society, The American Foundation for the Science of Creative Intelligence (AFSCI) has developed a twelve week clinical service program to teach the technique of Transcendental Meditation to persons who have recently been involved in alcohol or drug abuse and to facilitate their stability in independent, regular, and correct meditation. An outline of this program follows:

A. Personal Instruction in TM (7-step program)

1. *Introductory Lecture*—Informal group, potential benefits of TM in the areas of mental, physicial health, social behavior and more harmonious group action.

2. *Preparatory Lecture*—Informal group, mechanics of TM, how it is taught, the Tradition from which it is derived, the agreement of mutual consent and commitment required between student and teacher to follow the syllabus of the clinical program.

3. *Personal Interview*—one to one session, standard interview data gathering form, information which will aid the teacher in teaching, personal questions are answered, teacher and student get acquainted.

4. *Personal Instruction*—one to one session, teacher imparts the technique of TM, teaching at a rate of learning and experience according to the student's needs on an individual basis.

5, 6, 7. *Post Instruction Groups*—Informal meetings for 2 hours a night on the three nights immediately following the day of personal instruction. Additional information is given out on the basis of the preceding days experiences. Group procedure of verification and validation of correct meditation.

B. Clinical Follow-up Program

1. *Checking* (group or individual)—a systematic, standardized procedure which establishes correct practice of meditation.

2. *Advanced Lectures*—informal group, discussion on various aspects of the philosophy, principles and the practice of TM. audio & video tapes, books & reprints

3. *Residence Courses*—two days of closely supervised, fully structured program of meditating more than twice a day and gaining deeper experience and understanding of the further applications of TM. Once every 4 weeks.

C. Clinical Service Support System (CSSS) the basic operating principle of TM is the release of stress from the nervous system through deep rest. This is experienced either mentally or physically during mediation. CSSS facilitates this stress release in the most rapid and comfortable manner.

The system provides centralized, maximum information about the progress and condition of each participant. This information is obtained though clinical observation and is used to plan and regulate treatment according to individual needs. The essential components of the system are:

1. *checking*—(see B.1., above)

2. *personal contact*—advanced lectures and one to one sessions as needed.

3. *physiotherapy*—experience has shown that in some situations the release of stress is ameliorated by physical techniques such as exercise, massage, hydrotherapy, sauna bath, etc.

The advanced lecture series, group meditation and checking procedures over a twelve week period will serve to strengthen the patient's role as a meditator, satisfying the identity transformation goal of therapy. Meanwhile, the schedule of regular meditation and residence courses during this period should diminish the intensity of pathologic symptoms. Finally, the immediate feelings of relaxation and peacefulness which occur during meditation and linger on to some extent afterwards should make it easier to cope with day to day problems and persevere with the overall therapeutic program.

A study done on counselors at a Texas drug treatment program showed that after 10 weeks of meditation, there were significant decreases in manifest anxiety, hypochondriasis, and schizophrenia as measured by the Minnesota Multiphasic Personality Inventory, a standard clinical test. (16) It would seem reasonable that the more stress free a person is, the better he could perform the duties of his position in life. Will the meditating counselor be more effective in psychotherapy? Maybe so! At any rate, an understanding of the patient's experiences in meditation would be essential to continue in a progressive counselor/patient relationship. For this reason, AFSCI has also developed an

eight week staff training program to begin before the clinical service program is inaugurated. The overall TM/SCI approach is comprehensive and should supplement any existing program's total treatment approach.

So far, only a handful of agencies around the country are employing TM and SCI in their treatment approach. There should be more! I propose that the Subcommittee on Alcoholism and Narcotics recommend the establishment of an AFSCI clinical service program in the Philadelphia area to accept appropriate referrals from other agencies. This program should be used in conjunction with and not as a replacement for existing programs and more traditional therapeutic approaches. This TM and SCI program should serve as a pilot project to determine if, when and how similar programs should be established across the nation to deal with the current epidemic of drug abuse and addiction which is destroying so many otherwise productive and responsible people—the country's greatest natural resource.

SUMMARY

There is a large body of scientific data which suggests that Transcendental Meditation is an alternative to drug abuse. TM is an effortless mental technique which can be learned by anyone regardless of race, creed, sex, or national origin. Meditators stop using drugs. TM appears to operate by providing deep rest which eliminates stress from the nervous system. Regular meditation decreases anxiety and improves social behavior. The role of "meditator" is acceptable to most drug abusers. AFSCI has developed a program to serve the addicted population. Recommend government support of TM/SCI as an additional weapon in the therapeutic arsenal to be used in the national struggle against drug abuse.

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AN ANSWER TO RISING INFLATION

Mr. HARTKE. Mr. President, I ask unanimous consent that the text of a proposal for solving the serious problems cause by rising inflation be printed in the RECORD following my remarks. The proposal was presented by Tilford E. Dudley, director of the Washington office of the Center for Social Action and a member and former chairman of the D.C. Democratic Central Committee. I also ask unanimous consent that a letter to the Washington Post, printed on May 8, 1974, on the same subject be printed following my remarks.

Over the years, I have come to know Tilford Dudley quite well. We have worked together and I have developed a high degree of respect for him. I commend his proposal to my colleagues for their consideration.

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

STOPPING INFLATION

(By Tilford E. Dudley)

The nation faces soaring inflation which will ruin the economy, steal from those dependent on savings, and disastrously impoverish those already poor. This is not necessary. Unfortunately, the Nixon Administration is so committed to business interests that have openly or impliedly bribed it with payoffs and contributions that it can offer no program. Its policy is to let the corporations charge what they will—whatever they can extract from the public—as their price for producing products the people need.

We believe the Government should act. We believe decisive steps can be taken within the free enterprise system by the Government itself showing a little enterprise. With both stimulation, regulation and showing the way, the Government can bring prices down. We suggest the following as examples:

1. Congress should not only close the well-known tax loopholes, including especially depletion allowances for natural resources, but should change the corporate tax from the present fixed rates around 50% to sliding rates that increase as the profits increase. It should be clear that if corporations raise their prices to raise profits, those excess profits will be taken by taxation.

2. Congress should roll back postage rates for 1st class mail to 5 cents per ounce and pay the resulting cost from general funds. In this way the communication so necessary for business and for a civilized way of life is stimulated. Low income concerns and individuals are aided. The cost comes from those able to pay instead of a blind across-the-board assessment.

3. Congress should augment financial assistance available for construction and operation of mass transit facilities. Included in such loans or grants should be provisions requiring or at least encouraging abolition of the fare box. Metropolitan Washington, D.C. is an ideal place to start free rides on bus and subway systems.

4. Congress should establish a Federal Oil and Gas Corporation (as provided in Title III of the pending Consumer Energy Act of 1974) which would produce and market natural gas and oil from federally owned lands. Profits from publicly owned oil reserves should go to the public instead of to rapacious private corporations. Such a government corporation would also serve as a measure for legitimate costs, could encourage the independent oil companies, and be an example for private business, as TVA and Bonneville Power have been.

5. Congress should convert America's private oil companies into government regulated public utilities, similar to private but regulated electric, gas, water, telephone and transit companies.

6. Congress should create a national bank or finance corporation which would extend credit at reasonable interest rates, such as 6%, to businesses and individuals wanting loans on normal security for normal purposes. Such loans would be in addition to special loans now given for special purposes such as small and minority businesses. Since this new credit corporation would be in competition with the private banking industry, borrowers would be required to apply first to private banks. Such a supplement to private banking has precedents in similar crises, such as the Federal Farm Loan Banks, the Reconstruction Finance Corporation and the Home Owners Loan Corporation.

BRINGING PRICES DOWN

(By Tilford E. Dudley)

It is not necessary for the nation to be ravaged and the economy ruined by the soaring inflation now upon us. The government can take various steps to bring prices down. For example, Congress should roll back postage rates to 5¢ per ounce for first class mail and pay the deficit out of general funds. Low income businesses and individuals would thus have lower costs with the burden shifted to those better able to pay.

Grants and loans to mass transit facilities should be increased and should encourage or perhaps require free rides by the public. Abolition of the fare box will encourage travel and business. Washington, D.C. is an ideal place to start.

Congress should establish the Federal Oil and Gas Corporation to produce and market natural gas and oil from federally owned lands. Profits from publicly owned oil reserves would thus go to the public and a yardstick established for determining reasonable costs of private production, as in the case of TVA. Private oil companies should be converted into regulated public utilities.

Congress should create a national bank or finance corporation which would extend credit at reasonable rates, such as 6%, to businesses and individuals wanting loans for normal business purposes, as with the old R.F.C. High interest rates increase costs. Money supply can be better controlled directly. Corporation tax rates should escalate as profits increase. It should be clear that

if prices are raised to increase profits, those excess profits will be taken by taxation.

WYOMING BEAUTY AMERICA'S JUNIOR MISS

Mr. McGEE. Mr. President, last week in Mobile, Ala., an 18-year-old Cheyenne, Wyo., beauty, Miss Karen Morris, captured the 17th annual U.S. Junior Miss title.

Miss Morris, the daughter of Mr. and Mrs. John Morris of the Polo Ranch northwest of Cheyenne not only won the national title and a $10,000 scholarship to the college of her choice, but she also won three preliminary contests, including the poise and appearance and youth fitness categories.

Loraine and I viewed the finals on television last Monday night, and one can imagine how exicited and proud we were of Wyoming's representative to the Junior Miss competition. However, Karen Morris' selection to reign as the 1974 U.S. Junior Miss hardly came as a surprise to us, for she is a very poised, talented and beautiful young woman.

Karen Morris is an outstanding young woman; and I know I speak for the entire State when I pay tribute to the honor and recognition she has brought not only to herself, but Wyoming as well.

Karen, who is an excellent student, plans to attend the University of Wyoming this fall where she will major in speech pathology. Her sincerity and concern for others was so aptly demonstrated when, during the competition, she responded to the question of why she wanted to enter the field of speech pathology by replying:

> Through speech pathology, I can help people who have a problem communicating with other people. I think that would be very beautiful.

Her unique abilities were once again demonstrated during the talent portion of the pageant where she played the guitar and sang "My Way."

Karen Morris is a special type of individual. This uniqueness is best captured in an article written by Kathryn Gress of the Wyoming State-Tribune. Kathryn interviewed Karen prior to her leaving for Mobile and the national competition.

I ask unanimous consent that the article be printed in the RECORD.

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

INTERVIEWER PRAISES AMERICA'S JUNIOR MISS

(By Kathryn Gress)

Only a handful of people were at the municipal airport two weeks ago when Wyoming's Junior Miss, Karen Morris, boarded a plane for Denver to join other hopefuls for the trek to Mobile, Ala., where each would vie for the crown Karen won Monday night.

There to see her off were her parents, John and Norma Morris and George Hain, the Junior Miss Pageant chairman from Laramie.

It isn't easy to get pictures of persons leaving the airport since the safety restrictions have been imposed and that Thursday morning was no exception.

With only a few minutes to take-off time, decisions were made quickly. We told Karen to meet us outside the fence on the field so a picture of her could be taken with the plane in the background.

When we dashed around the terminal building and onto the deck, our only vantage point, Karen was waiting there in the pose we wanted. Seconds later the picture of her leaving for Mobile was taken and Karen was climbing the steps to the plane that would take her to glory only a few girls know in a lifetime.

Karen showed this same consideration for others when we did an official interview at her ranch home northwest of the city. When we arrived, Karen was ready for whatever we had in mind as far as pictures and questions were concerned. She took only seconds to change from one outfit to another. Her horse was saddled and ready in the corral.

She made one request. She wanted a picture of herself with some of the ranch cattle in the background.

"I think it's so beautiful over there," Karen said, pointing to the cattle grazing near haystacks in a meadow.

A true rancher's daughter, Karen has ridden horses since she was able to walk and has spent hours enjoying the simple, majestic beauty of the Wyoming prairies. She has taken part in branding operations ever since she can remember, and helping to round up cattle is something that has been expected of her.

Although Karen has spent her 18 years on a ranch, her life has not been limited to riding horses, feeding cattle and ranching chores.

Karen and her older sister, Betsy, have sung together and accompanied themselves on guitars since they were small.

Believing that the girls were gifted, as many parents do, John and Norma Morris gave their daughters every opportunity to develop their abilities. Karen has followed her older sister through many competitions, giving her encouragement and attempting to see what it takes to win.

Karen is careful not to slight her younger sister, Marsie, who is only 9.

"She's really talented," Karen said. "Mother has taken her to her piano lessons right now."

In an age when many young people seem to lack consideration for the views of their parents and other adults, Karen comes upon the national scene as a child who outwardly shows respect for them.

Whatever suggestions Norma and John made to Karen while the pictures were being taken, Karen accepted. When we asked her to repeat her run on her horse time after time, so just the right angle for a photo could be obtained, Karen obliged.

Karen's question in the pageant competition concerned communication between people. It would seem that this daughter of a Wyoming cattleman touched hearts in Mobile with her own "brand" of communication—beauty, humility and consideration for others.

THE CHAMPION BOSTON CELTICS

Mr. BROOKE. Mr. President, a truly memorable sporting series took place during the past fortnight. It reached its climax in Milwaukee this past Sunday night when the Boston Celtics regained the National Basketball Association Championship that has been their's so often in the past.

A tribute to this event appeared on the sports pages of the May 14 Boston Globe in an article by columnist Mike Barnicle. It is reminiscent of the moving pieces of sports prose we associate with writers such as Grantland Rice, Shirley Povich, or Stanley Woodward.

I ask unanimous consent, Mr. President, to have Mike Barnicle's article printed in the RECORD.

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

AN OCCASION FOR THE POET

(By Mike Barnicle)

We needed a poet this weekend, an old one whose heart and wisdom were full of ideas of romance and fate; one who was capable of carving out romantic tales of flight through dark times to places where heroes lived. A poet who could tell us about the Havliceks and Cowens and Silases of this team we call the Celtics.

But more than that, since men are mere mortals and basketball is only a game, the poet would have felt compelled to deal with that mystical element that arises when athletes become heroes and a game becomes a symbol. He would have to deal with the town that gave them their name and the moment that gave them their status as champions.

He would talk about Friday night and the double overtime loss when a national television audience found out that Abdul Jabbar was one of the greatest athletes to ever grace any court or field. And while in the process of finding out about Jabbar, these same people would also have seen the single greatest competitor in professional sport—John Havlicek.

The poet would have followed this small band of men through their championship day on Sunday—when heart was allowed to triumph because it was an element that had been blended with skill and thirst for victory. But his tale would have only begun.

Any team—in any sport—is a product of the town that invents them. And the Celtics are not so much a part of basketball as they are of Boston.

An estimated 5000 people turned out in the rain on Sunday evening to welcome home a plane load of spirit. There were no ugly incidents. No violence. Just the pure pleasure of people enjoying the good times of winning. It was Woodstock revisited.

The people were there because they knew how far their team had come: from defeat and humiliation in five long years. They had come all the way back, losers turned winners, all the way to that final few seconds when a new generation of Celtics could look at a Havlicek and a Nelson and, together, smile like winners.

Now, finally, after all of the years of rebuilding and waiting, the city is going to turn out in celebration for a team that carried the town's banner for too many years without any official recognition.

Caught up in the hockey craze, the Greater Boston area mushroomed in joy over men who skated while ignoring other men who played a game of much greater skill and grace. A few years ago, City Hall Plaza was overflowing with hero worshippers as the Bruins took their bows. But yesterday, the Bruins were in Philadelphia playing like dogs . . . and the Celtics were winners.

The poet would know how to handle that. He would know how to couple his verses and describe that item they call spirit. He could set the word "class" down on paper so that people might have some small understanding about what it means.

But, in the absence of a Yeats, all that really has to be done to understand both terms would be to take a walk down to City Hall Plaza at noon today to see Boston and its Celtics celebrate a championship.

The meeting of a town and its team will be a communion of grace. And the honors that will come down will be well deserved and long overdue.

It's been a long time since the days of Cousy and Sharman and Russell. A long time in between world's championships. But Boston is a city of history; a town that has survived through the years and now seems to be undergoing a vital rebirth of spirit. And so too . . . the Celtics.

RUMANIAN NATIONAL HOLIDAY

Mr. PROXMIRE. Mr. President, I would like to note the Rumanian national holiday, observing the achievement of that nation's independence and the founding of the kingdom of Rumania. The 10th of May marked three great events in Rumanian history.

On May 10, 1866, the Rumanian people won the right of electing as their ruler a member of one of the nonneighboring reigning families. Charles, Prince of Hohenzollern-Sigmaringen, was proclaimed Prince of Rumania in Bucharest. Founding the Rumanian dynasty was the first success of the Rumanian people in their long struggle for freedom.

The new Prince of Rumania ended the strifes and rivalries among the native candidates to the throne. That peace, however, was broken by the turmoil of the Russo-Turkish War. As an ally of Russia, the young Rumanian army fought bravely against the Turkish forces. May 10, 1877, was the day the principality of Rumania proclaimed her independence from the Ottoman Empire. The Congress of Berlin of 1878 confirmed Rumanian independence and conferred Europe's official recognition of the new nation.

Exactly 4 years after independence, Rumanians raised their country to the rank of a kingdom. On May 10, 1881, Charles I was crowned King of Rumania opening a prosperous era which lasted over six decades.

It is appropriate for all Americans to salute the Rumanian people. We must never forget the people still subject to foreign domination with little or no freedom. Their national holiday should remind us of the fights for liberty and independence which will continue until all peoples win their freedom. Until that day, we who are fortunate enough to live in the free world should help commemorate Rumania's national holiday in the hope that their freedom shall soon be restored.

UNITED STATES SOUTHERN AFRICAN POLICY

Mr. KENNEDY. Mr. President, the recent coup in Portugal and the resulting implications in Southern Africa are perceptively dealt with in recent articles in the Washington Post by Tad Szulc, "A New Beginning for Portugal," May 2, 1974, and David Ottoway, "South Africa Seeks U.S. Support Through "Back Door," May 12, 1974.

These articles in their implications for U.S. policy toward the government of South Africa, raise once again the disturbing question of whether the United States is for freedom or simply against communism. The visit of Adm. Hugo Biermann, the commander in chief of the South African Defense Forces, last week and the planned visit of South Africa's Foreign Minister and Finance Minister next week indicate the possibility of a concerted South African campaign to entice the United States to assist in pulling South Africa's apartheid chestnuts out of the fire should the Portuguese territories in Southern Africa gain their independence in the future. Although I realize that U.S. policy toward South Africa has been a matter of secondary priority for Secretary Kissinger and this administration in the past months, the time has come to close the "back door" and come forward to the American people with a comprehensive statement of U.S. policy toward the Southern Africa area in the light of recent events, and I urge Secretary Kissinger to do so as soon as possible.

Mr. President, in order that my colleagues may better appreciate these questions raised, I ask unanimous consent to have printed in the RECORD the articles of Mr. Szulc and Mr. Ottoway.

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

'NEW BEGINNING' FOR PORTUGAL

Portugal's military coup d'etat of April 25 has produced some of the most encouraging news in quite a few years for the cause of freedom in the world.

At a time when new repressive dictatorships are sprouting elsewhere and the old ones are becoming more frozen, the Portuguese Junta succeeded in overthrowing the world's most durable dictatorship this side of the Soviet Union and, hopefully, setting the peninsular country on the road to democracy for the first time in 46 years.

And while neo-colonialist and "white rule" tendencies were reasserting themselves in much of Africa, the Lisbon Junta's action carried the promise that the long and bloody colonial war in Angola, Mozambique and Portuguese Guinea may finally find a peaceful and rational solution.

Yet, in ejecting the Caetano dictatorship—essentially a combination of extreme rightist politics supported by a cruelly efficient secret police and powerful economic groups drawing their weight from the wealth of the African colonies—General Antonio de Spinola, the Junta chief, has set in motion new and contradictory forces that still leave much of the future in doubt.

If there is a valid precedent for the Spinola coup, it is General de Gaulle's return to power in 1958, signaling the end of the Algerian war and the start of negotiations with the rebels that led to Algeria's independence. At first sight, there is a certain parallel between the conditions that moved De Gaulle and, 16 years later, Spinola to take national matters in their own hands. Both metropolitan nations were exhausted and embittered by lengthy colonial wars, and internal unrest was growing. Both De Gaulle and Spinola concluded that military victory was impossible and that new answers were required.

But this is where the similarities end.

De Gaulle's basic problem was to win at home (and among Algeria's French *colons*) the acceptance of the inevitability of a peace settlement largely on the Algerians' terms. To be sure, he had to endure for awhile the menace of military counter-coups, and the terrorism of the OAS (Secret Army Organization). But he was spared the trauma of transforming a nation from a primitive dictatorship into a reasonably functioning democracy when hatreds and frustrations bottled up for nearly a half-century were surging to the fore. This, of course, is General Spinola's primary task.

Furthermore, De Gaulle's decision to make peace in Algeria was chiefly a French affair. Spinola, on the other hand, has created a situation in which other interests than those of Portugal and the African nationalist guerrillas are involved. What happened in Lisbon on April 25, affects deeply the immediate national security of South Africa and Rhodesia, as their governments perceive it, as well as the whole balance of power in sub-Sahara Africa.

The upheaval in Lisbon is also of concern to the United States and some of its allies in the North Atlantic Treaty Organization. One fear is that the ultimate establishment of unfriendly black regimes in Mozambique and Angola, a distinct possibility in time, may threaten South Africa's stability and endanger the sea lanes around the Cape and to the Indian Ocean. The Soviet Union and China who have long supported the rebels, notably Frelimo in Mozambique, have a stake in the outcome as well. Among the fears is that lack of access to southern Africa may deprive the U.S. and NATO countries of raw materials, ranging from uranium and other strategic metals to gold.

As long as a year ago, when it became obvious that the rebels were gaining in strength in Mozambique, the U.S. and NATO began to draw up secret contingency plans for air and naval defense of South Africa. In June, 1973, NATO's Defense Planning Committee (DPC) instructed Saclant (Supreme Allied Commander, Atlantic) headquarters in Norfolk, Va., to draw up plans for an allied air-naval task force to stand ready to assist South Africa, should the need arise.

This was part of broader United States strategy, as visualized at the Pentagon, to reinforce positions in the Indian Ocean—from South Africa to the Indian subcontinent—against a Soviet threat in the area. Plans for establishing a naval base at Diego Garcia fit into this pattern. Following a December 1969 National Security Council decision to preserve a "balance" in southern Africa, the United States has been quietly selling Portugal "non-lethal" military end-items such as jeeps, radio systems and spotter planes as well as defoliants. It has trained Portuguese officers in counter-insurgency at the jungle warfare Army school at Ft. Gulick in the Panama Canal Zone and helped in training Portuguese pilots at bases in Western Germany.

In a bilateral arrangement, France has been selling arms to Portugal and South Africa (Britain, too, has been selling weapons to the South Africans during the Tory government). This month, South African and French naval units conducted joint exercises in the area. Rhodesian detachments have been fighting with the Portuguese in Mozambique against the Frelimo.

In the light of the new uncertainties emerging from the Lisbon coup, all parties concerned will inevitably rethink their strategies. Inevitably, General Spinola will be the target of powerful international pressures.

But even in terms of direct dealings with the rebel movements, General Spinola faces serious problems.

For one thing, unlike in the Algerian situation, there is no unified rebel leadership in the Portuguese "overseas provinces." Since the 1969 murder of Dr. Eduardo Chivambo Mondlane, the top leader, Frelimo has been run by a politburo group in which Samora Machel, who was Mondlane's chief lieutenant, is the only clearly identifiable personality. Very little is known about others, including Frelimo officials in charge of "liberated zones" in Mozambique.

In Angola, the rebels are divided into two groups: the National Front for the Liberation of Angola headed by Holden Roberto, and the Popular Movement for the Liberation of Angola led by Dr. Antonio Neto. A fairly firm leadership exists in the Portuguese Guinea.

Spinola's problem, therefore, is to establish with whom he should negotiate and who has the power of decision.

The Junta seems to have defused the danger that white settlers in Mozambique and Angola would proclaim "unilateral declarations of independence" on the Rhodesian model to impose white rule.

What General Spinola, therefore, must first

do is to ascertain whether his "gradualism" approach—he has called for a federation of the three colonies with metropolitan Portugal—can serve as the basis for subsequent negotiations, possibly leading to a form of independence in which the three provinces would be tied to Portugal in the way in which the African Francophobe states are to France.

Spinola has ruled out a ceasefire for the time being, but domestic pressures from the newly emergent democratic parties—from Christian Democrats to the left—may force him to reconsider his stand and try for a De Gaulle formula, if he can find responsible interlocutors in Portuguese Africa.

April 25, 1975 in Portugal marks a significant new beginning for the country and its embattled colonies. But a great deal of flexibility is required of the Junta to find the proper solutions at home—and in Africa.

SOUTH AFRICA SEEKS U.S. SUPPORT THROUGH "BACK DOOR"

(By David B. Ottaway)

South Africa has mounted a major behind-the-scenes campaign to convince the U.S. government of its strategic importance, provoking complaints of "back-door" diplomacy among black American political leaders and even some State Department officials.

Located on the southern tip of Africa, the white-ruled nation astride the Indian Ocean oil lanes from the Persian Gulf is inviting the U.S. Navy to use South African ports and to coordinate strategy to counter the growing Soviet presence in the area, knowledgeable diplomats say.

The South African campaign is aimed at overturning an 11-year-old U.S. embargo on arms sales to South Africa and a prohibition on visits by American naval ships to its ports. But the South Africans apparently hope to get much more, namely U.S. support for its defense against nationalist movement seeking to overthrow the white governments of southern Africa.

The campaign, which already shows signs of considerable success, has far-reaching implications for U.S. policy in the Indian Ocean and toward black Africa. Its American supporters, with naval strategists and those concerned about Soviet expansionism in the forefront, argue that South Africa and Portuguese-controlled Mozambique offer some of the best air and naval bases available to the United States in the Indian Ocean.

But its opponents, black and church groups particularly, warn that overt U.S. support of South Africa would be disastrous to the American position in black Africa.

The intensive lobbying effort comes at a time when the independence of Portugal's African colonies, which have long served as buffers for South Africa against African guerrilla incursions, is openly being discussed in Lisbon following the recent coup there.

In the past few months, two ranking South African officials have come here on "private visits" and made numerous contacts with high-level U.S. government officials. Several others, including the foreign and finance ministers, are making trips to the United States this month, speaking to private groups.

The Washington visit last week of Adm. Hugo H. Biermann, commander in chief of the South African defense forces, has resulted in a diplomatic and congressional flap about his visa and his subsequent visit Tuesday to the Pentagon office of Acting Secretary of the Navy J. William Middendorf.

Rep. Charles E. Diggs (D-Mich.), black America's pro-African lobby, the Washington Office on Africa; various church groups and a number of African diplomats stationed at the United Nations got wind of the low-key Biermann visit and have spoken out against it.

Biermann, who publicly has advocated a U.S.-South African military alliance, first was refused a visa by the State Department, according to Sen. Harry F. Byrd, Jr. (Ind.-Va.) The senator said Monday that only after he protested to the department was the visa finally issued.

State Department sources said the visa was granted after Biermann assured the U.S. embassy in South Africa that "he would make no official contacts" while in Washington and after officials "at the highest level" ordered it.

Tuesday, the South African admiral called at Middendorf's office for what a Pentagon official described as an "informal and personal visit."

"We sure didn't consider it an official visit," said a spokesman for Middendorf. He said that Biermann and the acting secretary had talked only about a mutual friend and that Middendorf was not aware of the conditions under which Biermann's visa was issued.

A State Department spokesman later said: "We are very disturbed about this because we feel it violates the understanding we had" with Biermann. He said the department would take up the issue with the Pentagon.

Biermann, invited here by the Washington-based United States Strategic Institute, has followed the pattern of previous South African officials in bypassing both his own embassy and the State Department. Instead, he had been seeing congressmen and other government and military officials friendly to the South African cause at informal gatherings.

One dinner, given by Rep. Robert E. Bauman (R-Md.) in honor of the admiral, is said to have included 17 U.S. admirals. Asked about the dinner, the congressman's secretary said, "I am not allowed to comment on it."

This "back-door diplomacy" policy reportedly was devised by Eschel Rhodie, an advisor to Connie P. Mulder, the powerful South African interior and information minister widely regarded as the probable successor to Prime Minister John Vorster. The policy was initiated by Mulder himself in January when he made a two-week unofficial visit to the United States.

During his stay, Mulder saw an impressive array of American leaders, including vice President Gerald Ford, Senate minority leader Hugh Scott, Senate minority whip Robert Griffin, House majority leader Tip O'Neill and several other influential House and Senate members.

He also is reported to have met with Vice Admiral Ray Peet, deputy assistant secretary in the office of the assistant secretary of defense for international security, which has responsibility for planning strategy in the Indian Ocean.

Adm. Biermann has been seeking to promote greater U.S. interest in South Africa, pointing out its valuable location for any Western defense of the oil lanes to the Persian Gulf in the face of the Soviet naval buildup in the Indian Ocean.

In an interview published in Newsweek's international edition Nov. 26, the South African military leader argued that the Cape of Good Hope oil route was endangered both by Soviet warships and Communist-armed guerrillas in white-ruled Rhodesia and the Portuguese overseas territories of Mozambique, Angola and Guinea-Bissau.

Biermann argued that the South African system of apartheid—strict racial separation—should not be regarded as a stumbling block to U.S.-South African cooperation. "After all," he said, "the United States would not be creating a precedent by entering into a military alliance with a nation whose internal policies it did not approve of."

As the Soviet naval buildup in the Indian Ocean causes increasing concern by U.S. strategists, South Africa appears to be winning more allies for its arguments, particularly in Congress, and at the Pentagon.

The U.S. Navy now is hard put to maintain more than a token presence in the Indian Ocean partly because of a shortage of suitable port facilities there. The government is negotiating with Britain to obtain use of facilities on Diego Garcia, an island south of India, but the new Labor government has said it wants to reconsider the deal.

The South African naval base at Simonstown at the Cape of Good Hope is regarded as one of the best in the entire Indian Ocean area, but the Johnson administration ordered a halt in 1967 to U.S. naval ships calling there. The U.S. embargo on arms sales to South Africa dates back to 1963.

The U.S. National Aeronautics and Space Administration still has a tracking station there, but it is being phased out over the next two years. There also is the terminal station for the South Atlantic missile testing range, now in a "relatively inactive status," according to State Department sources.

"None of them have anything to do with the Indian Ocean or tracking Soviet vessels there," said one department official.

Despite South Africa's enhanced value as a result of the burgeoning East-West rivalry in the Indian Ocean, the Pentagon strongly denies reports that the NATO command has drawn up secret contingency plans for possible air and naval defense of that country.

According to one recent report, NATO's defense planning committee in June 1973 instructed the alliance's Atlantic headquarters in Norfolk, Va., to study the possibility that an allied task force could assist South Africa in an emergency. But the Defense Department insists there are no NATO instructions "for any such planning" in the case of either South Africa or "any other country in southern Africa."

The Pentagon said that "it supports neither side in the disputes between Portugal and the African nationalist movements in its territories."

But there is growing concern among State Department African affairs specialists over the possible erosion of this official policy in the face of the South African offensive here and demands Portugal has made on Washington.

Portugal, under the now ousted Caetano government, asked the United States to lift its embargo on the sale of arms destined for use in the African colonies. It also asked for U.S. diplomatic support at the United Nations for its African policies in return for continued American use of Portuguese bases on the mid-Atlantic Azores Islands.

PRIVATE FOUNDATIONS: BLUEPRINT FOR PROGRESS

Mr. HARTKE. Mr. President, I ask unanimous consent that the text of my opening statement at the hearing held by the Subcommittee on Foundations, May 13, 1974, together with an attachment thereto, be printed in the RECORD.

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

Today we begin the first in a series of hearings to be held this year by the subcommittee on foundations.

Four years ago, foundations were one of the prime targets of tax reform legislation. Congress closely examined the benefits received by the public from the tax exemption afforded foundations. Almost all of the witnesses appearing before the Senate Finance Committee in 1969 agreed that there were abuses of the tax exemption privilege by foundations.

Some saw the accumulation of wealth in the hands of a few and its use to further the personal interests of those long deceased as inconsistent with our democratic values. Still others objected to foundation activities in politically sensitive areas. And some ob-

jected to foundation control of segments of the private sector.

On the other side were posed those in the foundation community who saw private charity as relieving Government of responsibilities it would otherwise have to discharge, and those whose programs depended on the support of foundation grants.

There are those who say now that the Tax Reform Act of 1969 cures most of the ills afflicting the foundation community. Quite frankly, I have no idea whether that assertion is true. In fact, I am concerned about our continuing lack of knowledge in this field.

Hard facts were lacking when Congress acted in 1969—they are still in short supply today. On March 22nd of this year, I sent a letter to the Commissioner of Internal Revenue, Mr. Donald Alexander, asking him to respond to 17 essential questions. I am placing that letter in the hearing record today so that the public may become aware of some of my initial requests for the information which has been lacking so far. Those 17 questions can be grouped into two categories:

First, how is the I.R.S. organized to administer tax exempt organizations, and just what administrative functions does it now perform?

Along this line, I asked for projections of what changes might occur if the special office within I.R.S. for tax exempt organizations proposed in both House and Senate pension bills becomes law.

Second, just what impact has the 1969 tax reform act had on exempt organizations? How many new foundations have been created since 1969? How many have gone out of existence? How many have changed their exempt status to or from a private foundation? What evidence is there that the 1969 act has resulted in proportionately more foundation wealth going to charitable purposes?

Unfortunately, Commissioner Alexander was unable to be with us today, but he will appear before this subcommittee within the next few weeks. If the I.R.S. is able to respond to my questions, the data will shed some useful light on this important subject.

Let me make it understood at the outset that I come into these hearings with an open mind. I have no predetermined position on private foundations. These hearings are designed to help the members of this subcommittee assess the position and role of foundations in our society. This is 1974—not 1969, and we will not rehash the arguments of the past, instead, I want to know just what foundations are doing today and where they may be going in the future.

In making this assessment, it is not enough to say that private charity has been around since the Romans, or that it had an important place in the very early days of this republic. All of this is true, but it says very little about the role of private charity today.

Nor is it enough to say that, if private foundations ceased to exist, government would have to take up the slack. If foundations are merely on a parallel course with government, they are existing on a very slender reed.

The meaning of private charity has changed from the days of the Romans and colonial America. Perhaps it is not so much that it has changed, but that it has expanded. We may still need private efforts to aid the poor and the handicapped and the infirm, but there is now a much greater need for private charity.

Foundations have a unique opportunity as we begin the third century of our experiment in democracy. They can be truly philanthropic by providing for new opportunities to open our society to new ideas and new approaches to the solution of problems which have plagued mankind for centuries. There is injustice all around us, from malnourished babies, to needless deaths which result from insufficient medical knowledge, to inadequate housing and insufficient education, to human lives which are wasted because we have erected barriers in our society or in our economy which have inhibited people from achieving their full potential.

So much remains to be done, and foundations have the resources and the freedom to meet the challenge. From the smallest to the biggest, foundations can help to solve community and national problems.

What was asked in 1969 will also be asked in 1974—just how much does the public benefit from the tax subsidy which it gives to private charity? That is the ultimate question before this subcommittee, and I suggest that private foundations and their grantees can answer that question best by defining their purposes in terms of essential American needs.

In a speech I made earlier this year, I made the following pertinent points:

1. There is nothing in American society which *requires* that foundations exist. Public needs can be defined by elected officials who are responsive to the people they serve.

2. Rather than consider foundations "essential" to American society, we should talk of their "desirability". Ours is a pluralistic society, and we should encourage the participation of diverse groups of citizens in the process of defining and meeting the needs of people. Foundations can help fill this need.

3. If foundations are to earn their right to continued existence, they must have a well-defined purpose and clearly delineated policies in pursuit of that purpose.

I do not say that all foundations are without a clear purpose, but I do say that the foundation community as a whole is lacking a clearly defined conception of their role in contemporary American society.

I believe that foundations should be the cutting edge of innovation and experimentation, that they should be probing the resources of America so that we can raise the quality of life for all Americans.

It is true that some foundations came into existence for the purpose of tax avoidance, but if those same foundations can use their resources to better our way of life, the motives behind their creation may be inconsequential. What I am suggesting is that we look beyond the superficial issues to determine just how the public is benefitting from the wealth of private foundations.

This subcommittee can shed some light on this question, but foundations themselves must undergo a critical period of self-examination. They must determine just how well they are responding to the needs of our society.

In my February speech, I also suggested that foundations should open themselves to the public. I recognize that vast improvements have been made in terms of annual reports, newsletters and the like—but I have a greater meaning in mind. There is an inherent danger in private foundations where the boards of directors are composed of wealthy people who may be associated with other charitable endeavors. This is an elitist danger, and it can only be resolved by expanding boards to include more members of the public and opening up the grant-making decision process to the public to a greater extent than is now practiced.

The current strain of elitism means that foundations may be all too prone to support "safe" activities—activities which reflect the values of the members of the board. Diversification of the personnel involved in the grant-making decision process will open up foundations to new insights and new approaches.

I realize that I am painting with a broad brush, but the public views foundation activity in terms of its general impact and its general value. I do not discount the work done by many individual foundations, by the Council on Foundations, and by local and regional associations of foundations to encourage innovation and facilitate cooperation among foundations. By and large, the foundation community is a responsible one which seeks to avoid the mistakes which led to provisions of the Tax Reform Act of 1969.

At the same time, I note that the excellent program of the recent annual conference of the Council on Foundations was entitled "Blueprints for Survival." There is a certain defensiveness connoted by that title—a defensiveness which recognizes that the foundation community remains under attack. But the best defense is an offense, and I trust that foundations will take to the offense, not in a public relations effort to show us how many grants they make or how much money they spend, but an offense based on the substance of progress and positive contribution to our society.

I open these hearings both with a concern about the role of foundations in our society today and an excitement about the potential of that role.

There is much to be done to make the dreams of our Founding Fathers and the hopes and aspirations of all American men and women a reality. If the wealth of foundations can be harnessed in the effort to realize those dreams, they will have the support of this subcommittee and of the American people.

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C., March 22, 1974.

Hon. DONALD C. ALEXANDER,
Commissioner, Internal Revenue Service, Washington, D.C.

DEAR COMMISSIONER ALEXANDER: The Subcommittee on Foundations plans to hold hearings on the subject of problems raised by the administration of private foundations by the Internal Revenue Service, in the latter part of April. We would appreciate having your comments on this subject during our hearings and I would specifically like you to direct your attention to the series of questions which follows.

1. a. How is the Internal Revenue Service presently organized with respect to exempt organizations?

b. What functions are performed?

c. How many people are involved?

d. How many man-hours are involved?

e. What activities are undertaken?

f. How much money is budgeted for this activity?

g. How often are audits performed?

h. What was the impact on your normal exempt organization audit activities of programs related to the Economic Stabilization Act and the energy program?

2. a. In your auditing activities do you treat private foundations differently from other exempt organizations?

b. How much of your budget goes to auditing private foundations?

c. How many man-hours are involved in audits of private foundations?

3. a. What changes do you anticipate in your activities related to exempt organizations if the Special Assistant Commissioner proposed by both House and Senate pension bills become law?

b. What plans does the Service have for recruiting, employing and training specialized personnel in the exempt organization field?

4. a. How many organizations are exempt under section 501(c)(3)?

b. How many of these organizations came into existence after 1969?

c. How many were already in existence but first brought forth their existence to I.R.S. after 1969?

5. a. Of the section 501(c)(3) organizations now registered with I.R.S., how many

are so-called "public charities" under *each* of the clauses (i) through (v) of section 170 (b)(1)(A)?

b. How many are "publicly supported" under clause (vi) of section 170(b)(1)(A)?

c. How many are section 509(a)(2) organizations?

d. How many are section 509(a)(3) organizations?

e. 1. How many are private operating foundations?

2. How many are non-operating foundations?

3. What is the asset value of operating foundations and of non-operating foundations?

4. What is the asset value of foundations formed after the 1969 Tax Act?

f. What figures does the Service have on foundation terminations, including a breakdown based upon operating and non-operating foundations and the assets of each?

g. The answers to the above questions are based on information as of what date?

6. a. Of the section 509(a)(3) organizations, what are the patterns of relationship to "public" charities, and to section 509(a)(2) organizations?

b. How many qualify because they are "operated in connection with" a public charity?

7. How many of the 509(a)(3) organizations provide funds as their sole or primary service to their public charity or section 509(a)(2) organization?

8. a. How frequently have each of the categories of public charities and private foundations been audited since 1969?

b. How many man-hours or man-years have been used in performing these audits?

c. Have these audits generally been conducted by personnel whose primary activity is the auditing of taxable income?

9. a. How much has been collected under each of the categories of private foundation taxes other than the tax on investment income in each of the years since the 1969 Act?

b. Of this amount, how much constituted "first-level" taxes and how much constituted "second-level" taxes?

c. How much constituted penalties under section 6684?

d. How much constituted "wringer" taxes under section 507?

e. How many proceedings are still outstanding or a "first-level" tax has been determined but the case has not yet been closed?

10. Generally, are "first-level" taxes determined as a result of the exempt organization volunteering the information received from State authorities, or information developed from I.R.S. examination of returns and I.R.S. audits? To what extent has State authorities participated in the closing of cases so as to avoid the necessity for "second-level" taxes?

11. To what extent does I.R.S. coordinate the audits of charitable organizations and individual taxpayers?

12. Why does the federal tax return no longer require disclosure of the names of specific charitable organizations to which the taxpayer contributed if he has retained cancelled checks?

13. a. To what extent does I.R.S. monitor the requirement that private foundations publish a notice of the availability of their report for public inspection and that it be available?

b. Have you found any situation in which a foundation was not in compliance with this requirement?

c. If so, list each such foundation and any subsequent corrective action.

14. What evidence is there that the payout requirement has resulted in an increased amount of current expenditures for charity by private foundations?

15. Of the organizations on the Treasury Department's cumulative tax exempt list, how many use the term "foundation," "fund," or trust" in their name? How many of these organizations are not classified by the I.R.S. as private foundations?

16. a. How many rulings have been issued under the Tax Reform Act which affect private foundations?

b. How many of these rulings have been published?

17. Please supply the Subcommittee with the I.R.S. regulations applying to the requirements of the Freedom of Information Act.

To expedite the preparation for the Subcommittee's hearings, I would appreciate if you would designate a member of your staff to work with Howard Marlowe of my staff. Please have your designee contact Mr. Marlowe at the earliest possible time by calling 225-4814.

With my best wishes, I am

Sincerely,

VANCE HARTKE,
Chairman, Subcommittee on Foundations Senate Finance Committee,

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MEMORANDUM

To: Senator
From: Howard
Date: February 13, 1974
Re: Revised Recommendations for Foundation Subcommittee Hearings

Attached are my revised recommendations for a series of foundation hearings this year.

I worked on these in cooperation with the Finance Committee staff.

If they are acceptable to you, I would suggest that a letter to Senator Long be prepared informing hir· of your plans.

LEGISLATIVE RECOMMENDATION, SUBCOMMITTEE ON FOUNDATION, HEARINGS: 1974

No. 1: *Problems Raised by the Administration of Private Foundations by the Internal Revenue Service and State Officials*

a. IRS and Treasury: rules, regulations and judiciary review of IRS determinations

b. State officials: regulations and litigation

3. Foundation officials: problems and costs of compliance

d. General public: awareness of extent of regulation

No. 2: *Experience of Private Foundations under the 1969 Tax Reform Act*

a. 4% Tax on Investment Income:

(1) justification

(2) revenue produced

(3) reduction in tax as opposed to distribution of excess to state attorneys general

(4) earmarking 2% of the 4% tax for an Assistant Commissioner for exempt organizations

b. Payout Provision:

(1) underlying assumptions of the 1969 law

(2) current assessment of return on investment

(3) relationship of payout provision to future maintenance of the current role of private charity in American society

(4) possibility of payout requirement applying to a term in excess of 1 year as opposed to an annual requirement

c. Excess Business Holdings:

(1) is the rule too restrictive?

(2) does the rule apply to debt securities? If not, what limitations are necessary to prevent avoidance of the prohibition against lending money to insiders?

d. Program restrictions:

(1) should the restrictions of legislative activities be retained?

(2) are the limitations on grants to individuals too restrictive?

(3) are the expenditure responsibility requirements too cumbersome?

e. Birth, mortality and transfiguration:

(1) what has been the impact of the 1969 Tax Act on the birth, mortality and transfiguration of private foundations?

No. 3: *Activities and Practices of Public Charities*

a. fund-raising practices

b. overhead costs

c. amount of support from public

d. degree of public involvement and control

e. degree of public financial disclosure

f. duplication of effort

No. 4: *Problems of Small Foundations*

a. should foundations below a certain size be governed by less restrictive rules?

b. should special status be given to small memorial scholarship funds?

No. 5: *Problems of Community Foundations*

a. special problems of community foundations

b. promulgation of final regulations

No. 6: *Establishment of an Independent Regulatory Agency for Foundations*

a. should such an independent agency be established?

No. 7: *Relationship between Foundations and Government*

a. can cooperation be improved?

b. How much duplication is there and what is the relationship between duplication and a pluralistic society?

No. 8: *Charitable Provisions of the 1969 Tax Act*

a. limitation of the legislative activity of public charities

b. rules on gifts of appreciated property

c. effects of 1969 Act on charitable contributions to higher education

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MORE CAP BULLYING

Mr. HANSEN. Mr. President, over the weekend, I attended the Republican State Convention at Casper, Wyo., and returned to Washington through Chicago on commercial airline.

While at Chicago, I bought a Chicago Tribune, dated May 13, and was surprised to read that a group the Tribune termed "senior citizen bullies" had employed militant tactics in a lobby effort conducted in the office of the distinguished senior Senator from Illinois (Mr. PERCY).

As a fellow member of the Senate Special Committee on Aging, I can assure my colleagues, as can every other member of that committee, that no one has greater concern for the senior citizens of this country than the able senior Senator from Illinois. His performance record for the elderly, and his legislative initiatives in their behalf, set a high goal for any to match.

Only 2 weeks ago, our highly regarded colleague introduced a legislative package designed to achieve income security for the elderly. He has prepared for introduction later this week additional legislation relating to long-term nursing home care for the elderly.

Yet, despite the Senator's continuing effort in their behalf, according to the Tribune, members of a group known as the citizens action program came to the Senate Office Building and "amidst much shouting and abusive language" attempted to make demands to the senior Senator.

The Tribune very accurately called the conduct of this group "detestable." And the Tribune wisely admonished that such conduct "For all they generate prime-time television coverage, their invariable result is hostility, not cooperation, and

thus they serve to defeat their own purposes."

Mr. President, it is my hope that this group and any other so inclined will heed the Tribune's observations about the incident, and take note that such behavior will not be tolerated nor will it be rewarded.

I ask unanimous consent that the Tribune editorial be printed in the RECORD.

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

MORE CAP BULLYING

Senior citizen bullies? The description would seem absurd except for the fact that the senior citizens in question are members of the Citizens Action Program, whose use of media-oriented public disruption has intimidated many.

The latest target of this band of activists was Sen. Charles Percy, whom a CAP senior citizens contingent cornered in the Dirksen Federal Building recently. Amidst much shouting and abusive language, the CAP members "demanded" that Mr. Percy sign a statement promising to lobby for two drug bills in the Illinois legislature. It was also "demanded" that Mr. Percy refuse any campaign contributions from a drug manufacturer if the manufacturer did not support the bills.

"If Haldeman and Ehrlichman . . . couldn't bully me," Mr. Percy said. "you can rest assured you won't, either. I refuse to be intimidated."

Among the responses to Mr. Percy's refusal to sign the statement was the question: "Does that mean you'd accept contributions from the American Nazi Party?"

Without going into the merits of the drug bills in question, or how anyone could realistically expect a United States senator to assure their passage by a state legislature, it must be conceded that some of the goals of the C.A.P. are worthwhile. Their abusive and disruptive tactics, however, are frequently detestable. For all they generate prime-time television coverage, their invariable result is hostility, not cooperation, and thus they serve to defeat their own purposes.

In response to the CAP member's question, it is interesting to note that, in the late 1920s, there was a political party that practiced the same tactics of breaking up meetings, intimidating opponents, and shouting down speakers. It was called the National Socialist German Workers Party, or "Nazi," for short.

LYN JACKSON: SENATOR SAM J. ERVIN, JR.

Mr. MAGNUSON. Mr. President, one of my most brilliant young constituents, Lyn Jackson, who is the daughter of one of the aides of a distinguished Congressman from the State of Washington, the Honorable Floyd V. Hicks, has written a most eloquent article commenting upon the career of our colleague, Senator SAM J. ERVIN, JR.

I ask unanimous consent that a copy of the article be printed in the RECORD.

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

LYN JACKSON: SENATOR SAM J. ERVIN, JR.

Senator Samuel James Ervin of North Carolina has been defined as a constitutional fundamentalist. He is the Senate's ranking constitutional expert, the strictest constructionalist of them all, and one of the Senate's ablest civil libertarians—one who advocates liberty, especially with regard to thought or conduct. Yet, despite all the jeers and cheers he's received, Sam Ervin still maintains he's "just a pore ol' country lawyer from North Carolina." Senator Howard Baker of Tennessee in his introduction to Bill Wise's book *The Wisdom of Sam Ervin*, says that whenever Senator Ervin does this, "First, out of reflex, I put my hand on my wallet, then I gently remind him that while he may consider himself to be just a pore ol' country lawyer, he is also an honors graduate of Harvard Law School." [1]

That's when Chairman Sam raises his magnificent eyebrows, cocks his head, beams his benign smile, and whispers, "Yes, Howard, but nobody can tell it." [2]

This is the one time Senator Ervin is not advocating the truth. He possesses such grandiloquence, so sharp a wit and knowledge of the Bible that it is taken for granted that he graduated from Harvard with honors. What is also unfortunately forgotten sometimes is the fact that he is someone who has enough courage to abide by his moral convictions in a world where people of his rank and position tend to forget the words "truth" and "justice," and think only of themselves and how favorable they will look to certain people.

One such example of this was his position as Chairman of the Watergate Investigation Committee. Last February, the Senate voted seventy-seven to zero [3] to set up a special Committee, chaired by Ervin to investigate all aspects of the Watergate bugging case including questions of White House involvement with it. Ted Kennedy's subcommittee staff had been working long and hard on the Watergate investigation. He realized his own vulnerability and hoped all along that Ervin would take it over. "He is a man beyond ambition," said Kennedy.

Critics have complained that Ervin is more out to get Nixon than the truth. But his image of constitutional honesty, his country humor, and clever self-mocking senatorial use of lofty words have turned him into a major American personality. After his election, Ervin vowed, "There will be no witch hunt, but I am going to get to the bottom of this thing—and the top."

Recently, because of interference with impeachment investigations and the trial of John Mitchell and Maurice Stans, the Committee has been called off.

There have been other examples that play behind the lights of Watergate hearings have shed upon him. The issues he speaks have been of such importance that he cannot be ignored. For example, in 1970, he led the fight against the D.C. Crime bill—which provided for broadened wiretap powers, preventive detention, and "no-knock" entry when police officers feel that revealing their identity might result in destruction of evidence or endanger their lives. He felt that it was not constitutional, but was only able to persuade two Southern colleagues and was opposed by Northern liberal friends. When Mike Mansfield asserted that fine destinctions could be decided later in the courts, Ervin protested that by then the D.C. bill would lie a model for a federal law affecting the entire nation. He called it a "garbage pail of some of the most repressive, intolerant, unfair, and vindictive legislation that the Senate has ever been presented." [4]

Another piece of legislation he strenuously objected to was the late Senator Dirksen's proposed amendment that would have allowed voluntary prayers in public schools. "I believe in a wall between church and state, said Ervin, so high that no one can climb over it." [5]

He is currently combating the Equal Rights Amendment, which he contends would deprive women of many of the legal rights they now enjoy. Said Ervin, "I had a group [of Women's Libbers] come to my office after I had spoken on the Senate floor against [the Equal Rights Amendment]; some members of their committee asked for an audience, which I granted, and they asked me why I had spoken against this amendment.

"I pointed out that women would be drafted and sent into combat, and these ladies, who were not quite as ancient as I am, though some of them were approximately that, said that that was exactly what they wanted, that they wanted to be drafted and that they wanted to serve in combat.

"I said, 'Ladies, I have always tried to be a gallant gentleman. I have made a practice all of my life never to refer to a lady's age. But looking at you, I am compelled to conclude that, despite your very youthful appearances, you are at least a month above the draft age. If you want to persuade me that women want to be drafted and sent out like the men, to face the bullets of the enemy and to have their fair forms blasted into fragments by the enemy's bombs, you are going to have to send some of the sweet young things within the draft age up here to persuade me on that point." [8]

To many he would be called a chauvinist pig for his beliefs on Women's Rights. It clearly points out that he cares about the welfare of people. He does not want to see them hurt.

An example of his deep concern for people's well-being would be the hearings Ervin began March 1, 1971; which were against files that are being computerized by snoops, ranging from credit bureaus to Army agents, who allegedly concentrate on protestors. He especially criticized the Army, as well as the FBI, and accused them of snooping in a way that put in danger the First Amendment freedoms of speech, thought, and privacy. Stated Ervin, "If we are going to be a free society, the Government is going to have to take some risks; they can't put everyone under surveillance.

To prove his point, Ervin showed those present at the hearings a 1,245 page Bible and a two-inch square of microfilm, each containing 773,746 words. Said Ervin, "Someone remarked to me that this meant the Constitution could be reduced to the size of a pinhead. I said I thought maybe that was what they had done with it in the Executive Branch, because some of the officials could not see it with their naked eye." [10]

Senator Ervin began pumping for an inquiry into the impact of Government data banks since 1967. At that time he found out that the Health, Education, and Welfare Department was using stored information to blacklist scientists for their political views. In 1969, he learned that the Secret Service had a data bank, containing information on approximately fifty-thousand people." Some of these people are called "professional gate crashers," also those "who insist upon personally contacting high Government officials for the purpose of redress of imaginary grievances," or in other words, complaining. During the hearings Senator Ervin heard evidence that different types of agencies keep ten to twenty dossiers on virtually every American. They stress political activity, sexual behavior, and credit records, all of which invite misuse by officials, as well as employers. According to Ervin, "There is not one syllable in the Constitution that gives the Federal Government the right to spy on civilians." [14]

Ervin hoped that the hearings would lead to federal privacy legislation giving citizens the right to access on the files compiled about them. At any rate snooping must be curbed. Ervin fervently believes: "When people fear surveillance, whether it exists or not, when they grow afraid to speak their minds and hearts freely to their Government or anyone else, then we shall cease to be a free society." [15]

Footnotes at end of article.

From an economic standpoint, Ervin led hearings last February 12-18 of 1973 on another bill that would force the President to seek the consent of Congress before impounding anymore funds. He agrees that much of the money Nixon has impounded should not be spent; he voted against some of those bills. He regards Nixon as something of a spendthrift, and voted against some of Nixon's own spending plans like revenue sharing, but that is not the issue. Ervin explained: "He is treading on our Constitution. I would suggest two books that should be in the White House. One is the Constitution of the United States, and the other is Dale Carnegie's book *How to Win Friends and Influence People.*" [16]

Ervin's bill to require congressional approval of any new Director and Deputy Director of the Office of Management and Budget was passed overwhelmingly on the Senate floor the same week, and he also laid plans to begin a hearing February 20, 1973, on a bill to protect newsmen from official interrogation about confidential sources.

Ervin has always been a strong defender of the First Amendment and the freedoms of thought, privacy and speech it gives to every American, so it is not surprising that he headed a hearing on freedom of the press in November of 1971 and February of 1972. It is also not surprising that he was the only one who stayed with the news hearings throughout their entirety. Many Senators sign letters, catch up on minor paper work, even daydream at hearings, but when Ervin is truly involved with a hearing he has an intensity of concentration that is awesome. They are no ritual to him. He learns from his witnesses; and in other hearings on other days, he has learned things that have led directly to legislation.

His vision of free press is both simple and profound; simple because his ideas do not go far from the world of the Founding Fathers and the early printing presses; profound because no matter how the press might defame his beliefs, his religion, his very being, his struggle to maintain a free press continues with undaunted zeal.

Laurence Leamer, a journalist covering the hearings, commented, "There had been something so admirable, so likable about Senator Ervin and the manner in which he conducted the hearings. Even those mountain stories, he couldn't resist telling them, but then he would hurry through, the words spilling down his chest so that much of the time it was impossible to understand; but everyone would laugh anyway. When he talked of the meaning of a free press—unaware of reporters or cameras or anything but his ideas, as if his very words might reaffirm belief in liberty—he was truly inspiring." [17]

To Ervin the Constitution is the most precious of American possessions, and he speaks of it with language and emotion one rarely hears, even on the Fourth of July. In this perspective, it is no irony that Sam Ervin, firm defender of the first amendment, is also the Senate's most brilliantly effective opponent of civil rights legislation. He takes as his dictum Justice Brandeis' statement that, "the great dangers to liberty lurk in the insidious encroachment by men of zeal, well-meaning, but without understanding." [18] Ervin certainly understands, which makes his arguments all the better.

Many people wonder why Ervin has emerged as the "enfant terrible" [19] of Congress instead of more obvious leaders like Mike Mansfield or Ted Kennedy. It is partly due to his seniority as a Senator of twenty years, after replacing Clyde Hoey after his sudden death in early summer of 1954. But mostly it is because he is known as one of the most high ranking constitutionalists in the Senate, a man of personal prestige, of such judicial temperament, that he is not easily attacked. His beliefs, or principles, can be traced to his early childhood and beyond.

Sam Ervin was born in Morganton, North Carolina (population 13,000) on September 27, 1896 into a family where both his father and grandfather were lawyers. It was his father who taught him that the threat to liberty comes from Government, and instilled in him a fierce sense of independence and individuality.

As a young boy, Ervin was addicted to learning and toy soldiers. He was either reading up on his ancestorial past, or hanging around the Burke County Courthouse as his father, in Victorian cut-away tails, tried trials.

In 1917, he enlisted as a private in the infantry, served in France, where he was wounded twice, cited for gallantry twice, and awarded the French Fourragere, Purple Heart with Oak Leaf Cluster, Silver Star, and Distinguished Service Cross. He was admitted to the North Carolina Bar in 1919. He then entered Harvard Law School as a third year student, in hopes that he would acquire a better education. Mainly, it was because he was in love with his childhood sweetheart, Margaret Bruce Bell, and feared that she would not wait four years so he could complete law school. Ervin graduated in 1922; marrying soon afterward. He and his wife, Margaret, have been married almost fifty years and have three grown children, and seven grandchildren.

Soon after Ervin's graduation, he joined his father's law firm. Said Ervin about beginning law: "My father, who was an active practitioner at the North Carolina Bar for sixty-five years, gave me this sage advice on this point when I entered his law office many years ago: 'Salt down the facts; the law will keep.' " [20]

Ervin still had bushy eyebrows that juttered up and down when he got nervous, and an occasional stutter. In court he depended on his wit and stories just as today in some instances. He was (and still is) extremely patriotic, and joined and boosted many organizations. He was the Commander of the local National Guard unit, a member of the Masons, the Knights of Pythias, the Sons of the American Revolution, and the Society of the Cincinnati.

After becoming Senator in 1954, he thrust himself in the front pages with a down-to-earth anecdote underlining his contempt for Joe McCarthy, his Communist-hunting colleague. According to Ervin, Uncle Ephraim Swink a sick arthritic mountaineer was called upon to testify to his religious experience at a revival meeting. Uncle Ephraim remained silent. Finally the minister said, "Brother Swink, suppose you tell us what God has done for you." Uncle Ephraim pulled his crippled body from his seat and replied, "Brother, he has mighty nigh ruint me." Said Ervin, "Mr. President, that is about what Senator McCarthy has done to the Senate." [21]

Later he became Chairman of the Judiciary Subcommittee on Constitutional Rights, and has startled conservatives and liberals alike with some of the positions his seniority allows him.

As a result of the Watergate hearings, Ervin was forced to get an unlisted phone number, as well as be accompanied by two plain-clothes policemen, whose presence embarrassed him at first, but later on praised for their assistance. People became so enthralled at the sight of him, that last July it was almost impossible to get through a crowd with his four grandchildren. Said twelve-year-old Bobby Ervin, "It's like going to the circus with the organ-grinder." [22]

Personally, Ervin is known to like good food, and has a large, hearty breakfast every morning before walking the few hundred yards to work from his two bedroom apartment he and his wife share in Washington, D.C. They have a larger home in Morganton, North Carolina which they sometimes occupy during Ervin's time off. He has few close friends. "Sam sticks pretty close to his wife and the Constitution," said Mike Mansfield. "He's married to both." [23]

On December 19, 1973, Sam Ervin announced his retirement from the Senate after his present term expires which will be in 1975. His reason is encroaching old age, which shortens an all too shortened lifespan, and slows even the most ambitious of the world. Ervin believes he works harder than most Senators of any age, and has no doubt he could win another six-year term, but he cannot ignore the fact that he would be eighty-four at the end of it, however. Ervin explained: "Since time takes a constantly accelerating toll on those of us who live many years, it is simply not reasonable for me to assume that my eye will remain undimmed and my natural force stay unabated for so long a time." [24]

It took him six months of mental struggle to resolve what he called "the hardest problem which has ever confronted me." [25]

During retirement he will fish and no doubt write his family history, which he has traced back to their Scottish origins and their arrival into the colonies in 1732. He was not seeking any family crest, nor any notables, when he traced his geneology. He did it to deepen his sense of uniqueness and freshness of the American experience.

Sam Ervin has proven to be an undefiable personage, someone unafraid to speak what he feels. He has restored my faith in the Government, for I know there is at least one man in an extremely important position who is on the side of "we the people." [26] He advocates freedom for all, and is in a position where he can do something about it. As he himself once said, "The tides of fear are rising and the anchors of faith are dragging. It is in such a time frightened humanity needs freedom most.

"Since courage is better than fear and faith is better than doubt, let us spurn fear, cherish faith, and dedicate ourselves to this proposition:

"Freedom is life's supreme valve and must be preserved for ourselves and our posterity, cost what it may." [27]

The day Senator Ervin retires, I truly shall mourn, not just because I will no longer be able to follow him along the path of his momentous life, but because our country will have lost the one link we had to the wisdom and knowledge by which our Founding Fathers built a nation.

FOOTNOTES

[1] Bill M. Wise, *The Wisdom of Sam Ervin* (New York, 1973), p. xxiv.

[2] *Ibid.*

[3] "Right Man, Right Time," *Time*, vol. 101 (February 19, 1973), p. 22.

[4] *Ibid.*

[5] "Right Man, Right Time," *Time*.

[6] "Conservative Libertarian," *Time*, vol. 97 (March 8, 1971), p. 38.

[7] *Ibid.*

[8] Bill M. Wise, *The Wisdom of Sam Ervin* (New York, 1973), p. xxiv.

[9] "Conservative Libertarian," *Time*, vol. 97 (March 8, 1971), p. 38.

[10] *Ibid.*

[11] "Drifting Towards 1984," *Time*, vol. 97 (March 29, 1971), p. 16.

[12] *Ibid.*

[13] "Drifting Towards 1984," *Time*.

[14] "Conservative Libertarian," *Time*, vol. 97 (March 8, 1971), p. 38.

[15] *Ibid.* p. 39.

[16] "Right Man, Right Time," *Time*, vol. 101 (February 19, 1973), p. 22.

[17] "The Sam Ervin Show," *Harper Magazine*, vol. 244 (March, 1972), p. 86.

[18] *Ibid.* p. 81.

[19] "Right Man, Right Time," *Time*, vol. 101 (February 19, 1973), p 22.

[20] Bill M. Wise, *The Wisdom of Sam Ervin* (New York, 1973), p. 130.

[21] "Conservative Libertarian," *Time*, vol. 97 (March 8, 1971), p. 39.

[22] "To the Circus With the Organ Grinder," *Time*, vol. 101 (July 30, 1973), p. 8.

[23] "Right Man, Right Time," *Time*, vol. 101, (February 19, 1973), p. 22.

[24] "Ervin Looks Back, Ahead," *Tacoma-News Tribune*, (December 19, 1973).

[25] *Ibid.*

[26] Article I, Section I, Page 1 of the United States Constitution.

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RESEARCH TO EXPAND FOOD PRODUCTION

Mr. HUMPHREY. Mr. President, I would like to call the attention of my colleagues to a very thoughtful article, "Food, Fiber, and Energy," by S. H. Wittwer, director of Michigan State University's agricultural experiment station.

In it he points out the need for research to maximize food production. The two most important energy-free but energy-producing biochemical processes, photosynthesis and biological nitrogen fixation, are receiving totally inadequate priority and funding. A third research priority would be to reduce the present "wasteful" conversion of grain to meat.

The author also recommends that we attempt to increase agriculture production by 50 percent over the next 5 years and rebuild our reserve food stocks.

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

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

FOOD, FIBER, AND ENERGY

(By S. H. Wittwer)

The rapidity of change in food and fiber supplies and prices is cause for national alarm and frustration.

Never has food production been so great and the harvests been so bountiful as they were in 1973. Record crops of corn, wheat, soybeans and sorghum were harvested. Yet, the United States has, in a few months, gone from the threshold of burdensome surpluses to nagging and persistent shortages of food, feed, fiber and energy.

There have been dramatic increases in national and global consumption and acquisition of food, feedstuffs, forest products, and natural fibers. Parallel with these are escalating demands and rising costs for energy dependent fertilizers and crop protecting chemicals. Greater incomes and affluency at home and abroad, coupled with population increases, have created a demand for resources which appears almost boundless. Agricultural exports have escalated from $8.5 billion to an estimated $19 billion in just two years, each year almost doubling the record of the previous one. The result has been diminishing land and water reserves, dwindling stocks of grains and processed foods, and soaring prices.

Agriculture is the only major industry in this nation, with the possible exception of the petroleum refining and electric power generation where the energy output is greater than the input. This is true at least for crop production.

Our renewable resources.—The products of agriculture, forestry, fisheries, wildlife and range are renewable resources. Food, fiber (cotton, wool, silk) and timber are reproducible because solar energy fixation through photosynthesis and biologically fixed nitrogen are free and essentially inexhaustible. We can go back to the land, the water, and the air—year after year and renew them, or reproduce the process. It is true that some nonrenewable resources such as fertilizers, chemicals, machinery, and fuel are needed, but the energy return is still better than two to one—even for the most advanced technological inputs.

Our agriculture and forests are a major source of energy production but are seldom considered as such in the same vein as electricity and fossil fuels. A recent report, also shows that the ratio of kilocalorie return to input has decreased. It is generally implied that agriculture has become less efficient in energy utilization. The release of land through higher yields, however, is ignored. The amount of land needed to produce a bushel of corn has been reduced by sixty percent since 1945. This has released vast acreages for the production of additional crops including soybeans.

Moreover, food production is more than just calories. Proteins, vitamins, minerals and flavoring compounds are a part of food. Even indigestible fibers and roughages play an essential role in human nutrition, digestive well being, and intestinal health. Prevalence of cancer of the colon and ulcerative colitis has been identified with a lack of roughage in the diet.

Research needs.—Critically needed are research investments to maximize or optimize the production of all food components with the least expenditures in energy accompanied by the greatest return. This is where our national priorities are all fouled up. The two most important energy-free (there is no charge for solar energy) but energy-producing biochemical processes on earth, namely, photosynthesis and biological nitrogen fixation, both intimately bound with the production of carbohydrates, proteins, fiber and energy, are receiving only token research and development priority and support.

Among the 21 national problems warranting greater research and development efforts as reported in 1973 by the National Science Board of the National Science Foundation, food production is not listed. This is not surprising since there is a complete absence of people even remotely connected with biology, let alone agriculture, in the top echelon of the National Science Foundation. This reflects the need for well balanced, interdisciplinary teams to screen, guide, and project national programs. Biological and agricultural input for the most esteemed of the national science funding agencies is crucial.

Photosynthesis.—This is the most important biochemical process on earth. By it, the sun's electromagnetic energy is converted to chemical energy stored in plants. It remains today as the world's most important renewable energy producing process. From it has come the great energy reserves, the fossil fuels, which we are now utilizing at an ever accelerating pace. To meet current food and fiber needs terrestrial plants alone appropriate approximately 15 billion tons of carbon dioxide a year from the earth's atmosphere. Man has, through the ages, evolved strategies for manipulating the plant and its environment to maximize this energy conversion process. It is called *agriculture*. The technologies include crop fertilization with mineral nutrients applied to the soil and foliage, spacing, irrigation, improved light receiving systems through plant structure modifications and leaf display, variety development, improvement, and selection; pest control, training and pruning, and tillage. Ultimately, all agronomic, forestry, range, and horticultural practices are directed toward increasing the efficiency of the photosynthetic energy producing process.

Through photosynthesis the energy resources of the earth, the so-called "wealth of nature", can be added to. The result has not been an ecological disaster, but a marshalling of resources, most of which are renewable, for the lasting benefit of mankind. This has relieved 95 percent of the working force of this nation from food production, that other goods and services might be provided.

Biological nitrogen fixation.—The second most important biochemical reaction on earth is biological nitrogen fixation. Worldwide, this process currently exceeds by sevenfold all chemical fixation for nitrogen fertilizer production. Energy from photosynthesis has recently been identified as the major limiting factor for symbiotic nitrogen fixation in the root nodules of soybeans. Thus, a close linkage has been established between photosynthetic capability and biological nitrogen fixation. Further, it is now possible to monitor the magnitude of biological nitrogen fixation under field conditions. This provides capability to maximize the process through varietal selections of crops, and the management practices of time of seeding, tillage, fertilization, spacing, and irrigation.

Biological nitrogen fixation is the second process where the resources of the earth, or nature, can be added upon. It is essentially an unlimited resource for the production of needed protein in human nutrition. The immediate results could be realized in the protein-rich legumes (peas, beans, lentils, pulses).

Improved plant efficiency.—A critical research need and partial answer to the energy crisis would be to increase the efficiency and enhance the magnitude of food producing systems. Regulation of yields of major food crops should be a worldwide objective of top priority. An increase of only one percentage point in the efficiency of energy conversion in the green plant would have a remarkable impact.

It is a sad commentary that among the energy options currently listed for the future in the leading articles of the most prestigious scientific journals, and in the deliberations of the congressional subcommittees on energy and the White House Council for Environmental Quality, maximization of energy production through photosynthesis and biological nitrogen fixation as "renewable resources" are not worthy of mention. For the short run the emphasis is on nuclear fission and utilization of coal reserves. Geothermal energy, solar energy, and nuclear fusion are suggested as possibilities for the year 2000 or thereafter. The one process, namely photosynthesis, whereby the nonrenewable fossil fuels which have heretofore provided the primary energy base of the nation and world is not on the list.

Increased agricultural productivity.—On a positive note, I propose that we establish as a national goal, a 50% increase in agricultural productivity during the next five years. The proposition is creative, not destructive. There is an almost inexhaustible reserve of carbonates, including CO_2 in the earth, oceans, and atmosphere that could be photosynthetically fixed as carbohydrates. There is no shortage of nitrogen in the atmosphere that could be biologically fixed for protein synthesis. Increased productivity per unit land area would also release additional land and the solar energy that falls upon it for additional food or fiber cropping or for other alternatives. Food, fiber, timber, and energy may be considered as one. The products of agriculture, forestry, and the range can all

be viewed, alternatively, as food or fiber, on the one hand, or as energy, on the other. Agricultural products and by-products constitute a vast energy resource. Increased productivity enlarges that resource.

The tens of millions of tons of agricultural commodities now being exported abroad also represent a massive export energy. No one has yet provided the answer as to how much energy is exported with each bushel of wheat, corn, or soybeans. A bushel of corn will produce three to four gallons of alcohol. In this light we are a major energy exporting nation.

It takes seven to ten pounds of grain to produce a pound of beef, and everyone wants to eat beef. Three to four pounds of grain are required to produce a pound of pork, and two pounds for chicken. Those in human nutrition may well question the dietary need for all this meat. Reduction of the present "wasteful conversion" of grain to meat should be a third research priority. Annual per capita food consumption in this nation approximates the equivalent of 2,000 pounds of grain. In India and Bangladesh, it is 500 pounds. Based on calorie equivalents, it is 11,000 per day. Obviously, we do not consume such enormous amounts of grain. Most of it is inefficiently converted to the meat, milk, and eggs which we eat.

We have witnessed a doubling of both energy and food prices in a matter of months. We cannot deal with one without the other. A national goal of 50% increase in agricultural productivity would be less than 10% a year, since it would be compounded annually. It should have a significant impact on world trade, balance of payments, reestablishing the integrity of the dollar, and meeting the food needs of hungry nations with money; and, for people in the lesser developed nations with no money. It would rebuild dangerously low food stocks and reestablish price stability. A powerful political force could thus be exerted for world peace. Seventy percent of all the food surplus on this planet is already provided by the U.S.A.

Reevaluation of national goals.—Such a goal would force a reassessment of land and water uses. Social, political, and economic constraints on food producing systems would need reevaluation. Priorities would need to be established as to uses of energy, land, water, and some nonrenewable minerals. The impact on the environment and natural ecosystems would need reassessment. Finally, a basic philosophical change must occur in the minds of the American people. Namely, it would be important and desirable to live in harmony with food producing systems as well as in harmony with nature. The two are not incompatible.

A goal of 50% increase in productivity in five years, would require rapid replenishment of dwindling technology reserves. The boxcars need refilling. There is much technology that is now in the experimental stage that can be released in the near future, especially if there is an economic incentive. Such research in progress includes greater photosynthetic efficiency and the inhibition of photorespiration of plants, genetically, physically, and chemically; enhancement of biological nitrogen fixation; somatic cell hybridization for the creation of new plant species; improved water and fertilizer management, including drip irrigation; improved grain quality, especially amino acid distribution in food grains; new strategies for pest control; protected cultivation; carbon dioxide enrichment; multiple, relay and intensive cropping; reduced tillage, especially important in that it conserves soil, water, and energy; plant growth regulants; new crops; use of nonprotein nitrogen (NPN) in ruminant rations; crop residues and pasture improvement for optional utilization of acreage for grazing and livestock feeding; crossbreeding in livestock; producing beef carcasses of grade good rather than choice which would reduce feeding requirements of over 1,000 pounds of grain per animal and release over half a billion bushels of grain; opportunities for disease control in livestock and new vaccines for poultry; and increased fertility in swine and multiple births in sheep and cattle.

As one views a world of scarcities ahead—shortages of food, energy, and natural fibers; an accelerating global demand for foodstuffs generated by population growth and affluence; and soaring food, energy, land and water prices, one looks to production capacity reserves. It would be a noble experiment and a likely opportunity, with an economic incentive, to demonstrate our capability by taking the lid off U.S. agricultural production.

Let's look at a goal of 50% increase in five years. I believe it is realistic. Certainly, it is needed. Its accomplishment would depend strongly on the input complimentaries of land, water, fertilizer, pest control, credit and the weather. Only in this manner, however, with reserve technology at hand, and more that can be generated—there are no bounds to human creativity—; and a driving economic incentive, coupled with an urgency to perform, can we assess the food production capacity of this nation, and the world.

Technology reserves become focal in a world food and energy situation which has become more difficult than at any time since the devastations of World War II. Some major changes in diet might be necessary. One has already occurred in the decreased per capita consumption of beef in 1973. These changes could be beneficial. What other acceptable alternatives do we have?

The issue is also one of renewable versus nonrenewable resources. No one has been able to put a price, or a limit, on the solar energy which could be captured in photosynthesis nor the nitrogen from the atmosphere that is fixed by soil micro-organisms.

A TAX CUT NOW WOULD MAKE NO SENSE

Mr. BENNETT. Mr. President, on Sunday, May 5, 1974, an article written by Senator CHARLES H. PERCY entitled "A Tax Cut Now Would Make No Sense," appeared in the Washington Star-News. In this article, the Senator gives reasons why a tax cut would be economically impractical although it may sound politically attractive at first glance. I believe that Senator PERCY's article is extremely interesting and presents facts that should be carefully considered.

I ask unanimous consent that the Senator's remarks be printed in the RECORD.

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

[From the Washington Star-News, May 5, 1974]

A TAX CUT NOW WOULD MAKE NO SENSE

(By Senator CHARLES H. PERCY)

The recently proposed cut in federal taxes may be politically appealing for some, but it would be economically disastrous for all.

No one questions that the bleak phenomenon of double-digit inflation is just about the worse of the array of problems presently facing the nation. Certainly the government must do all in its power to turn the spiral around.

Inflation has many parents, not all of them easily identified. But we do know that a high level of business activity, blended with a high level of spendable income and spiced by huge federal deficits, creates a sure recipe for rising prices.

The best way to dampen such inflation is to moderate these elements. To cut taxes now as urged by some Democrats would only add to the unfortunate mix.

We should not hold out the hope that reduced taxes will increase individual buying power when we know full well that such buying power would soon be more than offset by the inflationary pressures created. Those who are already bearing the major burden of inflation—the poor and those millions on low, fixed retirement incomes—would benefit not at all by a cut in taxes. Yet their ability to buy what they need would be even further impaired.

It has been argued that a tax cut is needed to stimulate the economy and reverse the decline in growth which the nation experienced in the first three months of this year. I disagree on three counts.

First, by the time the money from any tax cut actually gets into the consumer's pocket, we will have entered a period in which most economists foresee an upturn in real growth. This would be just the time when a jump in consumer spending could be most harmful.

Second, the rising prices of some items—starting with industrial raw materials—can be traced directly to a shortage of supply. To increase consumer demand for these goods would only add to the upward pressure on their prices.

Finally, those sections of the economy in which there may be a need for economic stimulus will not be helped at all by a tax cut. Sluggish automobile production and lagging residential construction accounted for most of the negative growth rate in the recent first quarter; to be vigorous, these sectors must have lower interest rates and an easing of credit. Yet Arthur Burns and the Federal Reserve have made it clear that there will be no easing of credit or lowering of interest rates until inflation is brought under control.

The only way to bring interest rates down is to cool the pressures that forced them up in the first place. A tax cut would have the opposite effect. As Burns has said, additional stimulative measures at this time will surely give us double-digit inflation for the entire year.

Furthermore, the particular kind of tax cut suggested—an increase in the personal income-tax exemption—is plainly inequitable. On our graduated tax scale, taxpayers in the higher income brackets would have their tax bills reduced more than those with lower incomes, who most need relief. If and when a tax cut should become the right thing to do, the fair way to do it will be through a reduction in the tax rates themselves.

I believe the best course for Congress in the weeks ahead is to reject any measure that will reduce federal revenues and work to keep federal spending at no more than its current level. We must also achieve final passage of the budget reform bill, now in conference. It will give us the mechanism—and perhaps the discipline—needed to bring down federal spending at times of heated business activity—and thus neutralize one of the elements of inflation.

Only if the developing economic indicators later this year do not signal the expected economic recovery should Congress consider stimulative measures. If unemployment, for instance, remains a serious problem or worsens, we should respond through such direct and selective means as increased funding for public employment programs. Another stimulus would be to correct the payroll withholding schedule, so that the billions now overwithheld would stay in the economy.

In the meantime, let's not be tempted to put politics before the public pocketbook. Bad economics, we should know by now, is also bad politics.

TAKING THE "E" OUT OF HEW

Mr. DOMENICI. Mr. President, I have become a cosponsor of a measure which I believe merits the serious attention of all my colleagues. This bill, S. 1059, is a proposal to establish a separate Department of Education.

This action on my part is by no means a signal to society that education in its present organization has failed. On the contrary, because education in its present form has been successful over the years, we have educated our population so that we have developed an advanced technology that in turn requires centralization and a concerted effort to insure an educated population.

According to the National Education Association, education is the Nation's second largest enterprise, involving pupils, teachers, supervisors, and administrators, who comprise more than one-third of the entire U.S. population.

The question arises, why does not our Federal Government already have a separate Department of Education? One reply to this question is that education has been considered a State function—which it is. However, the emphasis on education today is national concern and the number of Federal dollars supporting education is substantial.

When President Eisenhower created HEW in 1953, health, education, and welfare were all miniscule in terms of the size of their organization as compared to their current proportions. In fact, opponents of HEW at that time questioned the need for areas they considered none of the Federal Government's business. Today there can be no denial that we are involved in health, education, and welfare, and there is confirmation by the public that the Federal Government has a legitimate role to play. In fiscal years 1953 and 1954 the total expenditure for HEW was under $2 billion. By fiscal 1973, the HEW budget was $89 billion, more than 40 times the amount in 1953. The question confronting us today is whether or not Government involvement would be more efficient in a separate Department of Education or in the current conglomerate known as HEW.

WHY TAKE THE "E" OUT OF HEW?

First, there is a need for a strong voice in education with direct accessibility to the White House. At the present time, there is no Cabinet-level position specifically designated for education alone. We are the only major nation which does not have a separate Cabinet-level post for education. The vast priorities of health, education, and welfare are currently presided over by a single Cabinet officer whose directives in health and welfare often overshadow education. The Secretary of Health, Education, and Welfare has been confronted with the problems of welfare reform on top of inflationary health care costs, coupled with the problems in education including the financial crunch of schools and colleges. This is too big a burden for one man to bear. In creating a Cabinet level post there would be a greater Federal commitment to education. A Department of Education with a Secretary of Education would insure a fair hearing on educational needs, plans, and programs before the President.

A second reason for taking the "E" out of HEW is that educators have urged the establishment of a Department of Education for some time remarking that HEW is too big. Six education organization—American Association of School Administrators, Council of State School Officers, National Association of State Boards of Education, National Congress of Parents and Teachers, National Education Association, and the National School Boards Association—have recommended that we can best focus on achieving excellence in education by establishing a Department of Education. They contend that HEW is becoming an anachronism, and that while health and welfare could easily remain under the same organizational roof, education is of a different nature and should stand apart. The present Department of Health, Education, and Welfare is a monstrous bureaucracy second only to Defense in size. There is little chance that the position of the Office of Education would improve within HEW.

A third reason for a Department of Education is a need to consolidate the Federal education effort. It is estimated that approximately 40 different governmental units are directly involved in education in several hundred separate programs. Education-related activities reside in so many different agencies that the result is a scattered and divided educational effort. Also, there is quite often fierce competition between agencies and wasteful duplication. In effect, the Department of Education would eliminate the waste that goes on due to duplication of programs. The National Education Association indicates that the consolidation of all education programs is the only way to give education the status it needs, the confidence and inspiration it needs, to provide and improve education for all children.

A fourth reason for taking the "E" out of HEW and establishing a Department of Education is that the Federal education budget is already larger than that of some existing Departments: Commerce, Justice, and Department of State, for example. The total budget by account in fiscal year 1975 for Commerce is estimated at $1.7 billion, for State is $893 million and for Justice is $2.1 billion—all of which are below the fiscal year 1975 budget authority for education programs at $7.6 billion. The size of the education budget alone is enough to demand a Cabinet level position.

Finally, a Department of Education headed by a Secretary of Education would in a sense help the workings of Congress. That is to say, that a cabinet-level official would provide a single authority to answer the questions posed by Congress concerning authorizations and appropriations legislation, and one man would leash the responsibility of priorities in education, hitherto engulfed in the triad of HEW.

HOW CAN WE SUCCESSFULLY TAKE THE "E" OUT OF HEW?

I propose that a Department of Education be established. This department would be administered by a Secretary of Education, a cabinet level post. My bill would transfer those offices concerned with education to the new Department so that there would be strong coordination of education programs.

The first concern of educators and of Congress in contemplating this change should be that the educational needs of our children have the highest priority. We must find the best organizational structure to address those needs. Education is big business. In school year 1972-73, Federal expenditures for education were approximately 11 percent of total educational expenditure in the United States. Federal expenditures for education-related programs will reach $16 billion in 1975, according to the fiscal year 1975 budget. In fact, NEA asserts that 6 percent of the Federal budget supports education if we delve into the programs of all agencies. To take the "E" from HEW will, of course, split up the triad, but the "E" of education will be longest and strongest when standing apart.

CUTTING TAXES

Mr. HUMPHREY. Mr. President, since early this year, several of my Senate colleagues and I have been calling for some form of tax relief to ease the crushing burden of inflation on low- and moderate-income consumers. We have also called for a number of specific and much needed tax reform measures.

This morning the Washington Post published an article explaining my views on this subject and the reasons for them. Since the Senate will soon consider the proposed tax cut-tax reform measures, I ask unanimous consent that this article be printed in the RECORD.

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

CUTTING TAXES

(By HUBERT H. HUMPHREY)

In recent days there has been considerable criticism, including an editorial in The Washington Post, of the proposal that we cut income taxes for low and moderate income consumers. I have proposed this course of action, as have others, as a means of buttressing consumer purchasing power and in that way fighting the recession that is already upon us. I believe the arguments against a tax cut are based on a serious misreading of the current economic situation.

In the first place, the federal budget presently provides no real stimulus to the economy. As Mr. Nixon correctly said in his budget message, "the recommended budget totals continue (the) policy of fiscal restraint as part of a continuing anti-inflation program." To be more precise, the unified budget is becoming more restrictive, rising from a full employment surplus of $4 billion in fiscal 1974 to an $8 billion surplus in fiscal 1975. This means the $6 billion dollar tax cut now being discussed would lower the full employment budget surplus for fiscal 1975 to about the level of restraint in last year's budget. Even without any revenue gaining measures, a $6 billion tax cut would not push the budget into an expansionary position.

In addition to misreading the current fiscal position of the federal budget, several critics of a tax cut have not looked at the fine print of the proposals. The proposal I prefer, and intend to fight for, is a tax cut coupled with revenue-gaining tax reform along the lines recommended by the Joint Economic Committee earlier this year. This would mean a tax cut for low and moderate income consumers, largely offset by a package of tax reform focusing on percentage depletion, intangible drilling expenses, foreign tax preferences, and a strengthening of the minimum income tax. With major oil companies reporting first quarter profits increases as high as 123 per cent, while the real spendable earnings of consumers declined 3 per cent during the same quarter, tax reform is essential to restoring consumer confidence in the fundamental fairness of our economic system.

Second, those who oppose a tax cut usually misunderstand the nature of the present inflation. Rather than being the result of excessive federal stimulus, the pressure on prices has come from other sources. The *inflation of 1973* was primarily the result of food and fuel supply problems that had their origin in specific policy errors and market disruptions. A secondary source of inflation was the worldwide boom in commodity prices. These previous price increases are this year working their way through the production cycle as well as stimulating a sharp rise in labor costs. And inflation this year will get a further jolt as business and labor seek to get "ahead" of inflation after all formal controls have ended on April 30.

In other words, inflation in 1974 has a life of its own outside of the conventional macro-economic framework. It is now nourished by a variety of cost factors that unfortunately were injected into the system last year, and which now lie beyond the impact and grasp of ordinary fiscal policy.

I would like this point even further, arguing that those who believe that the current inflation is the result of excessive fiscal stimulus, or that it can be dealt with by conventional policies of aggregate restraint, do real harm to the formulation of an effective anti-inflationary policy.

While I don't pretend to have a neat package of solutions to the problem of inflation, it is obvious to me that we need to develop new techniques in this battle to complement our present economic tools. It is my judgment that the federal government must establish a permanent institution to focus on the problem of inflation. In addition to developing an information system that identifies price problems before they become crises, such an institution should have the power to hold hearings, postpone public and private decisions that could seriously undermine price stability, make recommendations to the Executive and Congress to improve price stability, and have limited power to impose legal sanctions.

Just as they have misread the nature of the current inflation, many of those who oppose a tax cut also fail to read the unmistakable signs of the serious recession that is upon us. The huge drop in real GNP in the first quarter is, after all, the worst decline in economic output since 1958, and much worse than the administration's February forecast that the economy would probably only decline a little in the first quarter. More important, the recent statistics do not reveal any sectors of the economy with sufficient strength to bring about recovery.

Consumption spending has been weak for the last six months and cannot be expected to lead any recovery. In the first quarter, real per capita disposable income fell at a 7 per cent annual rate, only the sixth decline that has occurred in the last 20 years, and the sharpest fall since 1949.

Residential construction expenditures in the first quarter dropped 8 per cent and have fallen 16 per cent in the last six months. Housing starts in the first quarter were 34 per cent below year earlier levels. In view of the recent sharp rise in interest rates, and the incredible announcement by Federal Reserve Board Chairman, Arthur Burns, that money will stay tight no matter what it does to housing, there is presently no hope that homebuilding will experience the turnaround forecast by the administration earlier this year.

Business spending on plant and equipment, which has always been offered as the backbone of a recovery in the second half of 1974, only increased at a 7 per cent annual rate in the first quarter. This is considerably below the 11 per cent annual rate of increase in the previous quarter and below the expectations for capital expansion this year.

Finally, net exports declined $3.3 billion in the first quarter of this year, compared to an increase of $5.2 billion in the fourth quarter.

Because the current inflation is not significantly due to excessive budget stimulus, and because the recession is upon us with no signs of recovery, it seems to me that the case for a tax cut is made. This conclusion is not reached, as some commentators have inferred, because I regard unemployment as more serious than inflation. On the contrary, I regard both inflation and unemployment as harmful to the economic and social fabric. But it is my belief that a modest tax cut, coupled with tax reform, will not increase inflation but will express itself in higher output, jobs, and income.

FOOD AND THE POPULATION CRISIS

Mr. McGOVERN. Mr. President, the worldwide problems of food supply and increasing world demand brought on by rapid population growth are every day becoming a more crucial concern to the United States and enlightened people in the world over.

The Declaration on Food and Population by the Population Crisis Committee endorsed by concerned citizens from over 80 countries and by many Members of Congress, represents a momentous call for immediate attention and positive action to meet the demands of these two interrelated problems which are at the heart of the future welfare of the world.

The Declaration on Food and Population presented to Secretary-General Kurt Waldheim, of the United Nations, on April 25, 1974, is a dynamic statement of new and obtainable policy objectives in this area. The encouraging response to it from Secretary-General Waldheim, His Imperial Majesty, the Shahanshah Aryamamehr, of Iran, Ambassador Samar Sen, Permanent Representative to the United Nations from India, His Excellency Leopold Senghor, President of Senegal, Prime Minister Sirimavo Bandaranaike, or Sri Lanka, His Excellency Dong-jo Kim, Minister of Foreign Affairs, the Republic of Korea, and Secretary of State Henry A. Kissinger, is hopefully a harbinger of real progress in this matter of life and death.

I applaud this sober effort to deal with this crisis. As a former director of Food for Peace who has seen firsthand the face of starvation, I can only pray that the community of nations will take heed of this call to action.

I ask unanimous consent that the Declaration of Food and Population and the attached statements in support of it from the distinguished world leaders I have mentioned be printed in the RECORD.

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

DECLARATION ON FOOD AND POPULATION

No link unites the family of man more than his need for food. For food is an essential condition of life, common to all people; wherever they are, whatever they do, they share alike in this need.

The stark truth is that man's ability to produce food is not keeping pace with his need. Despite efforts by governments and the international community to solve world food problems, more people are hungry today that ever before.

Hundreds of millions of the world's people are undernourished. Population growth is adding 75 to 80 million more people each year, 200,000 each day. Within the next 25 years or so our present numbers of nearly 4 billion will be nearly 7 billion. They must all be fed.

The world food situation took a sharp turn for the worse in 1972 and 1973:

1. Stocks of grain have hit an all-time low since the end of World War II. Surplus stocks formerly held in reserve have nearly been exhausted and no longer offer security against widespread hunger and starvation.

2. Food prices have reached new highs. Last year, despite a record world harvest, escalating demand nearly doubled grain prices. The increasing cost of food threatens to cause serious hardship for many people already spending most of what they have on food.

3. Less of the cheaper protein foods, which normally supplement grain diets, is available. The world's fish catch and per caput production of protein-rich legumes, the staple diet in many countries, have declined.

4. Food shortages have created serious social unrest in many parts of the world and are particularly severe in countries where hunger and the diseases that thrive on undernourished bodies are prevalent. This scarcity has been aggravated by the consumption of more and more grain to produce meat, eggs and milk.

5. Mounting fertilizer and energy shortages are reducing food production in certain areas and increasng food prices.

In this new and threatenting situation, a bad monsoon in Asia (which could occur in any year), or a drought in North America (like those in the 1930's and 1950's), could mean severe malnutrition for hundreds of millions and death for many millions.

This dangerously unstable world food picture, when seen against an unprecedented population increase, has created an immediate sense of urgency. The dangers of food shortages could remain a threat for the rest of this century—even if, hopefully, bumper crops in some years create temporary surpluses and even if the trend toward reduced birth rates becomes general throughout the world.

World food production in the years ahead must rise at least 2 percent a year to keep pace with the present rate of population growth. But it must rise a good deal more if the world's people are to be provided with an adequate diet. This required annual increase in food production is considerably greater than that which occurred during recent decades—and seems to be increasingly harder to achieve each year. But unless there is this necessary and continuous increase in food production, there will be even more hunger and malnutrition and soaring food prices.

The need to seek solutions is pressing. The

nature of the problem, the precarious state of world food production made critical by predicted expectations of continued population growth, calls for concerted action by the world community. There is only one cure for hunger and that is food. No palliatives or panaceas in the form of reports or resolutions can alleviate the pain of empty stomachs that must be filled. International resolutions, however high-minded, are a mockery if they do not have a tangible impact on the human condition.

The United Nations is now providing leadership on both these problems. In August the United Nations will convene the World Population Conference in Bucharest. In November it will convene the World Food Conference in Rome. These are the first occasions when governments have agreed to meet to consider these crucial questions and to consider taking action on them.

With these two conferences only a few months away, we urge governments, acting before, at and after these two global conferences, to consider realistic and purposeful measures such as the following:

1. Give high priority to programs in each country which will increase the production of grains, legumes and other staple food crops; ensure the availability of protein-rich foods, particularly to the more vulnerable population groups; expand the production of fertilizer; and improve the opportunities for small farmers to make a reasonable living. Develop a comprehensive and constructive World Food Plan for adoption at the World Food Conference.

2. Support sound population policies relevant to national needs which respect national sovereignty and the diversity of social, economic and cultural conditions; accept and assure the human right of each couple to decide for themselves the spacing and size of their families;* and recognize the corresponding responsibility of governments to provide their peoples the information and the means to exercise this right effectively.** Embody these policies in a World Population Plan of Action to be agreed upon by governments at the World Population Conference.

3. Recognize that the interdependence of the world community creates an obligation to assist in the necessary funding of food and population programs by both developing and developed countries. This call for the elaboration and implementation of a global strategy by the United Nations and its family of agencies, including the Food and Agriculture Organization of the United Nations and the United Nations Fund for Population Activities.

4. Establish sufficient food reserves through national and international efforts to provide continuing vital insurance against food shortages.

5. Recognize that, in our finite world where resources are limited, the family of man must one day, and hopefully fairly soon, bring birth rates into reasonable balance with the lowered death rates that have been achieved. Many governments see the need to guide national policy toward this objective.

A solution to the present world food crisis must be found within the next few years. The social transformation which can lead to a reduction in the world rate of fertility, along with lowering the rate of mortality will take decades to accomplish. But a start must be made now because the millions of people being born each year place a heavy burden on the resources available to many nations for education, health, employment and the maintenance of environmental quality. A reduction in population growth could help alleviate this burden. Effective measures toward resolving both the world food and population problems must come within a total strategy of development. Not only is social and economic development desirable in itself, but also it contributes to moderating population growth. All these measures are designed to improve the quality of life.

In this Declaration, we focus on food because it is the most critical of the pressures on the world today. It is the greatest manifestation of world poverty, which has many aspects. The absolute numbers of desperately poor are far greater today than ever before in history. The need to eradicate acute poverty is being recognized more than ever as a collective responsibility. It is a task which global partnership and the demands of social justice make imperative.

We repeat, food is crucial because literally tens of millions of lives are suspended in the delicate balance between world population and world food supplies. Growing populations, denied sufficient food needed for survival, resist all efforts to secure a peaceful world. With increased production and more equitable distribution of food, the future could provide a prospect of less misery and more hope for countless people now deprived of the basic necessities that are their right.

The World Food Conference represents a unique opportunity. This opportunity must not be missed. Comprehensive international agreements must be reached to assure at least minimal food supplies, with sufficient annual carry-over stocks. Disastrous breakdowns in the world food supply can thus be avoided. All nations may then rest secure in the knowledge that this, the most critical of their immediate problems, is being attacked with wisdom, vigor and unity of purpose.

In the name of humanity we call upon all governments and peoples everywhere, rich and poor, regardless of political and social systems, to act—to act together—and to act in time.

STATEMENT BY SECRETARY-GENERAL ON RECEIVING A DECLARATION ON FOOD AND POPULATION

Following is the text of a statement made by Secretary-General Kurt Waldheim on receiving a declaration on food and population presented by a group of eminent intellectuals and scientists at a ceremony at United Nations Headquarters today:

I am grateful to be given this Declaration. It is marked by a profound concern for the improvement of the human condition. The Declaration is important of itself by virtue of the authority of the signers whose standing in all walks of life is reflected by the stature of those who have come to the United Nations today to bear witness to it.

I have recently described the times we are living in as being characterized by mass poverty, food shortages, an energy crisis, a continuing oppressive burden of military expenditure, inflation exacerbated by world monetary instability, and the prospect before us of a doubling of human numbers by the turn of the century.

The Declaration addresses itself primarily to the dramatic depletion of available food reserves and the shortfall in world food production. There is no more immediate task than that of rescuing the world from a situation which, for many, has always been precarious and is now even more hazardous. Short-term measures, while essential, must not be allowed to become palliatives, for the coming years will increase our vulnerability.

Virtually in no other area is it more pressing than in the one to which your Declaration addresses itself: the need to assure that the men, women, and children of Africa, Asia, Europe and the Americas, whatever their origin, their religion, their political philosophy, their age, their social condition have the basic foods which are the one essential and undebatable pre-condition of a life of dignity and decency. Without an assured supply, all our other aspirations for peace, for social justice, for growth and creativity, both as individuals and as nations, lose their meaning and take on a hollow ring.

I cannot but be sharply and painfully conscious of the dangers posed by the Declaration, having recently returned from the Sahel. There, the suffering provoked by a six-year drought is resulting in premature death, disease and a dreadful sense of helplessness. The tragic spectacle of dying cattle and their owners fleeing the encroaching desert induces a sense of desperation into what should be the objective analysis of the world's food situation and prospects.

It is no accident that this Declaration is presented at the United Nations. This body was established in the final phase of the most devastating war in history not merely to embody the highest aspirations of mankind, but to provide an operational vehicle for global action. The present crisis and those that we can see looming ahead can be overcome. They are indeed a serious challenge to use all our forces, our determination and ingenuity to provide a better life for future generations.

This is a year in which the international community, with some brutally abrupt reminders of what the future may hold, is facing up to the situation. At its present special session, the General Assembly is devoting its attention to finding the basis of a more equitable and workable economic system—a system which takes into account not only the needs of all nations, but also the imperative interrelationships of the several parts of the problem: poverty, the conservation and just apportionment of natural resources, the preservation of the environment, and the problems of trade and monetary system. Food and population, the two urgent issues to which your Declaration addresses itself, form an integral part of this whole.

In August, in Bucharest, for the first time Governments will hold a world population conference. Shortly afterwards, in Rome, the World Food Conference will offer Governments the opportunity to tackle the world food problem. Your call therefore for international co-operation to ensure supplies of food comes at an opportune moment. The World Food Conference will present the Member States of the United Nations with the unique opportunity to take immediate practical and urgently needed steps to redress a tragic situation which we can no longer afford to ignore.

The unprecedented growth of the world's population is compounding man's difficulties in feeding himself. The time at our disposal is very short. You point out that the world's food production has barely kept pace with population increases. Our goal is not mere survival but a life of dignity and peace with hope for each new generation to improve the conditions of life for the billions of men, women and children who will inhabit the earth in the coming decades.

Whether or not we can increase food production depends, as the Declaration states, not on a torrent of words and resolutions, but on adopting new and tangible objectives, hammering out the global strategies needed and revitalizing the machinery to achieve them. In spite of its ideological complexity and the political and other constraints that must exist in any global body, the United Nations can and will respond.

It is in this same spirit of commitment and determination that I receive this Declaration. I am confident that the international community can and will find humane solutions to the serious problems of food and population which confront mankind.

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*United Nations Teheran Declaration of Human Rights, 1968 (para. 16)

**Resolution 1672 (LII) of the United Nations Economic and Social Council, 1969

IMPERIAL EMBASSY OF IRAN,
Washington, D.C., April 22, 1974.

Gen. WILLIAM H. DRAPER,
Population Crisis Committee,
Washington, D.C.

DEAR GENERAL DRAPER: I have the honor to forward herewith a message from His Imperial Majesty, the Shahanshah Aryamehr, which is to be presented to His Excellency Kurt Waldheim, the Secretary General of the United Nations Organization, along with the Declaration on Food and Population on April 25, 1974.

I am also pleased to add my own signature to the list of those who have signed the Declaration on Food and Population. You will find enclosed a copy with my name affixed.

May I say how very much I appreciate the fact that you and Senator Tydings were kind enough to bring this matter to my attention.

Very truly yours,

ARDESHIR ZAHEDI.

MESSAGE FROM HIS IMPERIAL MAJESTY, THE SHAHANSHAH ARYAMEHR OF IRAN, TO HIS EXCELLENCY KURT WALDHEIM, THE SECRETARY-GENERAL OF THE UNITED STATES

I have learned with pleasure of the Declaration on Food and Population signed by a group of distinguished people which will be submitted to the Secretary General of the United Nations Organization on the 25th of April, 1974.

It is my sincere hope that this declaration will create a sense of urgency and contribute to a greater awareness among nations of the grave problems facing mankind in view of the rapid population growth on the one hand and the precarious state of the world food production on the other.

Priority must be given by governments to implementing sound population control and environmental protection policies, to devising methods of increasing food production especially that of grains, to encouraging increased cooperation between developing and developed countries in order to provide aid for population control and food production programs and to making provisions for sufficient food reserves to guard against famine.

I earnestly hope that the World Population Conference and the World Food Conference organized by the United Nations and to be held in August and November respectively will help to promote a concerted effort on behalf of all the nations of the globe to seek wise solutions to these crucial issues which will have a vital bearing on the future of mankind.

AMBASSADOR SAMAR SEN

Ambassador Samar Sen, Permanent Representative to the United Nations from India, at the ceremony on April 25 when the Declaration on Food and Population was officially presented to Secretary-General Waldheim, speaking on behalf of the Prime Minister Indira Gandhi expressed her support of the Declaration on Food and Population and her hope that this worldwide initiative dealing with the two important and related problems of food shortages and too rapid population growth would be successful. The Ambassador concluded by stating that in India, as the Prime Minister herself has stated publicly, "Family planning is at the base of our whole endeavor of national development."

HIS EXCELLENCY, LEOPOLD SENGHOR

(Translation from French.)

A Message from His Excellency, Leopold Senghor, to United Nations Secretary General Kurt Waldheim on the occasion of the Presentation of the Declaration on Food and Population, Delivered by Ambassador Medoune Fall on April 25, 1974

Mr. Secretary General, Ladies and Gentlemen. On behalf of the President of the Republic of Senegal, His Excellency Leopold Senghor, I come to bring you the support of my country, of my government for this Declaration on Food and Population, and also on behalf of my President, my government and my people to bestow congratulations from Senegal to those who undertook this generous and opportune initiative. I thank you gentlemen.

Following cable was received from Prime Minister Sirimavo Bandaranaike of Sri Lanka to General William H. Draper, Jr.

I thank you for inviting me to join a group of leaders to present a Declaration on Food and Population to the Secretary-General of the United Nations. I regret my inability to accept the invitation due to other commitments Stop

I have noted with great satisfaction the initiatives taken by you and other distinguished world citizens to focus attention through this Declaration on one of the most crucial problems facing mankind today Stop

We of the developing world are particularly conscious of the gravity of this problem Stop

I am happy to associate myself with the Declaration Stop

My government will support all international action to avert a world food and population crisis End of message.

Dictated over phone by Ambassador of Sri Lanka.

APRIL 25, 1974.

His Excellency KURT WALDHEIM,
Secretary-General,
United Nations:

On behalf of the Government and people of the Republic of Korea, I take great pleasure in expressing our firm support for the Declaration on Food and Population signed by distinguished individuals from around the world. It is our sincere hope that, under your prominent guidance, the said Declaration will receive the prompt attention of all governments and peoples regardless of political and social systems, and be translated into concerned action in order to mitigate misery and create more hope for mankind in the future.

DONG-JO-KIM,
Minister, Foreign Affairs,
Republic of Korea.

THE SECRETARY OF STATE,
Washington, April 25, 1974.

His Excellency DR. KURT WALDHEIM,
Secretary General of the United Nations, N.Y.

DEAR MR. SECRETARY GENERAL: The Declaration on Food and Population presented to you today vividly portrays the connected global problems of food supply and rapid population growth.

It is a timely call by distinguished citizens of many countries for urgent attention to two central problems of human welfare. It recognizes that in this increasingly interdependent world there is no acceptable alternative to nations working together to solve global problems, of which food and population are among the most pressing. It reminds us that the individual nations and the United Nations must approach the World Population Conference and the World Food Conference with the determination to seek and agree on common approaches.

As I stated in my address to the Special Session of General Assembly, the United States will do its part. We strongly support a global cooperative effort to increase food production and have removed all domestic restrictions on our output. We will endeavor to increase the quantity of our food aid to needy countries, give technological and material help to efforts of developing countries to expand their food output, assist in the production of more fertilizer and in its more effective use, and join other governments in a worldwide effort to rebuild food reserves.

We hope that other countries able to do so will make similar contributions and that all countries will take active measures to bring population growth and food production into better balance.

The food and population crises threaten the welfare and stability of peoples and nations. We must act together with the purpose, the mutual confidence and the determination to overcome them.

Best regards,

HENRY A. KISSINGER.

FINANCIAL STATEMENT BY SENATOR WEICKER

Mr. WEICKER. Mr. President, I ask unanimous consent that a joint statement of assets and liabilities of my wife and myself as of December 31, 1973, be printed in the RECORD.

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

WIENDIECK & CO.,
Greenwich, Conn., May 8, 1974.

Hon. LOWELL P. WEICKER, Jr.,
Senator From Connecticut,
Washington, D.C.

DEAR SENATOR WEICKER: Pursuant to your request we have prepared the enclosed joint statement of assets and liabilities for you and Mrs. Weicker as of December 31, 1973. Where applicable this statement is based on estimated values as more fully explained in the accompanying notes.

The items contained herein were determined in accordance with generally accepted auditing standards and the application of such other auditing procedures as we considered necessary in the circumstances.

In our opinion the aforementioned statement presents fairly your assets and liabilities at December 31, 1973.

Respectfully submitted,

WIENDIECK & CO.

STATEMENT OF ASSETS AND LIABILITIES—DECEMBER 31, 1973

Assets:	
Cash	$4,565
Marketable securities (Schedule 1 and Notes 1 and 6)	67,218
Cash value of life insurance	3,780
Interest in W-Ventures, partnership (Investment Club)	2,995
Residence, pledged on mortgage note (Note 2)	219,750
Automobiles	4,825
Household furnishings, paintings, jewelry, personal property	70,175
Accumulated deductions for Civil Service retirement	16,619
Deposit on real estate (Note 3)	5,300
Contingent asset (Notes 4 and 5)	
Total assets	395,227
Liabilities:	
Accounts payable	671
9% demand loan (monthly interest-voluntary reductions) (Note 6)	20,000
10% demand loan (monthly interest-voluntary reductions) (Note 6)	10,000
7½% mortgage, maturing in 1998, secured by residence (annual amortization and interest payments amount to $8,868)	99,187
Total liabilities	129,858
Excess of assets over liabilities	265,369

The Notes to the Statement of Assets and Liabilities are an integral part of this statement.

MARKETABLE SECURITIES

	Shares	Market value
Stock:		
American Brands, Inc.	100	$3,225
American Express Co.	75	3,375
Block Drug Co.	550	6,600
Charter Publishing Co.	377	1,885
Colonial Penn Group Inc., common	50	2,869
Friendly Ice Cream Corp.	475	6,650
Garfinckel, Brooks Bros., Miller & Rhoads, Inc.	125	1,500
General Signal Corp., common	83	4,109
Heublein, Inc.	160	7,980
Hewlett—Packard Co., common	50	4,043
Maryland Cup Corp., common	175	2,406
Marriott Corp., Inc.	125	2,375
Merck & Co., Inc., common	38	3,069
Mesa Petroleum	50	1,913
National Airlines, common	125	1,891
Pacific Power & Light	60	1,515
Scudder Common Stock Fund	239	2,053
Subtotal		57,458
Bonds:		
Heublein, Inc. 4½ percent convertible debenture due May 15, 1997 (face value)	$6,000	5,280
Maryland Cup 5⅛ percent due 1994 (face value)	7,000	4,480
Subtotal		9,760
Total		67,218

NOTES TO THE STATEMENT OF ASSETS AND LIABILITIES

Note 1.—Marketable Securities. The amounts shown represent the market value at December 31, 1973 as represented by the quoted closing or latest bid prices.

Note 2.—The assessed value for property taxes was ascertained to be $175,800 and taking into consideration the usual relationship of assessed value to actual market values an estimated value of $219,750 was indicated.

Note 3.—This represents a down payment on the purchase of a condominium at the Coloney Beach & Tennis Club, Sarasota, Florida. The total purchase price will be $53,000.

Note 4.—Senator Weicker is a beneficiary of certain trust funds which produced an income of $9,290 in 1973. In one instance he has the power of appointment but cannot inherit the principal. In connection with the other trusts, he does not have the power of appointment. One trust fund permits him to take down 10% annually. The value of this trust on December 31, 1973 was $182,340.

Contingencies within certain other trusts preclude the actuarial determination of a present value. He is not a trustee and has no control over investments of any trust.

Note 5.—Mrs. Weicker is a beneficiary of a trust established for her mother and aunt which provides income of roughly $1,000 a year to her. Upon her mothers death, Mrs. Weicker would inherit one-third of her mothers interest. As of December 31, 1973, the value of Mrs. Weicker's one-sixth share amounted to approximately $28,000.

Note 6.—As of December 31, 1973, the following securities were held as collateral for the demand loans:

	Shares	Market value
Stock:		
Maryland Cup Corp., common	175	$2,406
Marriott Corp., Inc.	125	2,375
Friendly Ice Cream Corp.	265	3,710
Merck & Co., Inc., common	38	3,069
Colonial Penn Group, Inc., common	50	2,869
Hewlett-Packard Co., common	50	4,044
Block Drug Co.	350	4,200
National Airlines, common	100	1,513
Pacific Power & Light	35	883
Total		25,069

FORMER PENTAGON OFFICIALS URGE $14.9 BILLION CUT IN MILITARY BUDGET

Mr. PROXMIRE. Mr. President, yesterday a group of 21 distinguished former Pentagon and National Security Council officials released an analysis of the fiscal year 1975 military budget indicating that some $14.9 billion could be cut without any negative effect on national security.

They proposed a $5.9 billion cut in general purpose forces, $4 billion in military efficiency, $2.5 billion in strategic forces, $1.4 billion for Southeast Asia military assistance and $1.1 billion for military assistance programs.

Although I personally think this recommendation is too high, the expertise that went into this study forces any reader to consider carefully what has been proposed.

The list of names reads like a who's who of the defense world: Former Assistant Secretaries of Defense, Director and Deputy Director of the Arms Control and Disarmament Agency, a Deputy Director of the CIA, a Director of Defense Research and Engineering, staff members of the National Security Council.

The names go on and on representing countless years of experience at the highest policy levels of Government under Democratic and Republican administrations. Their recommendations cannot be dismissed with a wave of the hand or a short statement of rebuttal.

Mr. President, I urge all Members to read this document regardless of their feelings on the military spending issue. We simply cannot ignore the scope of knowledge and talent that went into this study.

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

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

MILITARY POLICY AND BUDGET PRIORITIES—FISCAL YEAR 1975

Presented by:

Paul C. Warnke, Convener—Former Assistant Secretary of Defense (International Security Affairs).

Adrian S. Fisher—Former Deputy Director, U.S. Arms Control and Disarmament Agency.

Alfred B. Fitt—Former Assistant Secretary of Defense (Manpower).

William Foster—Former Director, U.S. Arms Control and Disarmament Agency.

Alvin Friedman—Former Deputy Assistant Secretary of Defense (International Security Affairs).

Roswell Gilpatric—Former Deputy Secretary of Defense.

Morton Halperin—Former Deputy Assistant Secretary of Defense (Policy Planning and Arms Control).

Townsend Hoopes—Former Under Secretary of the Air Force.

Brig. Gen. Douglas Kinnard, U.S. Army, Ret.—Formerly in the U.S. Military Assistance Command, South Vietnam.

George B. Kistiakowsky—Former Presidential Science Advisor to President Eisenhower.

Anthony Lake—Former staff member, National Security Council.

Rear Adm. Gene LaRocque, U.S. Navy, Ret.—Former Commander, Carrier Task Group, U.S. Sixth Fleet.

Vice Adm. John M. Lee, U.S. Navy, Ret.—Former Assistant Director, U.S. Arms Control and Disarmament Agency.

Earl Ravenal—Former Director, Asian Division (Systems Analysis), Department of Defense.

Herbert Scoville, Jr.—Former Deputy Director, Central Intelligence Agency.

Ivan Selin—Former Deputy Assistant Secretary of Defense (Strategic Programs).

Richard C. Steadman—Former Deputy Assistant Secretary of Defense (East Asia and Pacific Affairs).

James C. Thomson, Jr.—Former staff member, National Security Council.

Adam Yarmolinsky—Former Deputy Assistant Secretary of Defense (International Security Affairs).

Herbert F. York—Former Director of Defense Research and Engineering.

Walter Slocombe, Editor—Former staff member, National Security Council.

SUMMARY OF FEASIBLE REDUCTIONS IN FISCAL YEAR 1975 MILITARY BUDGET AUTHORITY

[In billions]

General purpose forces	$5.9
Asia committed forces	2.4
Indian Ocean carrier	.1
Reserves	.6
Procurement	2.8
Military efficiency	4.0
Military support personnel	2.0
Civilian bureaucracy	2.0
Strategic forces	2.5
Counterforce program	.3
Trident submarine	1.4
B-1 bomber	.5
Strategic defense	.3
Southeast Asia military assistance	1.4
Military assistance program	1.1
Total feasible reductions	14.9

MILITARY POLICY AND BUDGET PRIORITIES

The Nixon Administration has proposed to Congress the largest peacetime military budget in our history. The Administration juggles its figures to seek to give the impression that the proposed increase over last year is only large enough to cover pay and price increases—about $5 billion. But the truth is that, if all the requests that are really part of the FY 1975 program are counted, the actual increase is about $13 billion. This proposal comes at a time when the Administration is freezing budgets and impounding funds appropriated by Congress for vital domestic programs. Moreover, the Secretary of Defense has admitted that his request for national defense needs would have been more than $6 billion lower had he not been encouraged to include funds in the hope that more military buying might stave off a recession.

The huge size of the request the attempt to camouflage the real increase from last year and the open admission that extra billions for the Pentagon are included to stimulate the economy make it more necessary than ever that Congress looks independently and critically at the real need for military spending to serve our national interests—and at how much of the Nixon Administration's proposals involves waste, continuance of unwise past programs and unsound efforts at pump-priming.

In this report, we propose an approach to end the remorseless growth of the defense budget. Also outlined are certain feasible measures that can be taken and programs that can be cut without risk to our national security. These reductions, which are illus-

trative rather than comprehensive, would total nearly $15 billion, well in excess of the amount necessary to achieve the $11 billion in savings we recommended for FY 1975.

THE REAL FY 1975 BUDGET

Despite the end of direct U.S. combat in Southeast Asia and the much-advertised detente, the military budget* for FY 1975, accurately calculated, is significantly higher than that for FY 1974. As shown in the table, after pay and price increases are taken into account, the net increase (FY 1975 constant dollars) amounts to $8.0 billion or 9.4 percent. This increase in real spending indicates that military functions are being expanded very substantially.

Military [*budget authority in billions of dollars*]

Fiscal year 1974	
Enacted by Congress: [1]	
Department of Defense	$76.5
Military assistance	4.2
AEC—military	2.4
Add supplementals: [3]	
Pay increases	3.4
Fuel price increases	.5
Middle East payback	.2
Delete (for comparison):	
Emergency aid to Israel [2]	−2.2
Total FY 1974	85.0
Fiscal year 1975	
Administration request: [1]	
Department of Defense	91.0
Military assistance	1.9
AEC—military	3.1
Add supplemental for "readiness" [3]	2.1
Total FY 1975	98.1
Increase from FY 1974 to FY 1975 (15.4%)	13.1
Less pay and price increases (DoD estimate) [3]	5.1
Real increase from FY 1975 to FY 1975 (9.4%)	8.0

[1] Source: *Budget of the United States Government: Fiscal Year 1975*, Table 13, page 303.

[2] *Ibid.*, page 73.

[3] Office of the Assistant Secretary of Defense (Public Affairs), "FY 1975 Department of Defense Budget", News Release 43-74, Feb. 4, 1974.

These actual figures are distorted by the Administration's budget presentation. The Administration claims an increase in budget authority of only $6.6 billion or 7.4 percent, creating the illusion that this year's military budget, in Secretary Schlesinger's words, in real terms "means doing no more than holding our own as compared to 1974".

This illusion depends on two key budget manipulations:

Last year's budget would be retroactively increased through a $2.1 billion "supplemental" to buy new capability. This kind of request—made at the same time as the FY 1975 budget—should properly be submitted as part of that budget.

Aid of $2.2 billion for Israel—not a direct part of the defense costs for the U.S.—is counted in the FY 1974 figures to which the FY 1975 request is compared. The FY 1975 budget, as presented, does not include any comparable request for Israel. White House Deputy Press Secretary Warren, moreover, has announced that Israel will be expected to pay back $1.2 billion of this arms aid.

Despite the attempted distortion, the FY 1975 request is higher in absolute amount than any peacetime military budget in our history, higher indeed than any during the Vietnam War years. Even allowing for the reduced value of today's dollars, the contrast with other post-war budgets is striking. By 1948, the defense budget was less than 10% of its World II high; after Korea, in two years defense spending fell to 45% of its 1952 peak.

The Administration has fostered the impression that the increased military request results largely from military pay and the cost of the volunteer force. But compared to FY 1974, other areas of the budget have been increased more. For example, procurement is up 23.4 percent ($5 billion), research, development, test and evaluation would get a 15.9 percent increase ($1.3 billion) and operation and maintenance would rise by 13.7 percent ($3.3 billion). By contrast, the costs for active duty military personnel have increased only 6.5 percent or $1.6 billion. If the volunteer force were terminated, no more than $750 million would be saved.

ECONOMICS AND THE MILITARY BUDGET

Secretary Schlesinger told the Mahon Defense Appropriations Subcommittee in February that his budget request would have been only $85 billion (TOA), instead of the $91.3 billion actually sought, except that this large amount was added to the FY 1975 military budget request to try to stimulate the economy during the present downturn. No one outside the Nixon Administration can know exactly where this anti-recession padding has been hidden. But it is clear that inflating the military budget is a grossly wasteful device for economic stimulation.

Any form of government spending arguably can stimulate economic activity. But for four primary reasons, spending through the Department of Defense is a clumsy and crude approach when compared to other available measures. First, military spending is generally slower in impact than increasing other programs because of built-in lags necessary for cost-effective contracting. Figures on outlays in the budget document indicate that nearly 70 percent of the budget increases in military programs that might be used for stimulation will not be expended until after July 1, 1975. Greater military spending thus would have its major impact not when it might help but at the time when boom conditions are predicted by the Administration.

Second, countercyclical spending is less desirable through the Department of Defense than through other federal agencies, because it cannot be targeted to particular geographic depressed areas as effectively. The locations of the military contractors or the installations at which stimulative spending could take place have no necessary correlation to economic trouble spots, especially if contracts are to be awarded on an efficient and competitive basis.

Third, military spending goes largely to industries employing skilled, well-paid workers. Unemployment is most severe among unskilled, low-income people. Because of the high rate of inflation in food and fuel, this same group suffers even greater hardships from present economic conditions. Increasing the military budget provides little in the way of direct relief for the hardest hit among the unemployed.

Fourth, military spending as a stimulus to the economy is particularly wasteful, because, instead of creating social capital and providing services vitally needed in our states, cities, and rural communities, it creates only superfluous military hardware.

To grasp the significance of the $6 billion injected into the military budget for nonmilitary reasons, Congress need only look at the amounts of total federal funding for other programs: education ($7.5 billion), drug abuse enforcement and prevention ($750 million), community development and housing ($6.4 billion), manpower ($3.3 billion), pollution control ($700 million), general revenue sharing ($6.2 billion), energy research ($2.1 billion). The Administration has impounded some $11 billion for water treatment, housing, health, education, welfare and mass transportation using as a justification the need for greater fiscal responsibility. When $375 million for urban transit is impounded at a time of both an energy crisis and high unemployment while $6 billion is pumped into the Pentagon, it would seem that the Administration favors unneeded military spending over even the most essential and worthwhile domestic programs.

Of course, spending for other government programs is not the only alternative to greater Pentagon waste as a means to provide the needed degree of economic stimulation. Instead, more money could be put into the hands of the working people who are hit hardest by both recession and inflation through expanded and extended unemployment compensation benefits, quick-impact local programs of public employment, a temporary reduction of the social security withholding rate or a reduction in the income tax on low incomes.

While the economy is experiencing a slowdown, inflation is rampaging. This unique economic quandary—known as stagflation—means that if federal spending is used to influence economic activity emphasis should be placed on both job creation and inflation control. Military spending is perhaps the worst form of federal spending in this regard. As noted on the recent "Monthly Economic Letter" of the First National City Bank of New York. "Historically, it has seldom proved good economics to give an economy a fiscal shot in the arm by upping defense outlays". In reference to the proposed increase for FY 1975, they add, "the result could be inflationary stimulus to an economy that has already started on the road to recovery".

Military spending contributes to inflation, because it diverts resources which are then not available to meet demand by consumers or other agencies of government. As demand is being stimulated by counter-recessionary spending through the military budget, there will be greater upward pressure on prices for goods than normally is the case with military spending. As output nears production capacity the pressure on prices becomes even more intense.

THE REAL WORLD OF TODAY AND MILITARY NEEDS

The large real increase in proposed defense expenditures would suggest that somehow the military threat to the United States has increased. If this were so, the Administration would have been derelict in its failure to alert the people of the United States to the greater danger. But it is not so. Rather, as Secretary Schlesinger recognizes in his current Posture Statement, the world is "militarily dominated by two states—ours and the Soviet Union." He asserts that "the Soviet Union has historically been a relatively prudent and sober power" and that the contingencies of any Soviet aggression against Western Europe are "unlikely."

Instead of warnings of greater military threats, we are told that an era of confrontation has yielded to an era of negotiation. Current activity supports this contention. The United States and the Soviet Union are engaged in continuing talks on the limitation of strategic nuclear arms, and President Nixon still plans for a summit review in Moscow within the next couple of months. Other negotiations between the super-powers include those on mutual troop reductions in Central Europe and on European security and cooperation. We and the U.S.S.R. are co-participants in the Geneva conference intended to bring stable peace to the Middle East.

In Asia, the military capacity of the

*For purposes of this analysis, the military budget includes funding for the Department of Defense, Military Assistance Program and military activities of the Atomic Energy Commission.

People's Republic of China is dwarfed by our own strategic air and naval forces. Our relations with China have improved, and there is now an exchange of high diplomatic representatives. The only current threat of Russian or Chinese aggression in Asia is that of a possible fratricidal fight between these two great Communist powers. Their mutual hostility helps restrain each from military adventures elsewhere.

We are, after tragic delay, no longer fighting or bombing in Indochina. The Secretary of Defense notes that this is the "first budget in a decade or more that does not include support of United States forces in combat."

Further swelling of our defense budget cannot helpfully affect the course of events in the Middle East. We have already in abundance the military power that lends weight to our diplomatic efforts to bring about a settlement.

Steps have been taken in the past and can be taken in the future, outside the regular defense budget, to see that Israel has the arms it needs for its own defense. And certainly any direct U.S. military involvement would only hazard a confrontation there between the military superpowers with disastrous consequences for Israel and for world peace.

Nor does the United States enter this new era of international relations militarily weak. Despite the tendency of the Nixon Administration and the military services to poor-mouth U.S. defense capability at budget time, the U.S. retains important advantages over the U.S.S.R. militarily. For example, the U.S. has been about five years ahead of the Soviets in the development of MIRV's, multiple warheads which can be aimed at separate targets, and will continue to lead them in the number of missile warheads well into the 1980's no matter what the Russians do. Nevertheless, we are moving on to the next generations of nuclear warheads without waiting to see whether this dangerous and expensive race can be halted. The U.S. does not lead the U.S.S.R. in every category of weapons or units—nor need we seek to do so. We are today the strongest military power in history. What we must maintain is the strength, together with our allies, to deter or deflect any Soviet aggression against our territory or that of nations whose security is integral to our own.

But, despite these facts, we are asked now to supply more tax dollars for defense appropriations and expenditures, while badly needed domestic programs are starved for funds and inflation runs rampant. Our true national security is sacrificed to a mindless drive for more weapons of unneeded complexity and inordinate expense and for the maintenance at home and overseas of military forces designed for contingencies in which our military involvement would disserve our national interests. For our true national security is neither measured nor insured by tanks, planes, missiles, warships and armed men but by the fundamental strength, unity and confidence of our people in our institutions, our economy and our society. We do not protect but endanger that real security by excessive military spending.

GENERAL PURPOSE FORCES

Feasible savings: $5.9 billion

General purpose forces—Army and Marine divisions, land and sea based tactical aircraft and naval vessels other than strategic missile submarines—are the most expensive part of our military budget. They absorb with their support, at least 60 percent of the total budget.

Policy and Deployments

Our general purpose forces and where they are deployed are a major key to our foreign policy in reality—as opposed to our policy in words. The world has changed much in the last decade, but the conventional forces of the United States have changed little. Even on the Defense Department's grossly inflated "constant dollars" basis, which minimizes current costs, we are spending virtually as much on general purpose forces in 1975 as we spent in 1964 to maintain a strikingly similar force structure. The Pentagon claims that our conventional forces have declined sharply since 1964, but the truth is that the "peacetime" force for the 70's, although quantitatively somewhat smaller, is qualitatively far more powerful than in 1964. We maintain essentially the same number of tactical air wings. The Navy has the same number of attack carriers and three times as many nuclear attack submarines. The Pentagon itself explains the significant decline in the number of surface war ships as due to retirement of "marginally effective ships". The small decrease in the number of ground divisions from 19⅓ to 16 has reflected deactivation of forces remaining in 1964 from the earlier Berlin buildup and the abandonment of plans to fight 2½ major land wars simultaneously in Asia and Europe. (The number of divisions is now to be increased.) The individual weapons in the 1974 force now are immensely more powerful and sophisticated than those of 1964. To give just one example, the number of helicopters in the Army has doubled in that period and the capability of each has greatly increased.

Our deployments of these forces are also relatively little changed despite the vast changes in the world. The Asian deployments merit more attention than they have received. Even after the end of direct U.S. military involvement in the fighting in Southeast Asia and 24 years after the Korean conflict broke out, we still station some 181,000 troops in the Western Pacific and Asia, about two-thirds as many as in Europe. Most of the 36,000 troops based in Thailand are classified as incremental to the baseline force and are intended solely for possible reintervention into Vietnam hostilities. In addition, despite what we should have learned from the Vietnam experience about the folly of fighting a major land war in Asia, much of our general purpose force at home is committed to just such a possibility. Independent estimates of baseline force allocations slot at least 3 of our 16 ground divisions and 8 of our 39 tactical air wings to Asian contingencies.

We recommend that most of the forces maintained for Asian intervention, including the incremental force earmarked for Vietnam, be eliminated. This reduction of the force structure will yield savings of $463 million in incremental costs for Vietnam plus another $1.9 billion for demobilization of 3 divisions, 8 air wings and one carrier with attendant direct fleet and shore support.

A minimal first step Congress could take this year should be withdrawal and demobilization of 125,000 U.S. military personnel stationed in Asia. This would include the 36,000 troops in Thailand and our division in Korea. Even without the U.S. ground forces in Korea, the South Koreans would retain about a 2-to-1 advantage over the North Korean army. More than 20 years after the Korean War these forces serve only to foreclose the option of non-involvement of American personnel in the event of conflict. Now the time has come to eliminate this last remaining automatic commitment of American forces outside of Europe. The American forces remaining in Asia after this 125,000 reduction would be more than ample to provide stabilizing evidence of continued American interest.

The most hotly debated aspect of our overseas deployments have been the forces stationed in Europe. In the interest of the United States, providing the forces necessary to give the NATO alliance military and political credibility must remain our highest conventional force priority. However, Congress has properly insisted that our allies neutralize the effect of our NATO forces on our balance of payments through the device of off-set payments.

There is certainly no military necessity nor any diplomatic purpose for maintenance of all our present 300,000 troops in Europe indefinitely. Nor can we wait indefinitely for complex arms control negotiations to begin this process of reduction. We should work out with our European allies a practical program for restructuring our NATO conventional plans in ways that will permit gradual but significant reductions in the U.S. force. As a very modest initial step, European forces and bases should be included in an immediate fifteen percent cut in suport personnel. In fact, the Secretary of Defense acknowledged recently that at least 20,000 support personnel could be withdrawn. Significant economies of personnel and money would be available by reducing tactical nuclear weapons in Europe, and this can actually increase our security by minimizing the risk of nuclear war. Moreover, abandoning the illusion—shared neither by the U.S.S.R. nor our allies—that a long conventional war in Europe is a real possibility would sharply reduce our support billets there.

Finally, the Congress should proceed with caution in considering the relatively modest request for $29 million to expand the present small communications facility at the remote Indian Ocean island of Diego Garcia. This must not be allowed to become the first step toward a new and separate fleet for a continuous U.S. naval presence in the Indian Ocean or an excuse for maintaining higher carrier levels. The Soviet naval forces there pose no threat to our security. If the opening of the Suez Canal makes that remote marine expanse more accessible to Soviet ships, the ease with which it could be closed could threaten an aquatic trap for Soviet naval forces in time of conflict. A decision not to create a massive U.S. military presence in the Indian Ocean would contribute to rationality and restraint in our foreign policy and save immense amounts of money through the prevention of long-term costs.

The FY 1975 budget reveals plans to keep a World War II type carrier in commission an extra year for duty in the Indian Ocean. This ominously suggests that the Navy is trying to keep the slot open for a future request for a fifth nuclear carrier to maintain the traditional total of 15 attack carriers rather than proceeding to implement earlier Navy plans to reduce the carrier fleet to 12 ships. This carrier should be deactivated for a savings of $100 million in FY 1975.

Streamline the Reserves

Considerable waste, duplication and inefficiency can be spared from the Administration's request of $4.8 billion for the reserves (including the national guard). This is up 9 percent over FY 1974.

With the end of conscription, the reserves have replaced the draft as the principal means for expanding military forces in a national emergency. However, despite the goal of "total force planning", the precise role of the reserves in current national security planning remains unclear.

In view of actual capabilities, the reserves appear to be designed for a conventional war of indefinite duration. A significant portion of the reserve units is to perform support activities designed for a World War II type conflict, e.g., in governing occupied nations.

Since escalation of major conflict to a nuclear war has become a dominant reality for military planning, full mobilization of the reserves for protracted conventional wars seems unlikely. Given the present readiness of the reserves, it is unlikely that a reserve division could be deployed in time to effect the outcome of a short conventional war. Deterrence of conventional war now depends on forces in being which can react quickly. Even

during the Vietnam War—the longest conventional war in U.S. history—there were only token mobilizations of the reserves.

In recent years, actual deployment of the reserves has been limited to domestic requirements such as disaster relief and quelling civil disorders.

If only the reserve units which could be used in a short war or for domestic emergencies are retained, reserve personnel and costs could be cut by two-thirds. We urge the Congress to begin a thorough review of the unit missions of the reserves and to begin paring back non-essential units which do not meet the practical realities of present day military requirements. It might be possible to save several billions of dollars in future years.

But without redefining the role of the reserves in upholding U.S. national security interests, significant savings can be achieved in FY 1975 primarily through greater efficiencies.

Marginal and inappropriate functions should be eliminated, particularly those which survive from the World War II era only through bureaucratic momentum. Many administrative, recruiting and training activities and facilities of the Army and Air National Guard should be merged with reserve counterparts. In some instances, reserve personnel could be substituted for more costly active duty personnel in support billets. The manning for some units should be reduced to cadre status. If these reforms were to be implemented in FY 1975, as much as $600 million could be saved.

Procurement of New Weapons

Our general purpose forces, like our strategic forces, are marked by increasingly complex and expensive weapons systems. There is a danger that by neglecting practical combat effectiveness for goldplating and super sophistication, the Pentagon may well actually be reducing real military power. Significantly, the Pentagon admits that the experience of the Middle East War showed that basic combat readiness—maintenance, organization of supply and ammunition stocks—has not been adequate for modern conventional combat.

We recommend that research, development and procurement of weapons for general purpose forces be reduced by $2.8 billion through a combination of terminating and stretching out programs. Any additional costs incurred from implementing these cutbacks should be met out of the unobligated balances of budget authority now totaling some $10 billion.

Examples of weapons systems which can and should be eliminated or cut back as we bring the size, deployments and mission of our conventional forces up to date include:

Cancel AWACS, an electronics-laden Boeing 707 for airborne battle management and air defense command and control, which was suddenly and unconvincingly shifted from a strategic to a tactical mission ($770 million).

Halt the Navy F-14 aircraft program ($756 million) and the Phoenix missile being developed for it ($100 million). This aircraft represents too little improvement over the F-4 at skyrocketing per-unit costs to be continued. The new VFX "austere" carrier aircraft proposal is far more promising.

Stretch out procurement of the SSN-688 nuclear attack submarine. Only two instead of three boats should be built in FY 1975 for a savings of $100 million.

Suspend new tank development. The Middle East War raises very serious questions about the role of the traditional tank in modern combat environments in which missiles are used extensively. Yet the Pentagon response has been to accelerate procurement of M60 tanks ($237 million) and to revive the main battle tank (XM-1) killed by Congress in 1971 ($69 million). Clearly some new tanks are needed, but massive procurement and development of a super tank are hardy justified at present. The appropriation for tanks should be limited to $100 million in FY 1975.

Stretch out procurement of the DD-963 by cutting the FY 1975 build from seven to three ships and reducing the $464 million request to about $200 million. The unit cost of this oversized, rapidly obsolescing destroyer is nearing $100 million. At the very least, the program should be decelerated while the financial and technical problems are resolved.

Slow procurement of the Patrol Frigate ($437 million). This imaginative concept for a lower cost, less complex ASW ship is threatened by a forced-pace, high concurrency rush to procurement. The lessons of the DD-963 are being ignored. A more modest pace would save $200 million in FY 1975 and, equally important, would increase the chances for success in the program.

Cuts such as these and a more critical look at other aircraft, missile, ship and vehicle programs in terms of both procurement efficiency and a recognition of the limits to U.S. need for conventional intervention forces—especially in Asia—could yield an additional $300 million. Simpler and more workable weapons could actually enhance the effectiveness of our force.

Personnel

General purpose forces and their support are the largest users of personnel. So it is here that the greatest benefits would result from economy in use of this expensive resource—and here that the need is greatest. Headquarters, training, base operations and other areas in which waste abounds (detailed elsewhere in this report) have their biggest impact on general purpose forces.

A particular Pentagon anomaly, new in this year, needs to be stopped now. The Chairman of the Joint Chiefs of Staff proposes to increase the Army a full division by the end of 1975—and possibly by 3 divisions in two or three years—as the result of personnel savings from efficiencies. There is no convincing evidence we need any such build-up of ground forces either to meet new threats or to negotiate away in arms control talks. In fact, heavy emphasis is placed on the build-up as an "incentive" to the Army to cooperate with efforts to shrink swollen support costs. This amounts to giving the army—and presumably the other services as well—a permanent claim on the dollars and manpower slots saved by eliminating their past waste and inefficiencies, to prevent them from sabotaging the efficiency program. This is an abdication of management, and it is an insult to our military services to suggest that only this kind of tactic will induce them to eliminate waste. Instead of "beating fat into more swords", this waste should be converted for non-military purposes.

MILITARY EFFICIENCY

Feasible savings: $4.0 billion

Through implementation of operating efficiencies at least $4.0 billion or 8.3 percent could be saved in FY 1975 from a portion of the budget totaling some $48 billion. This covers $21.2 billion in military support personnel (excluding reductions outlined in an earlier section), civilian pay of $14.7 billion and the non-pay portion of operation and maintenance of about $12 billion. Greater efficiency can be achieved with no significant effect on U.S. military capabilities.

Eliminate Excess Support Troops

A growing problem for the military is that, despite improved combat effectiveness supposedly gained from better technology, the support bureaucracy is becoming more complex and cumbersome. The overwhelming majority—about 83 percent—perform direct or indirect support tasks such as administration, logistics, training or maintenance. This is an area in which personnel savings can be realized. Only strict oversight by Congress and tough management by the Pentagon will stop this drain of valuable resources.

We recommend that fifteen percent of all support personnel be cut. Excluding the billets eliminated in the section of this report covering general purpose forces, the net reduction would be about 175,000. Assuming that reductions take place early in the fiscal year, savings could amount ot $2 billion in payroll and attendant operation and maintenance costs. This goal could be reached readily by limiting the 473,000 accessions planned for FY 1975. Congress has used such a procedure in the past to limit the number of replacements.

Reduce the Civilian Bureaucracy

The Administration has requested 1,128,000 direct-hire civilian positions for FY 1975. This figure represents an increase of 18,000 over the level approved by Congress last year.

There is nearly one civilian for every two people in uniform. Excluding the Postal Service, the Department of Defense has roughly as many civilians as all other federal agencies combined.

President Nixon said shortly after his 1972 election victory, "But in terms of the masses of civilian employees who are getting in the way of each other over the Pentagon and around the country, they are going to have to take a thinning down". This view was echoed by Chairman John Stennis of the Senate Armed Services Committee when the FY 1975 request was submitted, "This proposed increase seems inconsistent with the announced intent of the Department to achieve greater manpower efficiencies". Certainly this problem should receive careful scrutiny.

Although we support the basic objective of civilianization—to use civilian personnel in jobs which do not require military incumbents and thereby reduce the requirement for military personnel—we believe that greater effort should be made to reduce the civilian work force while meeting civilianization goals. An excessively large civilian bureaucracy will drain resources from more vital military programs.

We recommend a fifteen percent cut in the civilian personnel slots requested for FY 1975. About $2 billion in payroll and attendant operation and maintenance costs can be saved if staff reductions are made early in the fiscal year. As in the case of active forces, this goal can be reached primarily through reduction of accessions.

The Administration has requested an additional 24,000 jobs in the FY 1974 Supplemental and the FY 1975 budget to "improve combat readiness" by "reducing backlogs in depot maintenance and ship overhaul and increasing logistics and base operations support activities". It seems apparent that these jobs were added as part of the increment designated to stimulate the economy, and, therefore, should be eliminated.

Further economies can be made by cutting some of the 953,000 support slots for land forces, base operations, command, logistics, training, personnel management, medical services and reserve units.

Trim Support Services

Some of the major ways in which support positions both civilian and military can be reduced are:

24,000 excess support troops are being used to create additional land forces. Instead of "beating fat into swords" the fat should be rendered for consumption by domestic priorities.

"Grade creep"—a growing number of higher grade officers and senior civilians in a smaller total force—should be minimized. For example, there are now more field grade (lieutenant colonel or commander and above) and flag officers to command a force of 2.2 million than there were in 1945 when the military numbered 12.1 million.

The military enjoys a much higher teacher/staff to student ratio (1.7 to 2) than practically any civilian institution offering comparable individual training. Greater emphasis should be given to on-the-job training, shortening specialized training, courses and inter-service courses. The number of pilots trained per active aircraft has grown unreasonably and should be decreased. Thus pilot training costs and student billets can be pared.

Some 1,181,000 military and civilian personnel are engaged in personnel management, command, base operating support and logistics activities. Reductions can be made by making operations more efficient and closing facilities having marginal utility.

Given the fact that major conventional wars are likely to be short, support forces geared for sustaining long term combat should be reduced.

The average time a soldier spends on a duty station can be extended thereby reducing the number of billets allocated to transients and the costs of permanent change of station moves. Current efforts in this direction are highly desirable and should be continued.

In view of force modernization, the requirements for overhaul and maintenance should be cut back, not increased.

The number of full-time personnel used to support reserve components should be trimmed.

STRATEGIC NUCLEAR FORCES

Feasible savings: $2.5 billion

The basic principle of U.S. nuclear forces since even before our nuclear monopoly was broken has been the absolute deterrence of nuclear war by maintaining an ability utterly to destroy any attacker even after absorbing the worst possible first strike. Statements surrounding the FY 1975 budget suggest that President Nixon's oft stated, but never defined, desire to have alternatives to our basic strategic policy of deterrence has led to a new strategic doctrine.

Counterforce Weapons and New Strategies

The Nixon Administration appears confused over what the new policy is—targeting military installations as well as cities, more flexible planning and command or a new requirement for weapons with enhanced capabilities for counterforce, i.e., for attacking enemy nuclear forces. Our plans have always included military targetting, so the announcement of a "new" targetting strategy is only a public announcement of an existing option. Similarly, insuring that our command and control and our planning are flexible enough to give us choices besides a final world-destroying spasm is scarcely a novel idea and certainly requires no new weapons.

But neither the new policy nor the admitted uncertainties of Soviet programs and plans justify Administration requests to build weapons with enhanced capabilities to destroy Soviet missiles—a capability President Nixon and his earlier Secretary of Defense Melvin Laird once denied seeking—by higher accuracies and yields for our ICBM's. These programs include new warheads, new guidance systems and advanced work on a new ICBM. Their approval would be a mistake and a dangerous one.

New counterforce weapons would introduce a major new and very dangerous element into the strategic equation, for they could be construed to threaten the entire Soviet land-based missile deterrent and thereby provide a strong impetus to the arms race. They are not the right answer to potential Soviet counterforce capability. Instead of reducing the feared vulnerability of U.S. ICBM's to a Soviet counterforce strike, they would increase the attractiveness of our ICBM's as targets.

For these reasons, none of the counterforce programs—costing about $300 million—should be included in the FY 1975 budget. This relatively low request for research and development money would be the opening wedge for programs which could in time cost billions of dollars. We should halt these dangerous and unnecessary new programs now before they start; not start them as "bargaining chips". Experience has shown that we cannot rely on arms control negotiations to stop such developments once really underway.

Ballistic Missile Submarines

More than $2 billion, an increase of $600 million, is sought for the Trident program in FY 1975. This program is a technical, military and fiscal fiasco. These submarines will cost $1.3 billion or more per boat. The Soviet anti-submarine warfare threat to the existing Polaris-Poseidon fleet cannot even be defined. The replacement of Polaris and Trident boats would, in the long run, increase the vulnerability of the fleet as a whole, because it would concentrate more of our missiles in a smaller number of ships.

Fortunately, an alternative could be available when Polaris eventually needs to be replaced in the late 1980's or early 1990's. The new budget includes funds for research and development for the first time for a new, smaller missile submarine using the existing quiet Narwhal reactor. This would have essentially the same protection against anti-submarine warfare as the Trident but place fewer missiles in any given ship and be able to be based so as to operate in both the Atlantic and Pacific oceans. This program should be strongly supported. The 4,000 mile Trident I missile—usable in the existing force—is a worthwhile program, but the Trident submarine and the 6,000 mile Trident II missile (all but $661 million of the $2,042 million Trident request) are not and should be suspended at least until an evaluation can be made as to the proper replacement for Polaris.

Strategic Bombers

The budget seeks one half billion dollars for development of the B-1 intercontinental bomber and proposes to begin work on the fourth and fifth aircraft even though the program is in serious technical and financial difficulties. The unit cost of these planes has been rising almost daily to the present $61.5 million. Moreover, developments in surface-to-air missiles make it very desirable to restudy the proposition that the best bomber option for the future is a high-performance aircraft designed for penetration of Soviet air defense at the sacrifice of endurance and payload. Procurement of additional B-1 aircraft should be halted and development work begun on a follow-on to the B-52 bomber which could use the stand-off air-to-surface weapons now under development. The FY 1975 budget also includes $20 million for an advanced tanker aircraft which could carry both ballistic and cruise missiles. Inasmuch as the B-52's can remain in service well into the 1980's, these stand-off bomber options should be encouraged.

Strategic Defense

Even two years after the signing of the ABM Treaty, the budget calls for almost one half billion dollars for procurement of new strategic defense systems. $374 million is for the development of more modern ABM's, the development of which would be forbidden by treaty. These programs should be held to research on advanced technology without the procurement of hardware. Another $86 million is for civil defense programs including evaluation of evacuation procedures and shelters.

MILITARY ASSISTANCE TO SOUTHEAST ASIA

Feasible savings: $1.4 billion

The continuing war in Southeast Asia is still costing the United States about $2 billion a year in military aid alone. $1.45 billion in new appropriations for the Department of Defense is slated for military aid to South Vietnam. In the Military Assistance Program budget, $390 million is sought for Cambodia and $90 million for Laos, even though a political coalition has ended the conflict there. All but $500 million of the new aid money for Indochina should be cut. The aid ceiling should be set at the same level to avoid inflating the program by rapid use of "pipeline funds". In addition, 36,000 U.S. troops in Thailand should be withdrawn and demobilized as suggested in the section of this report on general purpose forces.

Many Americans would end military aid to Saigon entirely this fiscal year. In any event, the amount should be drastically reduced, not increased over last year, as sought by the Administration. Last year Congress appropriated $900 million in Pentagon-funded aid to Vietnam and set an overall ceiling of $1.126 billion to authorize the spending of some unobligated funds from previous years. We consider the decision by Congress to reduce the request last year wise and recommend that this year the amount of new appropriations be held to $500 million as a further step in a definite program for an early end to this vestige of our involvement in the Indochina war.

MILITARY ASSISTANCE PROGRAM

Feasible savings: $1.1 billion

The United States distributes an ever-increasing amount of military equipment around the world in free military assistance, training and sales. The reasons given are a mix of military and non-military: partly to mollify countries where the U.S. military maintains bases and troops (Spain, Portugal, Greece, Philippines, Korea); partly to favor the U.S. balance of payments; partly to gain political influence with the recipient country. This massive distribution of military weapons does little or nothing to bring about world peace. Several conflicts in Asia, Africa and Latin America have been fueled with U.S. military aid.

In FY 1975, military and related assistance and arms sales programs will probably total more than $10 billion. A large amount of military assistance, over $5 billion, is made available through programs which require no Congressional appropriations—Department of Defense foreign military cash sales, excess defense articles and ship loans.

Certainly some military assistance and sales are in the interests of peace and our national security, but the bulk of the proposed program contributes to neither. The countries of the world can no longer be realistically divided into the free and the non-free, based solely on a Communist/non-Communist definititon of government. For example, among the countries that receive some form of military assistance from the United States, there are twenty-seven that permit no political opposition and several that severely repress individual rights and liberties. Our military aid, at our expense, can gain us the lasting hostility of the people oppressed.

In addition to the savings outlined for new funding, we recommend that Congress reduce significantly cash sales and the distribution of excess defense articles and loaned ships to developing nations.

Military Assistance Advisory Groups, missions and military groups that are attached to U.S. embassies around the world, but which report directly to the Department of Defense, can easily be reduced. There are some countries with no military aid program where these groups still exist. We

recommend a 25 percent cut this year as a step toward a total phase out of the program.

FEASIBILITY REDUCTIONS IN THE FOREIGN MILITARY ASSISTANCE PROGRAM

[Budget authority in millions of dollars]

Program	Fiscal year 1975 budget request	Proposed	Savings
Military grant assistance	925	150	775
Foreign military credit sales	315		315
Credit sales ceiling	(543)	(228)	
Offsetting receipts	−161	−161	
MAP trust funds	846	846	
Total	1,925	835	1,090

LEVELING OFF AND REDUCING MILITARY APPROPRIATIONS

It is important for the Congress to have before it alternative views of the specifics of the military budget. As what has come before in this report makes clear, we believe that many substantial specific reductions can be made in military spending without reducing American security. Indeed we believe that the proper cuts will increase our security.

We believe that each of the reductions in the FY 1975 budget proposed here can and should be made by Congress. Scrutiny of the details of the defense program by Congress and its committees in the past has made important direct and indirect contributions to a more rational and more economical policy. But we are not unmindful of the practical legislative difficulties for Congress in seeking to control the military budget by eliminating or cutting particular programs, especially on the floor of either house.

Moreover, the relationship between the size of the military budget over a period of several years and the elimination of one or more programs is not very close. If one program is eliminated, other programs or other Pentagon uses of the funds "saved" will quickly step forward to fill the void within the military budget ceiling established each year within the Executive Branch. The obstacles to trying to influence the overall size of the military budget by identifying waste or cutting particular systems was made clear when Secretary of Defense Schlesinger told the Senate Armed Services Committee that there was significant waste in the military budget and that he was determined to eliminate it, but that any money saved would go for larger general purpose forces. Similarly, the decision to forego a complete ABM system has not led to reduced spending for strategic weapons. Compared to FY 1974, the funding for new strategic weapons has increased 15 percent.

Thus a weapon by weapon approach faces formidable difficulty for both the Congress and the Executive. Curtailing a weapons system on the floor of Congress should be attempted when important policy questions are involved. We suggest that as an alternative Congress, in light of its concern for fiscal responsibility, for shaping national priorities and for insuring that the Executive departments are run efficiently, develop a long term plan for controlling the total size of the military budget.

We propose that Congress establish a ceiling on the total military budget each year. This ceiling would be applied proportionately to the four major military appropriations bills (Department of Defense, Military Construction, Military Assistance and the military portion of Public Works-AEC). A Congressional ceiling would be fully consistent with the budgeting procedures used within the Administration. Since Congress has the responsibility for allocating federal resources, an annual ceiling would facilitate the determination of budget priorities in general. Legislation now pending to reform the budget process already incorporates the notion of ceilings for each major appropriation.

The effort to gain Congressional control of the defense budget in FY 1975 should, first of all, accept the view supported in this report that the world situation will not require, for the foreseeable future, constant dollar increases in the military budget. Thus, in considering the FY 1975 budget, Congress should begin with the constant dollar equivalent for FY 1974—about $90 billion, the amount appropriated for FY 1974 adjusted to take account of legitimate supplementals and price increases—rather than with the substantial increase reflected in the Administration's request of $98 billion.

Congress, however, should go beyond merely holding the military budget constant and should begin to require the Pentagon to squeeze the fat out of the budget that has been inadequately controlled for twenty-five years. This could best be done if Congress would establish an annual objective for efficiency in the operations of the Department of Defense to be achieved for several years. This efficiency program could be implemented by a 3 percent reduction in appropriations, in constant dollars, for each of the next five years. With an efficiency cut of just under $3 billion, the appropriations ceiling for all military functions would be $87 billion in FY 1975 or an $11 billion reduction from the Administration request. By FY 1979, the military budget would total $77 billion in FY 1975 constant dollars.

Congress need not attempt to define how these efficiency and economy cuts would be made but should leave the task to the Secretary of Defense who has already elaborated many areas of waste. As this report shows, the Penatgon could readily make the necessary $11 billion in reductions for FY 1975. Indeed the purpose of the five year efficiency program would be to give the Secretary the time and the motivation to plan ahead for future economies. Congressional hearings and debates as well as reports prepared by the Executive Branch would provide a means for oversight of progress made by the Department of Defense.

A congressionally directed 3 percent economy/efficiency dividend each year for five years would not in itself determine the size of the military budget in current dollars. Congress should permit the budget to rise to take account of inflation. For example, if a 7 percent rise in costs due to inflation were combined with a 3 percent cut for efficiency, the budget would increase by 4 percent (in constant dollars).

Beyond increases for inflation and decreases for efficiency, Congress would be free to legislate a further reduction (or increase) in defense spending based on a significant change in military threats or in military strategy.

We are now in a period of increasing scarcity of fuels, food and other goods. Americans are all being asked to economize in the use of scarce resources. The success of these conservation efforts depends on the willingness of all segments of American society to take stern measures to eliminate waste and inefficiency. To exclude the Department of Defense, which consumes so high a proportion of our funds and resources, would further undermine public confidence in government.

SENATE PASSAGE OF S. 411, POSTAL RATES

Mr. CLARK. Mr. President, the Senate has taken a major step forward in the effort to preserve the free flow of information and ideas with the overwhelming passage of S. 411, legislation to extend the phased implementation of second class and other postal rate increases.

When the Postal Reorganization Act of 1970 was considered, the Congress seriously underestimated the massive increases in postal rates that have taken place in the past few years—rate hikes that could amount to 300 percent for regular second class mail and 700 percent for nonprofit mail.

Increases of this dimension would place a considerable burden on many newspaper and magazine publishers, already operating with low profit margins. And the impact would fall most heavily on the smaller publishers who serve a vital function in a democratic society. The rate increases also would greatly affect the nonprofit organizations that depend on low postal rates to communicate with their memberships or to solicit contributions.

The Postal Reorganization Act was designed to provide a more efficient, economical postal service, not to place further obstacles in the way of organizations and individuals. That is why, early last year, I joined the distinguished Senator from Arizona (Mr. GOLDWATER) and the distinguished Senator from Massachusetts (Mr. KENNEDY) in cosponsoring S. 842. Although S. 411 does not go as far as that bill, it does serve essentially the same purpose: to extend the implementation of the postal rate increases and, in the process, to help insure that rising mailing costs do not greatly alter or eliminate the publication of many magazines, newspapers, and periodicals. I joined as a cosponsor of S. 411 as well.

During the Senate's consideration of S. 411, Senator GOLDWATER very eloquently pointed out its significance. He called it a crucial step toward preserving:

> The democratization of knowledge, the unique achievement of America which has given our people ready access to the printed word on a scale unmatched anywhere else in the world.

The Senate's passage of this important legislation on May 9 was very significant, and I hope that it is rapidly approved by the House.

Mr. President, I ask unanimous consent that a table prepared by the U.S. Postal Service, which illustrates a representative sample of average per piece mailing cost under present law compared with rates under S. 411, be printed in the RECORD.

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

VETERANS' MAGAZINE (NONPROFIT)

[Frequency: Monthly; Advertising: 20 percent; Weight: 4 oz; Distribution—In-county: Negligible; zones 1 and 2: 3 percent; zone 3: 17 percent; zone 4: 32 percent; zone 5: 36 percent; zones 6–8: [1] 12 percent]

Fiscal year	Step	Average postage per piece (cents) Current [2]	S. 411 [2]
1975	3	1.6	[3] 1.4
1976	4	1.9	1.6
1977	5	2.3	1.8

Fiscal year	Step	Average postage—per piece (cents) Current [2]	S. 411 [2]
1978	6	2.6	2.0
1979	7	2.9	2.2
1980	8	3.2	2.4
1981	9	3.6	2.6
1982	10	3.9	2.7
1983	11		2.9
1984	12		3.2
1985	13		3.3
1986	14		3.5
1987	15		3.7
1988	16		3.9

[1] Assumes uniform distribution to each zone.
[2] Includes effect of pending USPS rate proposals.
[3] Assumes effective date of July 6, 1974.

LABOR NEWSPAPER (NONPROFIT)

[Frequency: Weekly; Advertising: 3 percent; Weight: 1.4 oz.; Distribution: All zones; in-county portion negligible]

Fiscal year	Step	Average postage per piece (cents) Current [1]	S. 411 [1]
1975	3	0.9	[2] 0.7
1976	4	1.1	.9
1977	5	1.4	1.0
1978	6	1.7	1.1
1979	7	1.9	1.3
1980	8	2.1	1.5
1981	9	2.4	1.7
1982	10	2.7	1.8
1983	11		1.9
1984	12		2.1
1985	13		2.2
1986	14		2.4
1987	15		2.6
1988	16		2.7

[1] Includes effect of pending USPS rate proposals.
[2] Assumes effective date of July 6, 1974.

NEWS MAGAZINE

[Frequency: Weekly; Advertising: 51 percent; Weight: 6 oz; Distribution [1]—In-county: 3 percent; Zones 1 and 2: 63 percent; Zone 3: 23 percent; Zone 4: 9 percent; Zones 5-8: 2 percent]

Fiscal year	Step	Average postage per piece (cents) Current [2]	S. 411 [2]
1975	3	4.2	[3] 3.6
1976	4	5.3	4.1
1977	5	6.6	4.8
1978	6		5.4
1979	7		5.9
1980	8		6.6

[1] Assumes multiple entry points.
[2] Includes effect of pending USPS rate proposals.
[3] Assumes effective date of July 6, 1974.

GENERAL-INTEREST MAGAZINE

[Frequency: monthly: advertising: 37 percent; weight: 8 oz; distribution [1]—In-county: negligible: Zones 1 and 2:50 percent: Zone 3: 33 percent; Zone 4: 15 percent; Zones 5-8: 2 percent]

Fiscal year	Step	Average postage per piece (cents) Current [2]	S. 411 [2]
1975	3	4.9	[3] 4.3
1976	4	6.1	4.9
1977	5	7.6	5.6
1978	6		6.2
1979	7		6.9
1980	8		7.6

[1] Assumes multiple entry points.
[2] Includes effect of pending USPS rate proposals.
[3] Assumes effective date of July 6, 1974.

RURAL NEWSPAPER

[Frequency: Weekly; Advertising: 50 percent; Weight: 4 oz.; Distribution [1]—In-county: 65 percent; Zones 1 and 2: 30 percent; Zones 3-8: 5 percent]

Fiscal year	Step	Average postage per piece (cents) Current [2]	S. 411 [2]
1975	3	1.3	[3] 1.1
1976	4	1.6	1.3
1977	5	1.9	1.5
1978	6	2.1	1.7
1979	7	2.3	1.8
1980	8	2.5	1.9
1981	9	2.7	2.0
1982	10	2.9	2.1
1983	11		2.3
1984	12		2.4
1985	13		2.5
1986	14		2.6
1987	15		2.7
1988	16		2.9

[1] Assumes uniform distribution to zones 3-8, but fewer than 5,000 copies to all outside-the-county zones.
[2] Includes effect of pending USPS rate proposals.
[3] Assumes effect date of July 6, 1974.

FUND APPEAL LETTER (3D CLASS BULK-RATE NONPROFIT)

[Weight: 1 oz; Distribution: Nationwide]

Fiscal year	Step	Average postage per piece (cents) Current [1]	S. 411 [1]
1975	3	1.9	[2] 1.7
1976	4	1.9	1.9
1977	5	2.1	1.9
1978	6	2.1	1.9
1979	7	2.3	1.9
1980	8	2.3	2.1
1981	9	2.5	2.1
1982	10	2.5	2.1
1983	11		2.3
1984	12		2.3
1985	13		2.3
1986	14		2.3
1987	15		2.5
1988	16		2.5

[1] Includes effect of USPS pending rate proposals.
[2] Assumes effective date of July 6, 1974.

CLASSROOM FILMS (LIBRARY RATE)

[Weight: 4 lbs; Distribution: Nationwide]

Fiscal year	Step	Average postage per piece (cents) Current [1]	S. 411 [1]
1975	3	17	[2] 15
1976	4	17	17
1977	5	22	17
1978	6	25	20
1979	7	27	20
1980	8	27	22
1981	9	32	25
1982	10	32	25
1983	11		27
1984	12		27
1985	13		30
1986	14		30
1987	15		32
1988	16		32

[1] Includes effect of USPS pending rate proposals.
[2] Assumes effective date of July 6, 1974.

BOOK PARCEL

[Weight: 4 lb; Distribution: Nationwide]

Fiscal year	Step	Average postage per piece (cents) Current [1]	S. 411 [1]
1975	3	44	[2] 43
1976	4	52	48
1977	5	60	51
1978	6		52
1979	7		58
1980	8		60

[1] Includes effect of pending USPS rate proposals.
[2] Assumes effective date of July 6, 1974.

CONTROLLED CIRCULATION PUBLICATION

[Frequency: Monthly; Advertising: 70 percent; Weight: 8 oz.; Distribution: Nationwide]

Fiscal year	Step	Average postage per piece (cents) Current [1]	S. 411 [1]
1975	3	8.0	[2] 7.3
1976	4	8.5	8.0
1977	5	9.0	9.3
1978	6		8.5
1979	7		8.7
1980	8		9.0

[1] Includes effect of pending USPS rate proposals.
[2] Assumes effective date of July 6, 1974.

THE PRESIDENTIAL TRANSCRIPTS

Mr. FANNIN. Mr. President, because of the awesome responsibilities we may face, I do not intend to comment on the content of the White House transcripts which have been turned over to the House Judiciary Committee.

It does seem to me, however, that it would be appropriate to challenge those who contend that these transcripts raise more questions than they answer.

Columnist James Kilpatrick puts this in proper perspective in a column which I read last Saturday in the Arizona Republic. I ask unanimous consent to have this excellent column printed in the RECORD.

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

TRANSCRIPTS ANSWER A GOOD MANY OF OUR QUESTIONS

When it was announced the White House would release transcripts of certain presidential tapes, I voiced a sure prediction: Someone is going to say, "The transcripts raise more questions than they answer."

Sure enough, the next voice on the television screen was the voice of Carl Stern of NBC. He was saying, "The transcripts raise more questions than they answer."

Nonsense. The transcripts do raise certain new questions, having to do with the transcripts themselves, but this monumental publication answers more Watergate questions than most Americans will ever want to ask.

What were the big questions? Let me grapple with two or three.

Did the President know in advance about the bugging and burglary of Democratic National Headquarters? The answer is, he did not. In these 1,300 pages there is not a line, a hint, or a breath of a suggestion of any such foreknowledge.

Did Nixon know of the ensuing coverup? He did not. By early March 1973 he had inklings, but it was not until 10:12 a.m. March 21 that he began to get the whole story.

Do the transcripts tell us how and why Watergate happened? Yes, they do. This

wretched business happened because Gordon Liddy was strong and persistent, because John Mitchell was weak and preoccupied; because Charles Colson was vain and presumptuous; because Jeb Magruder was obedient and inexperienced.

The subsequent cover-up resulted out of the misguided loyalty and bad judgment of John Dean, John Ehrlichman and H. R. Haldeman. They kept their knowledge from the President.

Did Nixon act wisely and responsibly once he heard the story? The answer is yes and no. He acted humanly.

Let me dwell on this last point especially. The President's critics are stuffed like sausages with wisdom, virtue, and morality. For the past week they have been clucking and sighing.

Nixon, they say, did not react instantly with public cries of shame and remonstrance; the President did not leap from the Oval Office and cry for guards to haul his aides away in chains. The President resisted—and still resists—full disclosure of his words and acts.

Very well. Let me suggest an analogy from *every-day life*. The parents of a 16-year-old girl suspect something is wrong. They are concerned and anxious, but no one likes unpleastantness. They avoid direct confrontation.

Then one day in March she faces them: "You have to know," she says, "I'm pregnant."

To listen to the sausage moralists, you would suppose that the girl's parents should react with instant sermons on chastity; they should cry reproaches; they should hurl her into the street.

This is not the way the world is. The probabilities are 99 in 100 that the girl's parents would respond with questions. They would try to think what to do next. They would discuss options: Forced marriage? Abortion? Have the child in secret? It might be a long while before someone said of abortion, "but that would be wrong."

They would be concerned with salvaging whatever might be salvaged of their daughter's reputation and future.

The girl's father might keep saying, "I am just trying to think . . . I want to get all of this in my mind if I can."

Mr. FANNIN. Mr. President, one of the popular games today, especially in the press, is guessing when President Nixon will resign.

Those expecting or urging the resignation of the President apparently are ignoring the courage of Richard Nixon as demonstrated by history. He has been defeated several times in his political career, but I do not see that he has ever given up. I do not expect him to give up now.

Nor do I believe that he should resign.

My opinion is not based solely on the fact that I support the President, which I most certainly do.

My opinion would be the same regarding resignation even if I were to believe the very worst of the President, which I certainly do not.

The machinery of impeachment has been set in motion, and resignation is not the answer to our national dilemma.

Mr. President, the Phoenix Gazette ran an editorial last Friday which expresses my feelings on this issue better than I could. I ask unanimous consent that it be printed in the RECORD for the benefit of my colleagues.

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

RESIGNATION? No!

Resignation of the President of the United States would inflict a mortal wound on the republic.

Far from being the quick and simple remedy that those clamoring for it say it would be, President Nixon's resignation would set a precedent that could effectively destroy America's venerable system of government.

In their wisdom, the framers of the Constitution provided for the impeachment process to decide whether a President should be removed from office.

That process is now at work. It should be pursued with all deliberate speed.

Whatever else might be said about Mr. Nixon, he deserves credit for his willingness to continue facing his accusers. Resignation might be an easy way out for him. Instead, he has thus far stood fast against those seeking to oust him, and this can only help to preserve the institution of the presidency.

Were Mr. Nixon to resign, it would leave the office of President vulnerable to future assaults from determined forces that would copy the pattern of prosecution being set by those who are intent on overriding the vote in the 1972 election. The day would come when the White House would have to be equipped with a revolving door.

Resignation would leave many questions unresolved. The most important one would be whether Mr. Nixon was or was not in fact guilty of a high crime and misdemeanor.

To leave that question hanging, as it would be if the President were to resign, would be to leave the nation sorely divided for a long time to come.

However the impeachment proceedings come out, the nation will be divided anyway. But the division is not likely to be nearly so unhealable as it would be if the due constitutional process were not followed.

Many members of the House of Representatives doubtless would like to have Mr. Nixon relieve them of taking a stand on impeachment by resigning. Many senators doubtless likewise hope to be relieved of having to act as jurors in a trial of the President.

But those are among the duties representatives and senators swore to perform when they took their oath of office, to uphold the Constitution.

Let them get on with it. Impeach the President or get off his back.

DANIEL ODUBER—MAN OF THE PEOPLE—INAUGURATED PRESIDENT OF COSTA RICA

Mr. CHILES. Mr. President, I had the distinct honor and privilege of being chief of the U.S. delegation to the inauguration of Daniel Oduber as President of Costa Rica. I was extremely pleased that Congressman MANUEL LUJAN, JR. of New Mexico and his wife, and Mr. Lyle F. Lane, Charge d'Affaires ad interim of our Embassy in Costa Rica, and his wife were also members of the delegation. My wife, Rhea, and I, very much enjoyed having the opportunity to participate in the ceremonies with the other members of the delegation and their wives.

I met Daniel Oduber for the first time in February of 1972 and have seen him campaign for public office. He is very much a man of the people, conscious of the dilemma his people face between preserving their heritage and exposing themselves to the values and technology of the industrialized world.

I think that Daniel Oduber is exemplary in his way of seeing himself as one of the people rather than enshrouding himself in the trappings and aura of the Presidency. I was most impressed by the inauguration ceremony which was held in a soccer stadium. There was an easy and relaxed atmosphere, with school children everywhere and a spirit of it being the peoples' function rather than something for dignitaries. The day after becoming President, Daniel Oduber went downtown to walk the streets as if to show that he is still one of the people. He is going to live in his own house and operate part of his office from his home.

I think all this says a great deal about Daniel Oduber as a man of the people, and it says a great deal too about the Costa Rican people. They have not made a king of their President. There is a tone of unpretentiousness, not only about the man but about the Costa Rican people which they are determined to preserve.

There are some very valuable thoughts in Daniel Oduber's inauguration address which I would like to share with my colleagues. His speech reveals the concern he and his country have for their future and for the preservation of their own sense of individuality and heritage in a world of rapid change and material growth.

It was a great pleasure for me to serve as chief of the U.S. delegation to Costa Rica and represent the United States as Daniel Oduber became President. Our Embassy in San Jose was extremely helpful in making the trip a valuable one for the entire delegation. I am particularly grateful to Mr. Lyle Lane, Charge d'Affaires of the Embassy, and Mr. Peter Johnson, Chief of the Political Section, and their wives for their gracious hospitality. I was also pleased that my executive assistant, Dale Marler, was able to attend the inaugural ceremonies.

I recommend to my colleagues his inauguration address and ask unanimous consent that it be printed in the RECORD.

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

INAUGURAL ADDRESS

Before the Legislative Assembly, in the presence of the Honorable Special Delegations of so many friendly Governments, with the blessings of the high Ecclesiastical Authorities present, and under the watchful and benevolent gaze of the Costa Rican people, I receive with deep emotion this presidential band that has, from the founding of the Republic, encircled the noble breast of illustrious citizens that have been elevated, by the will of the people, to the Highest Office of the Nation.

I receive this presidential band, which is the symbol of the greatest honor and the greatest responsibility of Costa Rican democracy, from the hands of a worthy man who, like myself, belongs to a generation that has, for three decades, been struggling for national progress.

I receive this presidential band fully aware of the role that history has set out for me, to conduct the members of my generation and of coming generations, from the various political groups, to carry out with me the task of exercising power in order to achieve, before the end of the Twentieth Century, the ideals of a prosperous, just and free society.

I receive this symbol of authority with humility because I know that many Costa Ricans of the past and of the present, surpass me in many noble qualities. However, I

am certain that I am not, by any means, inferior to them in my love for Costa Rica.

Heartened by these feelings, ready to find in the experience of my predecessors the wisdom reaped by them in order to avoid mistakes, certain that I will find, in the good will of many Costa Ricans, the light to guide me and the strength to act, and, lastly, trusting in God, I assume, as of this moment and for the coming four year term, the guidance of national destiny.

The kind of society we Costa Ricans are proud of is not the work of one single generation, one social class or one political party. It is the result of centuries of work by all of those born in this country or who have become a part of it. All of them have been giving shape, through common experiences, pleasant or painful, to a particular national consciousness based on values and aspirations, institutions and norms, purposes and ideals, that have come to constitute a culture that is authentically Costa Rican. That authentic culture can and should absorb and assimilate new contributions, whether self-generated through adaptation to new circumstances or assimilated from other areas; but we can never accept a design for Costa Rican society that is not created in keeping with the essential elements of our authentic historical being. This is fundamental and the irreplaceable starting point of all political action and of every purpose of government. Let us never forget this.

Without any appreciable mineral resources and, fortunately, without any indigenous population offering human energy on the basis of slavery, our ancestors built, in the marvelous scenery, the splendid climate and the fertile lands of the Central Valley, a society that, while definitely poor, was egalitarian and democratic, deeply rooted in the small agrarian property with the culture, the beliefs and the elementary technology of European farmers.

During the first stage of our republican life, that agrarian society, with a subsistence economy, started to expand when its leaders established connections with world economic centers and, as a result, they opened the doors to cultural currents of other areas. The result was, on the one hand, to definitely establish the modern bases for the State and the guarantee of political freedom, which in reality only benefited a few privileged people; but on the other, the egalitarian dimension of society was reduced because, as a result of the inflow of mercantilistic ideas of the times—brought in and superimposed on our national reality—there appeared the large agricultural plantations with the first signs of concentration of wealth and of large groups of workers without land, wage earners and proletarians.

During the second stage of our Republic, beginning in the 1940's, it fell to our generation to cooperate with the previous generation in an effort to give impetus to the development of our material wealth which, going beyond the limited area of the Central Valley, began to incorporate into the structure of national progress, the entire geography and population of the country. It also fell to us, on the one hand, to struggle for the strengthening of the democratic system with a more conscious participation of a larger number of sectors of the population and, on the other, restore the egalitarian status of the inception of our nationality, giving real effectiveness to the principles of social justice and bringing forth new forms of cooperative organization, particularly in regard to the farmers.

A very important result of our action has been the expansion of social mobility, which has resulted in expanding and strengthening the middle sectors of our society. These sectors, in turn, have contributed to the economic and political development of our country as standard bearers of its modernization.

The fortunate result has been the existence, in this small territory of Central America, of a country devoted to peace, to the exercise of political freedom within the limits of respect for human rights, to the advancement of the cultural education of the country's people, and to economic development with greater social justice. Allow me, Honorable members of the Foreign Diplomatic Missions and very distinguished visitors, to present this national reality for your examination, so that you will be able to see the reasons I have for feeling the simple pride of being a Costa Rican and of being the President of this Republic.

Woe to the individual or nation that falls into complacency against its own objective realities: Our democracy is not yet perfect. There is still a long way to go until social, cultural and material benefits cover those sectors of the population that either do not receive them, or receive them only to a limited extent. Far from ignoring the accomplishments of those who came before us, the generation which I am to lead must continue and expand their work. What is more, it must redirect it with courage in that process of deep change that our society, as in the case of the rest of Latin America, is experimenting in its transition from an unjust society into a modern society.

The time is one of crisis. Everything is questioned: the parties, the state, the church, the development structures, and moral and philosophical values. Our generation is faced with the double challenge of the 1970's: on the one hand, how to preserve our spiritual and historical heritage with its basic values and yet meet the requirements of impatient popular masses; on the other, how to enrich our society by incorporating the new, emerging popular sectors: peasants, farmers, wage earners, marginal strata—in order to lead them to full political participation and to full enjoyment of the benefits of economic development. In order to meet these challenges, considerable political imagination is needed, together with a strong will to do whatever must be done. It is indispensable to place political and intellectual honesty at the service of the weaker sectors of our society. If my companions of this generation and of coming generations will assist me, we shall proceed to carry out the transformations of our present system, and thus we shall build the Costa Rican society of the future on the eternal value we have inherited from the past.

The indispensable requisite in the struggle against want and poverty is productive work. I invite Costa Ricans, without any political or ideological differences, to intensify the great battle for production. The worldwide food crisis is more serious than the energy crisis. Let us start by modernizing food production and diversifying our agriculture. Let us encourage that productive effort by seeking markets beyond our frontiers. With this in mind, let us continue the steps already taken to establish, in cooperation with other countries in the area, a modern air cargo fleet and a merchant marine to seek markets where the products of our fields may be valued even more. Along with agriculture, we shall intensify even more the authentic industry for the real utilization of our natural resources. Moreover, we must think in terms of big industry. We already have offers for the development of our petrochemical industry by the construction of a large refinery on the Atlantic coast. Let us continue the electrical development at Terraba, combined with an industrial complex that will enable us to process our bauxite and produce metallic aluminum. Let us not hold back in the Arenal hydro-electric project nor in the construction of the cement plant in Abangares. To engineers and entrepreneurs we submit a challenge: the possibility of developing sulphur and copper, iron and gold. These challenges put our will to overcome underdevelopment to the test. They require an investment of more than twenty billion colones and the work of thousands of Costa Ricans. Let us not be frightened by the apparent magnitude of these undertakings. We have proved, by carrying out large hydroelectric, electronic and communications projects that Costa Ricans can rise by their own efforts when they make the decision. Without this struggle for production, all our dreams become simple day-dreams.

Our efforts toward economic development must have man as the goal. It is up to us to define the type of man and the type of society in which that man is going to live in Costa Rica at the turn of the century. This is the essential question. Those of us who govern cannot improvise, from day to day, the route that must be defined by clear national goals. I call on Costa Ricans to meditate, in order to answer questions such as these: what type of man does the Costa Rican aspire to be? What kind of education is required to shape such a human being? and what kind of social organization best fits with our history and traditions? For my part, I propose to the Costa Rican people that, without overlooking the broader world of which we form part and without repudiating the positive teachings left by other experiences, we orient our national activities starting from what we are, from our own idiosyncrasy, and that we build the country on our own cultural patrimony.

The main and the best resource our country has is the one offered by the human quality of her peasants—men and women—whether they are still engaged in agriculture or have emigrated to the cities. This resource must be protected, developing Costa Rican agriculture, offering farmers the possibility to improve their productivity as well as adequate access to the cultivation of the land, within an appropriate social organization and a complete network of material works and basic services which should include industrial facilities capable of transforming and preserving the produce, and manufacturing plants that will provide well-paid employment that will contribute to modernization.

Let this be one of our dominant tasks for the remainder of this century. Modern technology makes it possible to substantially improve the standard of living of small farmers. We, ourselves, have shown that this is possible, as witnessed by farm modernization in the Central Valley and the penetration of material civilization into the Northern Puntarenas and Guanacaste area, the South Pacific, the El General Valley and San Carlos—Sarapiqui. Let us ready ourselves to push forward the frontiers of material progress and of social services. Let us make sure that this material and institutional progress will be the basis for the advancement of our peasant class and that it will not rather serve to confirm its subjugation to the plantation system we want to overcome.

We must act with clear ideas, so that we can discriminate between what we wish to bring in from outside and what it is advisable to keep of that which we have. Of the gigantic scientific revolution that has occurred in our times in industrialized countries, let us utilize whatever can help us to improve. But let us not try—as others have deplorably done—to copy from those countries, modes of living that, since they are modeled on peculiar values and characteristics alien to our culture, might bring to our communities and to our homes a deterioration of values and of goals peculiar to our national being. Powerful and wealthy nations can give us a great deal in the field of science and of technology, but they cannot offer us a substitute for our way of life.

I insist that Costa Rican values must continue and must guide the great transformations that must be carried out. I do not want a Costa Rica of men and women guided by imported materialist criteria. We must pre-

vent the urge for personal enrichment from destroying more important things that have been handed down to us by our history.

The great evils that assail our country are the result of a situation of reckless change in values which, drawing away from a proper balance between what must be kept and what must be discarded, rushes on like a torrent demolishing everything through the frustration, the impatience or bad faith of many. It is essential to stop that torrent if we do not want to lose the most valuable assets of our national heritage. Let us put a stop to public and private corruption, to drugs and prostitution. Let us put a stop to violence. This is all the result of the importation of false goals and of the inability of homes and schools to devote themselves to the great process of educating Costa Ricans at a time of crisis which is peculiar to the transition of our society.

The task cannot be achieved by the person in office alone, but by the entire country. Today we have paid homage to a national athlete, the young girl Maria del Milagro Paris, because in my opinion she is the symbol of what Costa Rica's youth should stand for: effort, sacrifice and patriotism. That is the School that must be formed, both by the parents in each home and by teachers in grade and high schools.

Let us not blame our social vices on young people who commit offenses; let us blame ourselves, as a generation, for not having given deep thought to what we used to have and to how we have changed, in order to realize that we have repudiated what was our own to implant modes of conduct that have warped our society.

There is still time. I call on every Costa Rican father and mother to join with the powers of the State and devote all of our efforts to one single goal: rescuing our national heritage.

People from other areas and from other countries give the impression of having discovered Costa Rica. They have come and they have shown us what we had. They attach great value to what we did not appreciate. Let us listen to them attentively and we will hear them speak of clean air; of crystal-clear water in our creeks, rivers and seas; of weather; of mountains, of valleys and of plains, and of the unpretentiousness of Costa Rican homes, where hospitality and human solidarity still prevail.

But there are other persons from those same countries and areas who come here and try to deceive us with false coins, to destroy what we have, disrespecting our laws, our environment and our culture. These persons—whether they are entrepreneurs, investors, diplomats, intellectuals, or simple tourists—will not be received.

On the contrary, those who wish to come with their families, to struggle side by side with us in our national crusade for preserving and improving what we have, will be welcome irrespective of race, religion or political beliefs. This is no invention of mine today. It is merely paraphrasing what our ancestors announced when they founded this republic.

The Costa Rican society of the future will be not only the result of economic and technological transformations, nor of our effort to preserve aspects of our culture that we consider to be important. It is also indispensable to renew and perfect the political system of our democracy.

All over the world it may be observed that the old ideas about representative democracy do not satisfy the needs of the times. New administrative and political thought has replaced the legal forms that our ancestors patiently discussed to organize the State. If this new thought is not adopted, the very survival of the democratic regime could well become seriously jeopardized. This has happened in countries in America and Europe.

I always cherished the idea of calling a National Constituent Assembly that, with care and without haste, would discuss the changes needed in our country, mainly in the field of State organization. Some groups opposed this idea: some of them for fear of losing economic privileges, others for fear of losing social advances.

It seems to me advisable to focus our attention this year on a study of the changes in the structure of the State and, if it is deemed advisable, all of the political groups could discuss the possibility of calling a Constituent Assembly, or of proceeding gradually to introduce partial amendments into our Constitution.

In the meantime, I have talked with the Magistrates of the Supreme Electoral Court in order that, with the least possible delay, we undertake a revision of our electoral system which is already outdated to handle the number of voters we have today. I believe that the present system is the result of a number of measures to prevent fraud, which have piled up to the point to represent, in many cases, powerful obstacles to the casting of votes. With the new technology and mechanization used in countries similar to ours, the electoral system must be revised to make it as easy as possible for citizens to cast their vote.

For many years, and as part of our ideas on the need for change, we have recognized that our prospects are inadequate if we remain isolated, and we have made efforts to expand the economic space for our country's development. We cannot foresee our development except in terms of Central America.

During the past weeks I have personally talked with the Heads of State and chief leaders of our sister countries and I can state today that the long struggle by sincere Central Americans is beginning to bear fruit. There is a yearning for peace between the countries at odds. The Presidents of Honduras and El Salvador recognize the urgency to consolidate an honorable peace, as a prior requisite to revise the economic integration of the Isthmus.

Great efforts are being made to bring together the Heads of State of Central America to hold talks and seek solutions. I harbor the most ardent hopes that we will be able to do this in Nicaragua before this month is over, to start the task of meeting frequently, without protocol or formalities, and face the task of saving the Central American economic community, in which we permanently include Panama.

The men who have worked toward these ideals in governments and in regional organizations have my sincere congratulations as a Central American, and my unstinted support for their ideals. Having kept our trade with Central America at levels that are quite high and continue to grow rapidly from year to year, is a national asset that we owe to these men in both the private and the public sector. I express my thanks to all the workers and entrepreneurs who, notwithstanding a fratricidal conflict already five years old, have kept Central America united in the ideals of development and change that are possible only with a regional outlook increasingly stronger and increasingly broad.

The lack of fairness in the system of international economic relations continues to be one of the main obstacles to greater success in our efforts toward change, transformation and progress. Costa Rica is going through its greatest social crisis in a quarter of a century. It had to be so. The structures on which the economic systems of the large countries after World War II had been built made them vulnerable. Food became scarce and oil became scarce, and the crisis began. But this time, the blow fell not only on the back of small peoples; the citizens of rich countries also felt on their own flesh the whip of scarcity and of inflation.

The United Nations Conference on Raw Materials and Development, the new Dialogue started in Tlatelolco and continued in Washington, and the latest meeting of the General Assembly of the OAS, mark the proper direction toward solidarity and international justice. Our position of support for the countries of OPEP, although it is costly to us, is based on the assurance that they will make common cause in our struggles, as the American chancellors did recently in Washington, when a badly informed group of North American workers opposed the aspirations of peoples that have made possible—to a lesser or greater extent—the well-being they enjoy.

This same feeling of solidarity compelled the Foreign Ministers of Latin America to proclaim in Bogotá, in Tlatelolco and in Washington, their support to the Republic of Panama in its struggle to reconquer its full sovereignty over the Canal Zone, and to negotiate with the United States a fairer Canal Treaty.

I wholeheartedly support the proposition made by President Carlos Andrés Pérez of Venezuela in his Inaugural Address when he stated: "it would be a great homage to the Fathers of Latin American Independence that this Panamanian claim could be achieved and celebrated on the next 7th of December, when we shall commemorate the 150th Anniversary of the Congress of Panama".

In this struggle, since 1950, Mr. José Figueres, the former President, has stood out more than anybody else. Costa Rica and the developing countries recognize that it was he who started the struggle for fair international prices, with his letter of that year to the FAO Conference in New Delhi.

The struggle has already taken a worldwide turn. Oil producers joined under OPEP and have shown their strength. Bauxite producers joined in Conakry and a struggle has started to organize and to improve international conditions and prices of aluminum. Next came coffee, cacao and sugar.

In New York, the countries of the third world managed to call a Special Meeting of the UNO to set up the bases for a fairer international economy. The Charter of the Economic Rights and Duties of the States, proposed by the President of Mexico, Lic. Luis Echeverría, continues to be our goal.

Ex-President José Figueres must continue in that struggle. As soon as I set up my Government, I will ask him to give a few more years to Costa Rica and to the world, in the struggle for an international system for justice and social improvement, the only basis on which worldwide peace can be built. As the Representative of the President of the Republic of Costa Rica, and by his own worth, Ex-President Figueres will be able to carry forward, at world forums and conferences, a banner that he has carried, with foresight and valor, for a quarter of a century.

The society of the future, the shaping of which will be a permanent effort of my Government, cannot be based on national efforts that will only serve a few, or that will consolidate unfair social systems. We have a long way to go to attain a harmonious development: man, land, capital and culture must go hand in hand, or the inequalities of growth will inevitably bring the explosions of change.

It is not fair that, in the Costa Rica of today, there should be a palace alongside of a shock. This is an invitation to those who have nothing, to take justice into their own hands. Costa Rica has no right to have palaces, nor is it fair that those who have a fortune through the efforts of all, should make aggressive ostentation of their opulence.

The entire political and fiscal system of the Nation must be aimed at having accumulated income reinvested so as to create more work and more wealth, and to pave the way

for more and more Costa Ricans to attain the standard of living of a middle class. Let the wealthy class spend less on luxury and save more in order to invest more. Let the middle classes continue to progress, but let them refrain a little from the desire to copy the bad things of those who have greater incomes, and initate them in whatever is good. And let the working class continue to advance soundly, in field and city, as it has done for a quarter of a century. My Government assures now, and will continue to do so for the next four years, that it will stand by those who produce, suffering with them, feeling with them, struggling with them, to make each productive unit stronger. Enterprises large and small, large and small farmers, will know that there will be, at their side, public officers ready to serve them, and that if those officers fail to do so, there will be a President that will not allow any official to serve himself instead of those who need most to be served.

Costa Ricans, let us go together toward the Twenty-First Century. The Costa Rica of our children is what we make of it. Let us always turn our eyes toward our traditions, toward our history and toward our ancestors. Together with them, with their spirit, let us defend Costa Rica. Let it not be taken away from us. Let it not be harmed. Let it not be soiled. I need all of you. Alone I am weak to struggle. But with God's help and the support of all of you, we will give those who follow us in time an exemplary country, in the center of America, where people live in freedom, enjoy a marvelous nature, work for the well-being of everybody, and ceasely cultivate the best values of the spirit.

TAX CREDIT FOR PROPERTY TAX

Mr. MONTOYA. Mr. President, on May 6, 1974, I introduced a bill to replace the tax deduction for home mortgage interest and property tax with a tax credit for the same purpose.

Because interest in the tax credit proposal has been vigorous, I wish today to insert for the RECORD three tables on the subject prepared by Mr. Henry Schechter, senior specialist in housing at the Library of Congress. Mr. Schechter was aided in this project by his research assistant Mr. Richard Wellons.

Based on the statistics of income for individuals in 1970, the charts show estimates of: First, the average amounts of tax benefit homeowners presently receive; second, for units built from 1960–1969, the average tax credit and government cost in this proposal based on the credit given during the 5th taxable year—calculated on the assumption that the average age for homes in each income class is 5 years, which was about the average age in 1970 of homes built in 1960–1969; third, for units built prior to 1960, the average tax credit and government cost based on the 11th taxable year.

These charts make clear the increased benefits to most homeowners, and the new, middle- and low-income buying power which would result from a substantial tax credit. I offer this information for the benefit of my colleagues. I hope it will also aid anyone else who wishes to study the tax credit concept.

I ask unanimous consent that the three tables be printed in the RECORD.

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

TABLE 1.—HOME MORTGAGE RATE DEDUCTIONS PLUS REAL ESTATE TAX DEDUCTIONS FROM FEDERAL INCOME TAXES—1970

Size of adjusted gross income	Real estate taxes—Number of returns		Deduction—Amounts				
	Number (1)	Percent of total (2)	Real estate amount plus interest amount (3)	Percent of total (4)	Average amount (3÷1) (5)	Marginal tax rate (percent) (6)	Estimated value of tax benefit (5×6) (7)
All returns, total	26,088,121	100.0	$25,358,209,000	100.00	972.02		
$1 under $1,000	28,517	.1	23,087,000	.09	809.58	0.1416	114.63
$1,000 under $2,000	113,082	.4	62,453,000	.25	552.28	.1416	78.20
$2,000 under $3,000	399,558	1.5	221,745,000	.87	554.97	.1416	78.58
$3,000 under $4,000	812,068	3.1	415,000,000	1.64	511.04	.1658	84.73
$4,000 under $5,000	1,015,112	3.9	564,392,000	2.23	555.98	.1658	92.18
$5,000 under $6,000	1,130,170	4.3	678,198,000	2.67	600.08	.1751	105.07
$6,000 under $7,000	1,248,095	4.8	818,666,000	3.23	655.93	.1751	114.85
$7,000 under $8,000	1,512,490	5.8	1,052,127,000	4.15	695.62	.1971	137.10
$8,000 under $9,000	1,764,724	6.8	1,312,591,000	5.18	743.79	.1971	146.60
$9,000 under $10,000	1,924,834	7.4	1,540,450,000	6.07	800.30	.1971	157.73
$10,000 under $11,000	1,943,331	7.4	1,686,352,000	6.66	867.76	.2082	180.66
$11,000 under $12,000	1,893,894	7.3	1,714,295,000	6.77	905.16	.2082	188.45
$12,000 under $13,000	1,724,688	6.6	1,639,024,000	6.47	950.33	.2082	197.85
$13,000 under $14,000	1,582,714	6.0	1,590,346,000	6.27	1,004.82	.2082	209.20
$14,000 under $15,000	1,421,300	5.4	1,468,191,000	5.79	1,032.99	.2082	215.06
$15,000 under $20,000	4,192,670	16.0	4,878,012,000	19.24	1,163.46	.2367	275.39
$20,000 under $25,000	1,564,855	6.0	2,199,865,000	8.68	1,405.79	.3164	444.79
$25,000 under $30,000	646,790	2.5	1,052,294,000	4.15	1,626.94	.3164	514.76
$30,000 under $50,000	788,265	3.0	1,447,172,000	5.71	1,835.89	.3164	580.87
$50,000 under $100,000	311,147	1.2	728,031,000	2.87	2,339.82	.5112	1,196.12
$100,000 under $200,000	56,058	.2	181,625,000	.72	3,239.94	.5915	1,916.42
$200,000 under $500,000	11,553	.04	59,827,000	.24	5,178.48	.5915	3,063.07
$500,000 under $1,000,000	1,606	.006	14,129,000	.06	8,797.63	.5915	5,203.80
$1,000,000 or more	600	.002	10,337,000	.04	17,228.33	.5915	10,190.55

Source: "Individual Income Tax Returns—Statistics of Income, 1970," Department of the Treasury, Internal Revenue Service, publication 79 (October 1972), table 38, p. 123 for col. 1, table 38 and table 40, p. 125 for col. 3.

TABLE 2.—FOR UNITS BUILT 1960-69—ESTIMATED TAX CREDIT AND GOVERNMENT COST BASED ON THE 5TH TAXABLE YEAR AT 46 PERCENT AND $1,100 LIMITATION

Gross income	Number of returns[1] (1)	Percent (2)	Average amount of deduction (3)	Estimated value of deduction—tax benefit (4)	Estimated average tax credit (5)	Tax gain or loss (—) for average taxpayer (5–4) (6)	Aggregate gain (6×1) (7)
All returns (total)	9,400,000	100.00	$972.02				
$5,000 under $6,000	447,440	4.76	600.00	$105.07	$276.04	$170.97	$76,498,816
$6,000 under $7,000	494,440	5.26	655.93	114.85	301.73	186.88	92,400,947
$7,000 under $8,000	598,780	6.37	695.62	137.10	319.99	182.09	109,.31,850
$8,000 under $9,000	698,420	7.43	743.79	146.60	342.14	195.54	136,569,046
$9,000 under $10,000	762,340	8.11	800.30	157.73	368.14	210.41	160,403,959
$10,000 under $11,000	769,860	8.19	867.76	180.66	399.17	218.51	168,222,108
$11,000 under $12,000	750,120	7.98	905.16	188.45	416.37	227.92	170,967,350
$12,000 under $13,000	683,380	7.27	950,33	197.85	437.15	239.30	163,532,834
$13,000 under $14,000	626,980	6.67	1,004.82	209.20	462.22	253.02	158,638,479
$14,000 under $15,000	563,060	5.99	1,032.99	215.06	475.18	260.12	146,463,167

TABLE 2.—FOR UNITS BUILT 1960-69—ESTIMATED TAX CREDIT AND GOVERNMENT COST BASED ON THE 5TH TAXABLE YEAR AT 46 PERCENT AND $1,100 LIMITATION—Continued

Gross income	Number of returns[1] (1)	Percent (2)	Average amount of deduction (3)	Estimated value of deduction—tax benefit (4)	Estimated average tax credit (5)	Tax gain or loss (—) for average taxpayer (5-4) (6)	Aggregate gain (6×1) (7)
$15,000 under $20,000	1,660,980	17.67	$1,163.46	$275.39	$535.19	$259.80	$431,522,604
$20,000 under $25,000	619,460	6.59	1,405.79	444.79	646.66	201.87	125,050,390
$25,000 under $30,000	255,680	2.72	1,626,94	514.76	748.39	233.65	59,734,518
$30,000 under $50,000	312,080	3.32	1,835.89	580.87	844.51	263.64	82,276,771
Subtotal							2,081,312,839
50,000 under 100,000	123,140	1.31	2,339.82	1,196.12	1,076.32	—119.80	—14,752,172
$100,000 under $200,000	21,620	.23	3,239.94	1,916.42	1,100.00	—816.42	—17,651,000
$200,000 under $500,000	3,760	.04	5,178.48	3,063.07	1,100.00	—1,963.07	—7,381,143
$500,000 under $1,000,000	629	.0067	8,797.63	5,203.80	1,100.00	—4,103.80	—2,581,290
$1,000,000 or more	235	.0025	17,228.33	10,190.55	1,100.00	—9,090.55	—2,136,279
Subtotal							—44,501,884
Total							2,036,810,955
Plus							101,840,547
Total 1970 estimated cost of such a tax credit to the Government is adjusted upward by 5 percent to account for the net increase in homes since 1970							

[1] Of the 26,088,000 homes in 1970, 9,400,000 were 10 yrs or less old, with an average age of 5 yr. Calculations for table 2 are based on the assumption that all of the 9,400,000 were owned by households distributed among $5,000 and above income classes in the same relative distribution as for all homeowners with $5,000 and above income. Taking deductions, and the average amount of deduction was the same for each income class. On the assumption that the average age for homes in each income class is 5 yr. The applicable percentage in 46 percent with a $1,000 limitation.

Source: Data in cols. 3 and 4 from table 1, cols. 5 and 7, with calculations as indicated. Data in col. 1 for 1- and 2-family units built 1960-69 from "Housing Starts," Construction Report, Bureau of the Census, Department of Commerce.

TABLE 3.—FOR UNITS BUILT PRIOR TO 1960—ESTIMATED TAX CREDIT AND GOVERNMENT COST BASED ON THE 11TH TAXABLE YEAR AT 40 PERCENT AND $500 LIMITATION

Size of adjusted gross income	Number of returns[1] Number (1)	Number of returns[1] Percent (2)	Average amount of deduction (3)	Estimated value of deduction—tax benefit (4)	Estimated average tax credit (5)	Tax gain or loss (—) for average taxpayer (5—4) (6)	Aggregate gain (6×1) (7)
All returns, total	14,327,380	100.00					
$5,000 under $6,000	682,750	4.76	$600.00	$105.07	$240.03	$134.96	$92,141,241
$6,000 under $7,000	753,655	5.26	655.93	114.85	262.37	147.52	111,179,186
$7,000 under $8,000	913,710	6.37	695.62	137.10	278.25	141.15	128,970,167
$8,000 under $9,000	1,066,304	7.44	743.79	146.60	297.52	150.92	160,926,600
$9,000 under $10,000	1,162,494	8.11	800.30	157.73	320.12	162.39	188,777,400
$10,000 under $11,000	1,173,471	8.19	867.76	180.66	347.10	166.44	195,312,513
$11,000 under $12,000	1,143,774	7.98	905.16	188.45	362.06	173.61	198,570,604
$12,000 under $13,000	1,041,308	7.27	950.33	197.85	380.13	182.28	189,809,622
$13,000 under $14,000	955,734	6.67	1,004.82	209.20	401.93	192.73	184,198,614
$14,000 under $15,000	858,240	5.99	1,032.99	215.06	413.20	198.14	170,051,674
$15,000 under $20,000	2,531,690	17.67	1,163.46	275.39	465.38	189.99	480,995,783
$20,000 under $25,000	945,395	6.59	1,405.79	444.79	500.00	55.21	52,195,258
Subtotal							2,153,128,662
$25,000 under $30,000	391,110	2.72	1,626.94	514.76	500.00	—14.76	—5,772,783
$30,000 under $50,000	476,185	3.32	1,835.89	580.87	500.00	—80.87	—38,509,061
$50,000 under $100,000	188,007	1.31	2,339.82	1,196.12	500.00	—696.12	—130,875,433
$100,000 under $200,000	34,438	.24	3,239.94	1,916.42	500.00	—1,416.42	—48,778,672
$200,000 under $500,000	7,793	.05	5,178.48	3,063.07	500.00	—2,563.07	—19,974,004
$500,000 under $1,000,000	977	.0068	8,797.63	5,203.80	500.00	—4,703.80	—4,595,613
$1,000,000 or more	365	.0025	17,228.33	10,190.55	500.00	—9,690.55	—3,537,051
Subtotal							—252,042,637
Total							1,901,086,025
Plus							95,054,301
Total cost to Government adjusted upward by 5 percent to account for net increase in homes							1,996,140,326
Plus							2,138,651,502
Total cost of such tax credit to Government, adjusted upward by 5 percent (equal to total for units built 1960-69 plus total for units built prior to 1960)							4,134,791,828

[1] Number of returns is equal to all returns in table 1 minus those in table 2 for each income class. All deductions subject to 11th taxable year percentage of 40 percent and $500 limitation.

Source: Data from tables 1 and 2, and calculated as indicated.

THE GREAT AMERICAN GENERATION

Mr. BELLMON. Mr. President, last Saturday night President Nixon delivered the commencement address at Oklahoma State University. Four thousand graduates and their 30,000 guests heard the President describe his vision of the part these graduates can play in making this "The Great American Generation" between now and the year 2000.

Mr. President, our President spoke at a time of great stress for his administration. He spoke at a time of great clamor over the Watergate scandal which has besmirched his record and his accomplishments which are many.

It is noteworthy that the President's remarks and presence were warmly and courteously received in Oklahoma. It made me especially proud to be an Okahoman.

But, this reception was more than hospitality. It should show to all who have come to doubt it that there is still great affection in the hearts of his countrymen for both the office and the man.

Unfortunately, because of the preoccupation of the media with a few comments the President made on the Watergate situation, in deference to the nonpolitical character of the occasion, not many people outside the OSU Stadium have had the opportunity to give his remarks the attention and reflection they deserve.

Mr. President, I ask unanimous consent that the President's remarks be

printed in full in the RECORD in the hope that many of his fellow citizens will read them in full and ponder their significance and meaning in their lives. I think we can all join sincerely in the President's hope that this will be a "Great American Generation."

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

REMARKS OF THE PRESIDENT, AT COMMENCEMENT EXERCISES, OKLAHOMA STATE UNIVERSITY, LEWIS FIELD

Dr Kamm, all of the distinguished guests on the platform, all of the distinguished members of the faculty, and particularly, of course, the most distinguished people here of all, those who are to receive degrees, both graduate and undergraduate, and your friends and those who have made it possible for you to be here today:

Let me say, Dr. Kamm, that I am most grateful for the invitation that was extended to me to come to this University. My good friend, Senator Henry Bellmon, said that this school had had once a tradition of noncontroversial speakers. Well, now you have changed it tonight. (Laughter)

And in the great tradition of an educational institution, I am very happy that there are some here who obviously disapprove of the speaker and there are others who approve of the speaker.

And all of you, of course, are welcome and my remarks will be directed to all of you in the sense that I know you will receive them, of what this day means to those who are receiving their degrees from one of America's greatest educational institutions.

I would like to say, first, however, before getting into the more serious parts of my remarks, that I am very happy to be standing here at this particular spot. As some of you probably have heard, I am somewhat of a sports fan and as some of you probably know, the university that is best known from Oklahoma in football is not the Cowboys, but the Sooners.

On the other hand, I am aware of the whole realm of sports, and I am aware of the fact that, except for my wife's alma mater, the University of Southern California, the university in all the United States that has won more national championships across the board is OSU. So congratulations. I know you are very good at wrestling. I could learn a little from you at that, too.

Let me say, too, that when I spoke of the fact that I was somewhat of a sportsman, I was one of those who spent virtually all of my time on the bench, and to be in the middle of the field is really an unusual experience, and I thank you for that, too. (Laughter)

On this particular day, I also want to pay tribute not only to the graduates to whom my remarks will be addressed primarily, but as already has been done so eloquently in the invocation, and also by Dr. Kamm, to those who taught them and to their parents and others who made it possible to get their education, and I can say to you who are graduating today, as the years go by, each year you will appreciate more the sacrifices of your parents who made it possible for you to get an education that they may not have received. I have always felt that way. And as the years go by, you will appreciate more the dedication of those who taught you and, as a matter of fact, strangely enough, you will probably appreciate the most those who graded you the hardest, because they are the ones who made you toe the line.

And so, to the faculty and to the parents, and all those who made it possible for this great day of achievement, the congratulations not only of this great audience here go, but of the whole Nation, for producing 4,000 fine young men and women to go forth in the service of their communities, of their States and the Nation and, as I will point out, also of the entire human race.

On an occasion like this, it is, of course, customary to talk, as we should, about the future. It is, however, on an occasion like this, certainly not appropriate to disregard problems of the present. I know, for example, from talking to both of your two great Senators and to the two Congressmen who are here, John Jarman and Happy Camp, and Senator Bartlett and Senator Bellmon, that farmers in Oklahoma, like farmers in the other places, are concerned by the effect of the energy crisis on them, the shortages in fertilizers and other areas.

I know that the cattlemen, for example, are concerned in Oklahoma, as they are in other parts of the country, because after two very good years they have a tough year this year because of a tough price squeeze. I know, too, that every housewife or budget keeper, should we say, is concerned about the problem of inflation, which is not limited to America. It is worldwide, as you know, but that makes it no less a difficult problem, or one that we should be less concerned by the fact that it is others, as well our own, and I know, too, that those who are interested in our country have been concerned, as I have been deeply concerned, by the political problems that we have had in Washington.

I can only say on this nonpolitical occasion this: That having presented all of the evidence to the Congress of the United States, I trust that the House of Representatives will act promptly so that we can reach a decision so that the President, the Congress, can get on with the people's business, as we should.

And having spoken of those problems, let me also remind ourselves of some of those things on this magnificent evening we can be thankful for. We can be thankful for the first time in 12 years the United States is at peace with every nation in the world.

We can be thankful that for the first time in eight years, every American prisoner of war is home where he belongs and that he came home on his feet and not on his knees.

And most of all—and I say this not only to those in the graduating class, but to the juniors and sophomores and the freshmen, and I trust the generation to come—we can be thankful for that for the first time in 25 years no young American is being drafted to serve in the Armed Forces of the United States.

As we look at our economic situation, we see its problems. But just a few weeks ago in Paris, I talked to the leaders of 35 nations, the great nations of Europe and of Asia, and some of the smaller nations of Latin America and Africa. I talked to them of their problems and we talked of ours. And today, on this beautiful evening, we can also be thankful that whatever our problems are, that in America, Americans enjoy more freedom, more opportunity, better jobs, higher wages, and a greater chance for a great future than in any place in the world.

That is America. This is a great and a good country. But we must go from here to more greatness. As you study history, you will inevitably find that the time of a nation's potential destruction is not when it is weak, but when it is strong, or appears to be; not when it is poor, but when it is rich. Because what happens inevitably is a certain complacence, a certain softness that erodes the strength and the fiber that made the Nation the great Nation that it was.

In two years, the United States will reach that period of 200 years old and already, there are those who look at America and wonder: Will we be rich, as we will be? Will we be strong, as we will be? But most important, will America still have the sense of vision, the sense of destiny, the sense of character and drive and determination that brought us across the mountains, across the prairies, and made us the great and strong Nation that we are? That is the question.

And it is a question that is very important to Americans. But it is also important to all the people who live on this earth today.

Dr. Kamm was telling me that this University proudly has in its graduating class representatives from over 40 countries abroad, as well as representatives from 47 States. So, this is truly a university in the true sense of universal, and therefore, as I lay before you the challenges of the future, whether America has seen its great period, or whether the next 200 years may be greater, as I lay those great challenges out, you will see that they are not just America's challenges, but they are those in which what America does will contribute to the benefit of all the people in the world.

I start with one that is very timely, and that is the problem of energy. And on that problem, those in this university have special skills and knowledge far beyond my own, but I do know this: That America consumes approximately 35 percent of the energy in the world.

I know, too, however, that America is blessed with great natural resources and great human and technological skills which makes it possible for this Nation—one of the few nations in the world, incidentally, of the industrial nations—to set a goal which it can achieve, a goal of being completely independent in terms of its energy needs.

Let me tell you why we should have that. In September and October and November of last year we went through a great crisis. It rebounded throughout our entire economy. It hurt all sectors of it in various ways. We are just recovering from it.

We want good relations with all nations in the world. But if the United States has the resources to become independent of any other nation for our energy, let's do it, and we can do it and we shall do it by the year 1980. Now, what does that require? It requires the development of our oil and gas resources, and some action by the Congress that will allow their full development. It requires the development of our coal resources, in which we have two-thirds of all the known coal resources in the free world. We have not used them adequately because of environmental problems and other problems recently, but it is possible not only to extract coal, but to use coal and to make it a clean fuel, and if we do so, that can help make America self-sufficient in energy, and that is why we should move on that front.

And third, in areas little dreamed of 15, 20 years ago—nuclear power, which can be the cleanest and the safest of all power; solar energy, far out perhaps in terms of what the science and arts would now seem to suggest, but certainly possible—what I am simply saying to this graduating class is that we have a goal. That goal is, by the year 1980, to be independent in energy. It is going to take the cooperation of Government. It is going to take your technological and other abilities to the extent that you work in these various areas, but it is a goal worth achieving. It will help us, and it will help other nations as well.

To put it in its proper context, let us understand what the mix is in terms of who does what. The Federal Government has a great role to play in this respect. We will be spending approximately $15 billion in research in the field of energy over the next three to four years. That is a very large amount of money. On the other hand, over the next ten years private enterprise will be spending $500 billion, a half a trillion dollares, to achieve the goal that I am referring to.

And it allows me to make this point: America became what we are—we became rich and productive and strong—not because

of what Government did, but because of what people did, and it is people in our private capacities. That is what counts. You are the ones who are going to make America move forward in this [illegible] in all the other areas as well.

And now to a second great challenge for this splendid generation of Americans, and I refer to the challenge of food. We are blessed richly in America in this respect. I know that many who write me about the cost of living speak about high grocery bills, and yet even at their highest, due to the productivity of America's farmers, due to the fact that they have been able to produce more with less people, today the American housewife pays a smaller percentage of her budget for food than does any housewife in the world.

That is to the credit of America's farmers. It is to the credit of our distribution system. It does not mean that we perhaps cannot do better over a long period of time in bringing those prices within those realms that everyone feels that he or she can afford, but what I do say is this: This is no time for jingoism as to who is Number 1 or Number 2 on this or that or the other between countries, but there is one area where America is by all odds Number 1, and that is in agriculture.

And looking to the future, the fact that America is so productive in agriculture that we produce enough to feed all of the American people, to clothe the American people, and to provide billions of dollars in aid, as well as in sales to countries abroad, that is a great instrument for peace in the world, and we are using it for peace as well as for humanity. So those who are in this field of American agriculture deserve the thanks of the Nation, and this university has played, I know, a very great role in that respect.

When I think, too, of one of your former presidents, Dr. Bennett, the first director of Point IV, I think of another area in which American agriculture can play a role in dealing with the problem of hunger for the whole world. In a visit to Brazil in 1967, I was talking to the then President. Northern Brazil at that time was one of the poorest areas of the world. It is still very poor. I have seen poverty in many places—in India, in Bolivia, in Brazil, in China—and I can tell you that as you look at the hungry faces, it doesn't make any difference what the political philosophy may be of those who rule them. When you see the hungry children, it make no difference about what the attitudes of their leaders may be.

It is a problem. Your heart goes to them. And America, to its credit, has always been very, very generous in providing from our surplus for their needs. But now what has happened? The world is producing a little more. The demands are becoming greater. And as a result, we find that we face a potential situation with regard to food, a shortage not only in America but in the world.

I come back to my conversation with the President of Brazil, and what America can do there and in many other places. You have heard of the miracle rice and the miracle wheat, what it has done, for example, in Latin America in the one instance, and in the case of rice, in Southeast Asia, in alleviating hunger by increasing production.

But there is another phase. It is not just in teaching farmers how to plant, but it is the whole process of not only producing food, but distributing it. And in Brazil, for example, the President told me that over one-half of everything grown on the farms in Brazil spoiled on the way from farm to market.

That is one country. I could repeat that for others, for India, certainly for China, for many others around the world.

What can America do about it? I am not suggesting that we export our farmers, but I am suggesting that American know-how, American technology, in this area is a place where we, we can do something not only for ourselves but for others as well.

And that is why the World Food Conference which we have helped to initiate this November is a great enterprise and one that this young generation, I trust, those in this field, will follow through on in the years ahead. Because even though it may not be very close at home to you, think of those people, as my wife and I have seen them, in virtually every country of the world. When a person is hungry, when a person is poor, we cannot have a world that will live in safety if that situation is not remedied. It can be remedied and we can help and you have already helped.

The third area that I want to speak of where we have a great challenge is in the field of health. I understand from Dr. Kamm you do not have a school of medicine, but you have many who will, of course, be involved in the various medical arts in one way or another, and all of you, of course, will have an interest, I am sure, in this area.

But here what we have now before us in an achievement that Americans have dreamed about but have never been able to achieve before, a program in which every American will have health insurance if he needs it; where every American will have protection against catastrophic illness where he needs it or wants it, and where this can be accomplished without additional taxes, and most important, where it is accomplished not by destroying the existing private medical system which has given us the best health care in the world, but by building on it. Because I say to you, let us remember when an individual is sick, I think he prefers to have a doctor who is working for the patient rather than for the Federal Government, and that is what this program is all about.

The fourth area is related to the third in a very interesting way. You hear of the great hostility, and there is hostility at times in the philosophy of the United States and that of the great super power, the Soviet Union, and the super power of the future, the People's Republic of China. And you wonder what areas are there where our interests do not collide? What areas are there where our interests are together? And there are many.

They do not receive the attention that they should. The joint project, for example, of the United States and the Soviet Union exploring space peacefully; the joint programs that we have developed with the Soviet Union and some also with the People's Republic of China, in the field of the environment where we share what we learn with them and they with us. And the joint programs, for example, that we have, and I mention this particularly, in the field of health.

I found that in my talks with Mr. Brezhnev, and with Mr. Chou En-lai and Mr. Mao Tse-tung, each in individual conversations emphasized the need, whatever differences in philosophies that we have, that the scientists and the medical technicians and doctors of the world should have no disagreement about working together against the diseases which are the scourges of mankind.

Just to recount to the younger members of this graduating class how much has happened in so few years, it is hard to realize that the man who served longest as President of the United States—12 years—was crippled with polio, because that was before the days of television and we did not think about it. He served well. But it is also well for us to realize that today, he would not have had polio.

We all think of this in permanent terms. And I remember in our own family, 45 years ago, two brothers—one younger, one older died of tuberculosis within two years of each other. Today, that would not happen; not in my family or in yours, because they have found the virus and they can kill it.

And that is why we have mounted within the Government of the United States a great program to find the cure, or a number of cures, and it may be a number, for different types of cancer. That is why we have mounted programs, also, in the field of heart disease and many other areas. Oh, I do not mean to suggest that we are looking forward to a time when there will be no diseases and when men and women live forever, but I am saying this: That what we do here in the United States will be great in the years ahead, because of the effort that we are putting in, but I also know that in the Soviet Union—and I have seen their hospitals there—and in the People's Republic of China where one-fourth of the ablest people in the world live, that there are doctors, there are people—men and women of genius—and if there is a way that the genius that they have and the genius that we have, or that some other people, whether they are in Europe or Latin America or Southeast Asia, has, where those two types of genius can run together we may get that spark that otherwise might not occur if we live in isolation.

And that is why I say what a great time for a new generation to think that you live in an open world; that you live in a world where we are not isolated from one-fourth of all the people in the world; that you live in a world where we still have differences that we are attempting to negotiate rather than to fight about; but that you live in a world where you can look forward to working with other people whoever they are, whatever the color of their skins, whatever their background, whatever their political philosophy, but to work with them and not against them in those common causes of a better environment, a healthier world, a better world. This is a great goal.

And I say to you tonight that on this goal you have often heard me speak of the need for us to work for what is called the generation of peace. That is stating it in much, it seems to me, too inadequate terms, although it would be more than we have had in this century, because Americans fought World War I, and thought it was the last. And then came World War II for the sons of those of World War I. And after World War II, and the United Nations and all the great hopes, we thought, "Now a period of peace." And the younger brothers of World War II were killed in Korea. And after Korea came Vietnam and the sons of those who fought in World War II and Korea, or their younger brothers, lost their lives there.

And now what? It is not enough to end wars. What we must do is to build a new structure of peace in the world, and that requires something that America, and America only, must play a leading—and in the free world the leading—role.

Because today, as distinguished from the period before World War I and World War II, we cannot look across the seas to Europe and say, "Oh, the British can do it, or the French can hold the line." There is no other nation in the free world that has the strength militarily, that has the productivity economically, that can provide the leadership role that America is providing today in negotiating a reduction of nuclear arms with the Soviet Union; in opening a dialogue with the People's Republic of China: in attempting to find, in one of the most diplomatic ventures of all time, in attempting to find a way in which peace can be brought to the cradle of civilization, the cradle of civilization and the religious—of the many—religions—in the Mideast, which could well be equated as the Balkans of the 1970s, unless we do something about it and do something now.

I do not suggest to this audience where you particularly, in your schools of arts and sciences, have concentrated on these subjects, that the way to peace is easy and I would never suggest that once you get peace,

you have it, because peace is a continuing process, it is never an end.

But the United States today has the unique position, because of our strength, because of our wealth, because we are respected, becase it is known throughout the world that we seek domination over no other country, that we will not use our power to destroy peace any place or to destroy freedom, only to defend it. Because of these factors, America now has a chance, a chance that may never come again, to play the role of peacemaker in the world, and the question is, will we meet the challenge?

And the answer is not just in Government, not just in the present leaders, the answer is in all the great mass of the American people, whether a nation that has sacrificed so much is willing now still to play a world role, whether a nation like America, which is so rich, still has the strength, the vision, the sense of destiny to play that role.

To the members of the graduating class, I think you have it. To the members of the graduating class, I want you to know that in 25 years, plus one, they are going to be celebrating a new year. Most of us will not be around, but you will. It comes once in a thousand years. And on that new year you will look back to this day and then you will judge your generation.

Let me tell you what I think you will be able to say. Yours was the generation that was there, that had the strength and stamina to see that America played a responsible role so that we do have peace in the world for a generation. Yours was the generation that helped America become self-sufficient in energy, that helped America to develop the food resources for ourselves and other nations so that the level as far as people's abilities for nutrition is concerned was raised not only for ourselves but for all people. Yours was the generation during which great strides were made forward in terms of fighting the scourges of disease wherever they existed throughout the world. And most of all, that yours was the generation, a generation that asked questions, a generation not afraid of controversy, but a generation that when the chips were down was strong, in the right, believed in what we were doing.

I say to you, when the year 2000 comes, I am confident that the members of the class of 1974 of Oklahoma State University will look back and say: Yes, we met the test. Ours was the great American generation.

BUSINESS WEEK AND COAL DEVELOPMENT

Mr. MANSFIELD. Mr. President, in my continuing effort to keep my colleagues here in the Senate informed on issues surrounding the development of vast coal deposits in the West, I would like to direct your attention to the current issue of Business Week, May 11, 1974, which contains yet another interesting feature on the development of low sulfur coal deposits in the West.

This article analyzes the more recent controversy associated with the move of coal company interests from the East to the West. The new concentration on the coal resources of the Northern Great Plains is likely to have less than a happy influence on the existing coal industry in the Eastern half of the Nation.

Interestingly, the Business Week article examines another aspect of the current move toward surface mining of coal in the West. It is pointed out that most western coal will not be mined in large quantities until the 1980's. According to present projections, the 1980's are when we anticipate that technology for purging sulfur oxides from utility stacks will probably be successful. This will enable utilities to burn the vast high sulfur reserves in the East. The question then arises, why look to the West for coal deposits, especially when this is a development which is not eagerly anticipated by many residents of the Great Plains. The article explores this aspect giving some interesting observations.

Mr. President, I ask unanimous consent to have the Business Week article entitled "The Coal Industry's Controversial Move West" printed in the RECORD.

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

THE COAL INDUSTRY'S CONTROVERSIAL MOVE WEST

Half of America's coal now comes from strip mines, and every week giant power shovels strip another 1,200 acres of land. Less than half the mined-out land has been adequately restored, and the scars of stripping still deface some two-million acres—roughly the size of Delaware and Rhode Island. So last fall, the Senate overwhelmingly passed a tough bill to regulate reclamation.

Then, just as the House began action on a similar bill, the Arabs launched their oil embargo, plunging the nation into energy chaos and strengthening the hand of the coal companies that eagerly want to expand strip mining in the West. As a result, the House bill has been tied up as environmental and industry lobbyists haggle over such technical matters as land contour, spoil banks, and revegetation.

But underlying the strip-mining fight is a much broader question of regional energy development: Should the U.S. concentrate its coal programs in the deep mines of Appalachia or in the Western plains, from Montana to New Mexico? The answer will set the growth patterns of the nation's major energy suppliers for years to come, decide the fate of the coal-dependent Appalachian economy, and determine the environmental quality and economic development of the West.

VIEWPOINTS

On one side are the environmentalists, led by the Environmental Policy Center, who claim that since Eastern deep mines contain 40% of the nation's vast coal reserves (table), the U.S. can have all the coal it needs without stripping the Western plains. They are backed by the United Mine Workers, which fears job losses in Appalachia if the coal industry continues its westward flight, and by some Western ranchers and farmers, who worry that strip mining will ruin their land and disrupt their rural life. These forces have coalesced behind a Senate-passed amendment, introduced by Senator Mike Mansfield (D-Mont.), that bans strip mining on all private land for which the federal government owns the mineral rights—roughly 35% of Western surface reserves.

On the other side are the coal companies that see a new frontier in the West, free of the high-cost mines of Appalachia, free of the health and safety problems of deep mining, and free of the militant demands of the strike-prone UMW. They are supported by some Westerners who expect an economic bonanza if the region's resources are developed. But their chief allies are unquestionably the electric utilities, which desperately need assured sources of low-sulfur coal. Pressed to meet air quality standards and convinced that the technology to purge the sulfur from dirtier Eastern coal is unproven and costly, the utilities are eying and buying the West's low-sulfur coal. Says Carl E. Bagge, president of the National Coal Assn.: "The coal reserves of the Northern Great Plains are a vital part of the fuel resource base necessary for both energy growth and national self-sufficiency."

UNITED STATES HAS PLENTY OF COAL, BUT MOST LOW-SULFUR COAL IS IN THE WEST

[In billions of tons]

	United States	West[1]	East
Recoverable reserves, underground	293	125	168
Recoverable reserves, surface	135	100	35
Total	428	225	203
Recoverable reserves, 1 percent sulfur or less	105	75	30

[1] West of the Mississippi River.

Source: Bureau of Mines.

The debate is more than academic, for the industry is already trekking West, like an eager prospector in Gold Rush days. Western coal, most of it strip-mined, now accounts for more than 10% of the 600-million tons of coal the U.S. produces annually, up from 5% in 1966. In Wyoming, for instance, coal production has jumped from three-million tons in 1968 to 14-million tons last year and may reach 40-million tons by 1980 and 100-million tons by 2000. Meanwhile, production in West Virginia has fallen from 145-million tons in 1968 to 115-million tons last year and may drop further. In all, says a study by the Atomic Energy Commission, Western strip-mined coal will provide 55% of the 1.8-billion tons of coal produced in the U.S. by 1985.

So eager are the utilities to buy low-sulfur Western coal that they are paying big premiums to haul it East. Detroit Edison Co., for example, has signed a 26-year contract with Decker Coal Co. for 180-million tons of Montana coal. The coal will cost $1 billion but transportation costs will reach $2 billion. Similarly, American Electric Power Co., with power plants in Appalachia and the Midwest, recently signed a 30-year contract with Carter Oil Co., a division of Exxon, for more than 150-million tons of Wyoming coal that will be shipped to two plants on the Ohio River. The coal will cost about $12 a ton initially ($9 of it for transportation), and its sulfur content is 0.4%. "We would rather burn Illinois coal," sighs Paul D. Martinka, AEP's senior vice-president for fuel supply, "but we can't get anything less than 2½% to 3% sulfur."

The sulfur problem is critical because the standards set under the Clean Air Act start taking effect in July, 1975. And since some states have tightened standards even more than the act requires, 200-million tons of coal now mined will be unusable, according to Thomas Falkie, director of the Bureau of Mines. Falkie and others want the states, such as Ohio, to relax their standards to federal levels. Otherwise, he says, "the Eastern coal industry could be in trouble."

THE MOVE

But the quest for low-sulfur fuel does not fully explain the move west. For one thing, not all Eastern coal is high in sulfur. "Appalachian deposits contain an estimated 28% of the U.S. demonstrated reserves of low-sulfur coal," Falkie says. For another, Western coal is low in heat value, averaging 9,000 Btu per lb., compared with about 12,000 Btu per lb. for Eastern coal. Since air quality standards are based on sulfur oxide emissions per million Btu's, some Western coal with a sulfur content of less than 1% based on tonnage will not satisfy the standards. Finally, most Western coal will not be mined until the 1980s, when the technology for purging sulfur oxides from utility stacks will probably be ready. That, of course, will

enable utilities to burn the vast high-sulfur reserves in the East.

In short, the coal industry has other long-term reasons for moving west:

LOWER COSTS

Western coal seams are often more than 100 ft. thick and near the surface for easy stripping. As a result, some operators in Wyoming and Montana can strip about 100 tons per man-day of labor, compared with only 12-tons in an Eastern deep mine and about 35 tons in an Ohio strip mine. Also, Western strip mines avoid the high cost of the 1969 Coal Mine Health & Safety Act, which has added $1.50 per ton to Eastern deep mine costs.

EASIER ACQUISITION

Assembling vast tracts of Eastern coal for long-term contracts is difficult because ownership is highly fragmented and much Eastern coal is tied up by the steel industry. But in the West, coal ownership is concentrated in the hands of the government and Indian tribes, enabling the industry to sign long-term leases with single suppliers. Though the government has temporarily halted lease sales pending environmental studies, it has already leased 682,000 acres to such companies as Exxon, Texaco, and Atlantic Richfield. And such railroads as Burlington Northern and Union Pacific, also control billions of tons.

FEWER LABOR WOES

Many coal operators are quietly trying to escape the jurisdiction of the militant UMW. In the West, most strip miners either belong to the International Union of Operating Engineers or to no union at all. Thus the industry can avoid paying an 80¢ per ton royalty to the UMW's welfare fund and, more important, can gain relief from the frequently bitter strikes that have hurt Eastern operators. Says Ralph E. Bailey, executive vice-president of Consolidation Coal Co.: "The deterioration in attitude of some of our work force . . . has led to a major decline in productivity."

The result of all this is that coal can be strip-mined in the West for $3 to $5 a ton, compared with $9 to $14 in Eastern deep mines—enough of a saving to offset transportation costs as far east as West Virginia. To realize the full saving, many utilities are building power plants near the coal sites. The trend started in the 1960s, when utilities began the huge complex in the four corners region of the southwest to supply power to Los Angeles. Now the action is moving north. Montana Power & Light, Utah Power & Light, and Pacific Power & Light are all building plants in Western coal country, and they will feed some of the electricity to the Pacific Northwest.

UNANSWERED QUESTIONS

All this is just the beginning, for energy companies hope to build an array of plants that will convert coal to synthetic gas or oil. The Federal Power Commission has already received applications for two gasification plants in New Mexico, while Wyoming projects up to 16 plants within a decade. And a memo recently circulated by Commerce Secretary Frederick B. Dent envisions as many as 72 gasification and liquefaction plants in the West.

If such massive development of Western energy occurs, it is bound to hurt the deep-mining industry, still the backbone of the Appalachian economy. Says Pennsylvania Governor Milton Shapp: "I think it will mean the eventual destruction of the Appalachian region. It's so much more economical to start in a new region where the companies control everything." And, asks Senator Mansfield: "What is going to happen to the vast quantities of mineable coal in the Eastern U.S.? Will a major shift to the West bring about serious unemployment in Appalachia? These are questions my Eastern colleagues should be asking."

Mansfield's questions are important because strippable Western reserves will be depleted long before Eastern reserves. "If we shift entirely to strip mining, we'll consume all the strippable coal we have in a generation," says Representative John F. Seiberling (D-Ohio). "We need a continually operating deep mine coal industry."

To coal men, such rapid depletion seems unlikely. The West has at least 100-billion tons of strippable coal, they note, and even on a Btu basis that should last well into the 21st Century. Moreover, says Bagge of the Coal Assn., Western reserves are probably greater than current estimates. "Every time we take another fix on the amount of coal out there, estimates go up."

Bagge, who frequently refers to his lobbying opponents as "kooks," also contends that the East is not being abandoned. "If we're going to reach two-billion tons a year by 1985, we're going to have expansion everywhere—in Appalachia, in the Midwest, and in the West. Indeed, some companies are already expanding operations in the deep mines of Appalachia. American Electric Power, for one, has recently acquired two companies with 150-million tons of low sulfur reserves in West Virginia, and it claims it will be able to supply all its low-sulfur coal needs in West Virginia, Virginia, and Kentucky with deep-mined Appalachian coal.

ROADBLOCKS

Nonetheless, if government projections are correct, Eastern coal, now 90% of U.S. production, will drop to 45% within a decade—a trend that may retard job opportunities and spur migration of potential miners. By 2000, when everyone agrees that much more Eastern coal will be needed, the industry could have trouble finding the necessary work force.

If Mansfield has his way, no such decline will occur. Just before the Senate passed its strip-mine bill, he inserted an amendment barring the industry from stripping any coal owned by the federal government beneath land that is privately owned. Such divided ownership is common in the West, where the government retained the mineral rights on land deeded to homesteaders. The Interior Dept., which opposes the amendment, says it will prevent strip mining of 35% of Western surface coal. And though private holdings are large, they are often next to government reserves, creating a vast checkerboard pattern that would make it uneconomical to strip some private coal, too. "If legislation makes it impossible to recover these resources, coal gasification will continue to be a gleam in somebody's eye," says D. Michael Rappoport of the Salt River Project, a public power operation in Arizona.

Though Mansfield's amendment may not survive, industry lobbyists are worried. Says one: "Mansfield has great power as majority leader, and he doesn't use it often for a bill of his own." Mansfield himself says he is "adamant" about keeping his provision.

The industry's westward drive faces other roadblocks, too. New coal-fired power plants in the West may be stalled by air pollution problems. A provision of the Clean Air Act, upheld by the Supreme Court, bars "significant deterioration" of air quality in regions that already meet federal standards. Though the EPA has yet to define significant deterioration, most experts say the court ruling probably means that few, if any, coal-fired power plants can be built in clean-air regions of the West. The coal industry has asked Congress to amend the law.

Worse yet for the industry's ambitious plans is the potential shortage of water in the arid West. In some areas the coal seams themselves form part of the aquifers. Moreover, to convert coal to synthetic gas requires enormous quantities of water. A report prepared by the National Academy of Sciences states flatly that "not enough water exists for large scale conversion of coal to other energy forms." Montana, concerned that its farmers will not have enough irrigation water, has already declared a three-year moratorium on any new commitment of water from rivers in Eastern Montana.

RESTORATION

Many Westerners also worry that strip-mined land cannot be effectively restored. Unlike Appalachia, where the hills and hollows make restoration difficult and costly, the plains are flat and easy to regrade after mining. But the soil is fragile, and rainfall is scant, making revegetation a chancy business. If the vegetation does not take root, the wind can scatter the top soil, making grazing impossible.

Many coal companies have planted a wide variety of trees and grass, hoping to find the most promising species. In most cases, the revegetation is so new that no one knows for sure whether it will last. But there have been some successes, notably by Peter Kiewit Sons, Inc., at its Big Horn, (Wyo.) mines. And Decker Coal, jointly owned by Kiewit and Pacific Power & Light, expects its reclamation to boost the land's grazing productivity fivefold.

Such results are supported by the NAS study, which says that revegetation is feasible only where rainfall averages more than 10 in. a year. Montana, Wyoming, and the Dakotas receive about 15 in., and the NAS says stable revegetation is possible there for only pennies a ton. But successful revegetation is not likely in New Mexico and Arizona, where rainfall averages less than 5 in. a year.

Perhaps more important, many Westerners worry that growth itself will prove more of a problem than land reclamation. Campbell County, Wyo., which now has a population of 13,000, will grow to 50,000 by the year 2000 if coal development goes as expected. "The whole public service sector there is already under a lot of pressure," reports a researcher at the University of Wyoming. "The sewerage is poor, the water supply is poor. They'll have a lot of work to do."

For now, industry and residents alike are marking time, waiting the outcome of the strip-mining bill in Congress. For if the Mansfield amendment becomes law, most of the ambitious plans for Western coal will probably be abandoned, and the industry will be forced back to the underground mines of Appalachia.

How much coal does the U.S. have? There is no single answer, and even government estimates differ. The U.S. Geological Survey has identified 1.5-trillion tons—theoretically enough to last for 2,500 years at the present mining rate of 600-million tons a year. But most of this coal cannot be recovered.

A more meaningful estimate of coal reserves is 428-billion tons, the amount that can be mined with existing technology at current prices (table). As prices rise and technology improves, more of the 1.5-trillion tons will become available. But even the 428-billion tons is a vast resource. If two-billion tons a year are mined by the 1990's, the U.S. has enough easy-to-recover coal to last more than two centuries.

UNIFORM ORIGINAL ENLISTMENT QUALIFICATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 803, H.R. 3418.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill (H.R.

3418) to amend section 505 of Title 10, United States Code, to establish uniform original enlistment qualifications for male and female persons.

The ACTING PRESIDENT pro tempore. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 93-839), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill is to establish uniform original enlistment qualifications for male and female persons in the armed services.

EXPLANATION OF THE BILL

Under current law, the Secretary concerned may accept original enlistment in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, of qualified, effective and able-bodied males who are not less than seventeen years of age, and females who are qualified, effective, and able-bodied persons who are not less than eighteen years of age. However, no male person under eighteen years of age, or female person under twenty-one years of age, may be originally enlisted without the written consent of his parent or guardian. Also, under current law, a person may be enlisted as a member of one of the Regular Services if he is a male, for the duration of his minority or for a period of two through six years, and, in the case of a female person, for a period of two through six years.

This bill would change the law so that the enlistment standards would be the same for both male and female persons—in other words, no difference in age, parental consent, or time of enlistment options.

There are two provisions in section 505 of title 10 that would not be changed. It would not eliminate the discretionary authority of the Secretary to set as a matter of policy a higher minimum age than seventeen or a lower maximum age than thirty-five for accepting enlistments.

FISCAL DATA

There will be no increased cost resulting from enactment of this bill.

QUORUM CALL

Mr. ROBERT C. BYRD. 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. ROBERT C. BYRD. 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.

CONCLUSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, is there further morning business?

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT OF 1974

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of H.R. 14368.

The Senate proceeded to consider the bill (H.R. 14368) to provide for means of dealing with energy shortages by requiring reports with respect to energy resources, by providing for temporary suspension of certain air pollution requirements, by providing for coal conversion, and for other purposes, which was read twice by its title.

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

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. MUSKIE. Mr. President, I ask unanimous consent that during consideration of and voting on H.R. 14368, the following staff members of the Committee on Public Works be allowed the privilege of the floor: M. Barry Meyer, Phillip Cummings, John W. Yago, Richard Grundy, Leon Billings, Bailey Guard, Richard Hellman, Richard Herod, Charlene Sturbitts, and Jackie Schaefer.

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

Mr. RANDOLPH. Mr. President, a point of clarification.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. RANDOLPH. The control of the time agreed to yesterday was between the chairman of the Committee on Public Works and the ranking minority member of the Committee on Public Works. In view of that parliamentary situation, I yield control of the time to the Senator from Maine, who is chairman of our Subcommittee on Environmental Pollution, Mr. MUSKIE, to manage this proposal on behalf of the committee.

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

Mr. RANDOLPH. I yield.

Mr. BAKER. The RECORD discloses, that time on this bill be allocated to him and to me. I wish to cede the time under my control to the Senator from New York (Mr. BUCKLEY), who will be here shortly and will handle the floor debate from the minority standpoint.

Mr. MUSKIE. Mr. President, I ask unanimous consent that Jackie Schaefer, a member of the staff of the committee, be granted the privilege of the floor during the consideration of this measure.

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

Mr. MUSKIE. Mr. President, I call up my amendment No. 1303 to the pending measure and ask that it be stated.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the further reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; PURPOSE.

(a) This Act, including the following table of contents, may be cited as the "Energy Supply and Environmental Coordination Act of 1974".

TABLE OF CONTENTS

Sec. 1. Short title; purpose.
Sec. 2. Suspension authority.
Sec. 3. Implementation plan revisions.
Sec. 4. Motor vehicle emissions.
Sec. 5. Conforming amendments.
Sec. 6. Protection of public health and environment.
Sec. 7. Reports.
Sec. 8. Coal conversion and allocation.
Sec. 9. Extension of Clean Air Act authorization.

(b) The purpose of this Act is to provide for a means to assist in meeting the essential needs of the United States for fuels, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

SEC. 2. SUSPENSION AUTHORITY.

Title I of the Clean Air Act is amended by adding at the end thereof the following new section:

"ENERGY-RELATED AUTHORITY

"SEC. 119. (a)(1)(A) The Administrator may, for any period beginning on or after the date of enactment of this section and ending on or before the earlier of June 30, 1975, or one year after the date of enactment of this section, temporarily suspend any stationary source fuel or emission limitation as it applies to any person, if the Administrator finds that such person will be unable to comply with such limitation during such period solely because of unavailability of types or amounts of fuels. Any suspension under this paragraph and any interim requirement on which such suspension is conditioned under paragraph (3) shall be exempted from any procedural requirements set forth in this Act or in any other provision of local, State, or Federal law; except as provided in subparagraph (B).

"(B) The Administrator shall give notice to the public of a suspension and afford the public an opportunity for written and oral presentation of views prior to granting such suspension unless otherwise provided by the Administrator for good cause found and published in the Federal Register. In any case, before granting such a suspension he shall give actual notice to the Governor of the State, and to the chief executive officer of the local government entity in which the affected source or sources are located. The granting or denial of such suspension and the imposition of an interim requirement shall be subject to judicial review only on the grounds specified in paragraphs (2)(B), (2)(C), or (2)(D) of section 706 of title 5, United States Code, and shall not be subject to any proceeding under section 304(a)(2) or 307 (b) and (c) of this Act.

"(2) In issuing any suspension under paragraph (1) the Administrator is authorized to act on his own motion without application by any source or State.

"(3) Any suspension under paragraph (1) shall be conditioned upon compliance with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include, but need not be limited to, (A) a requirement that the source receiving the suspension comply with such reporting requirements as the Administrator determines may be necessary, (B) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and (C) requirements that the suspension shall be inapplicable during any period during which fuels which would enable compliance with the suspended stationary source fuel or emission limitations are in fact reasonably available to that person (as determined by the Administrator). For purposes of clause (C) of this paragraph, availability of natural gas or petroleum products which enable compliance shall not make a suspension inapplicable to a source described in subsection (b)(1) of this section.

"(4) For purposes of this section:

"(A) The term "stationary source fuel or emission limitation' means any emission limitation, schedule, or time table for compliance, or other requirement, which is prescribed under this Act (other than section 303, 11(b), or 112) or contained in an applicable implemention plan (other than a requirement imposed under authority described in section 110(a)(2)(F)(v)), and which is designed to limit stationary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type or grade or pollution characteristic thereof.

"(B) The term 'stationary source' has the same meaning as such term has under section 111(a)(3).

"(b)(1) Except as provided in paragraph (2) of this subsection, any fuel-burning stationary source—

"(A) which is prohibited from using petroleum products or natural gas as fuel by reason of an order issued under section 8(a) of the Energy Supply and Environmental Coordination Act of 1974, or

"(B) which the Administrator determines began conversion to the use of coal as fuel during the ninety-day period ending December 15, 1973, and, consistent with the criteria established in this section should use coal after the expiration of any suspension approved pursuant to section 119(a) of the Clean Air Act,

and which is located in an air quality control region in which applicable national primary ambient air quality standards are not being exceeded and which converts to the use of coal as fuel, shall not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to such source. For purposes of this paragraph, the term 'began conversion' means action by the owner or operator of a source during the ninety-day period ending on December 15, 1973 (such as entering into a contract binding on the operator of the source for obtaining coal, or equipment or facilities to burn coal; expending substantial sums to permit such source to burn coal; or applying for an air pollution variance to enable the source to burn coal) which the Administrator finds evidences a decision (made prior to December 15, 1973) to convert to burning coal as a result of the unavailability of an adequate supply of fuels required for compliance with the applicable implementation plan, and a good faith effort to expeditiously carry out such decision.

"(2)(A) Paragraph (1) of this subsection shall apply to a source only if (I) the Administrator finds that emissions from the source will not cause or contribute to concentrations of air pollutants in excess of national primary ambient air quality standards and (II) if the source has submitted to the Administrator a plan for compliance for such source which the Administrator has approved, after notice to interested persons and opportunity for presentation of views (including oral presentation of views). A plan submitted under the preceding sentence shall be approved only if it (i) meets the requirements of regulations prescribed under subparagraph (B); and (ii) provides that such source will comply with requirements which the Administrator shall prescribe to assure that emissions from such source will not cause or contribute to concentrations of air pollutants in excess of national primary ambient air quality standards. The Administrator shall approve or disapprove any such plan within 60 days after such plan is submitted.

"(B) The Administrator shall prescribe regulations requiring that any source to which this subsection applies submit and obtain approval of its means for and schedule of compliance. Such regulations shall include requirements that such schedules shall include dates by which such sources must—

"(i) enter into contracts (or other enforceable obligations) which have received prior approval of the Administrator as being adequate to effectuate the purposes of this section and which provide for obtaining a long-term supply of coal which enables such source to achieve the emission reduction required by subparagraph (C), or

"(ii) if coal which enables such source to achieve such emission reduction is not available to such source, enter into contracts (or other enforceable obligations) which have received prior approval of the Administrator as being adequate to effectuate the purposes of this section and which provide for obtaining (I) a long-term supply of other coal or coal derivatives, and (II) continuous emission reduction systems necessary to permit such source to burn such coal or coal derivatives, and to achieve the degree of emission reduction required by subparagraph (C).

"(C) Regulations under subparagraph (B) shall require that the source achieve the most stringent degree of emission reduction that such source would have been required to achieve under the applicable implementation plan which was in effect on the date of enactment of this section (or if no applicable implementation plan was in effect on such date, under the first applicable implementation plan which takes effect after such date). Such degree of emission reduction shall be achieved as soon as practicable, but not later than January 1, 1979; except that, in the case of a source for which a continuous emission reduction system is required for sulfur-related emissions, reduction of such emissions shall be achieved on a date designated by the Administrator (but not later than January 1, 1979). Such regulations shall also include such interim requirements as the Administrator determines are reasonable and practicable including requirements described in clauses (A) and (B) of subsection (a)(3) and requirements to file progress reports.

"(D) The Administrator (after notice to interested persons and opportunity for presentation of views, including oral presentations of views, to the extent practicable) (i) may, prior to the earlier of June 30, 1975, or one year after the date of enactment of this section, and shall thereafter prohibit the use of coal by a source to which paragraph (1) applies if he determines that the use of coal by such source may cause or contribute to concentrations of air pollutants in excess of national primary ambient air quality standards; and (ii) may require such source to use coal of any particular type, grade, or pollution characteristic if such coal is available to such source. Nothing in this subsection (b) shall prohibit a State or local agency from taking action which the Administrator is authorized to take under this subparagraph.

"(3) For purposes of this subsection, the term 'air pollution requirement' means any emission limitation, schedule, or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regulation, including this Act (except for any requirement prescribed under this subsection, section 110(a)(2)(F)(v), or section 303), and which is designed to limit stationary source emissions resulting from combustion of fuels (including a restriction on the use or content of fuels). A conversion to coal to which this subsection applies shall not be deemed to be a modification for purposes of section 111(a)(2) and (4) of this Act.

"(4) A source to which this subsection applies may, upon the expiration of the exemption under paragraph (1), obtain a one-year postponement of the application of any requirement of an applicable implementation plan under the conditions and in the manner provided in section 110(f).

"(c) The Administrator may by rule establish priorities under which manufacturers of continuous emission reduction systems necessary to carry out subsection (b) shall provide such systems to users thereof, if he finds that priorities must be imposed in order to assure that such systems are first provided to users in air quality control regions with the most severe air pollution. No rule under this subsection may impair the obligation of any contract entered into before enactment of this section. To the extent necessary to carry out this section, the Administrator may prohibit any State or political subdivision from requiring any person to use a continuous emission reduction system for which priorities have been established under this subsection except in accordance with such priorities.

"(d) The Administrator shall study, and report to Congress not later than six months after the date of enactment of this section, with respect to—

"(1) the present and projected impact on the program under this Act of fuel shortages and of allocation and end-use allocation programs;

"(2) availability of continuous emission reduction technology (including projections respecting the time, cost, and number of units available) and the effects that continuous emission reduction systems would have on the total environment and on supplies of fuel and electricity;

"(3) the number of sources and locations which must use such technology based on projected fuel availability data;

"(4) priority schedule for implementation of continuous emission reduction technology based on public health or air quality;

"(5) evaluation of availability of technology to burn municipal solid waste in these sources including time schedules, priorities analysis of unregulated pollutants which will be emitted and balancing of health benefits and detriments from burning solid waste and of economic costs;

"(6) projection of air quality impact of fuel shortages and allocations;

"(7) evaluation of alternative control strategies for the attainment and maintenance of national ambient air quality standards for sulfur oxides within the time frames prescribed in the Act, including associated considerations of cost, time frames, feasibility, and effectiveness of such alternative control strategies as compared to stationary source fuel and emission regulations;

"(8) proposed allocations of continuous emission reduction systems which do not produce solid waste to sources which are least able to handle solid waste byproducts of such systems; and

"(9) plans for monitoring or requiring sources to which this section applies to monitor the impact of actions under this section on concentration of sulfur dioxide in the ambient air.

"(e) No State or political subdivision may require any person to whom a suspension has been granted under subsection (a) to use any fuel the unavailability of which is the basis of such person's suspension (except that this preemption shall not apply to requirements identical to Federal interim requirements under subsection (a)(3)).

"(f)(1) It shall be unlawful for any person to whom a suspension has been granted under subsection (a)(1) to violate any requirement on which the suspension is conditioned pursuant to subsection (a)(3).

"(2) It shall be unlawful for any person to violate any rule under subsection (c).

"(3) It shall be unlawful for the owner or operator of any source to fail to comply with any requirement under subsection (b) or any regulation, plan, or schedule thereunder.

"(4) It shall be unlawful for any person to fail to comply with an interim requirement under subsection (i)(3).

"(g) Beginning January 1, 1975, the Administrator shall publish at no less than one-hundred-and-eighty-day intervals, in the Federal Register, the following:

"(1) A concise summary of progress reports which are required to be filed by any person or source owner or operator to which subsection (b) applies. Such progress reports shall report on the status of compliance with all requirements which have been imposed by the Administrator under such subsections.

"(2) Up-to-date findings on the impact of this section upon—

"(A) applicable implementation plans, and

"(B) ambient air quality.

"(h) Nothing in this section shall affect the power of the Administrator to deal with air pollution presenting an imminent and substantial endangerment to the health of persons under section 303 of this Act.

"(i)(1) In order to reduce the likelihood of early phaseout of existing electric generating facilities, any electric generating powerplant (A) which, because of the age and condition of the plant, is to be taken out of service permanently no later than January 1, 1980, according to the power supply plan (in existence on January 1, 1974) of the operator of such plant, (B) for which a certification to that effect has been filed by the operator of the plan with the Environmental Protection Agency and the Federal Power Commission, and (C) for which the Commission has determined that the certification has been made in good faith and that the plan to cease operations no later than January 1, 1980, will be carried out as planned in light of existing and prospective power supply requirements, shall be eligible for a single one-year postponement as provided in paragraph (2).

"(2) Prior to the date on which any plant eligible under paragraph (1) is required to comply with any requirement of an applicable implementation plan, such source may apply (with the concurrence of the Governor of the State in which the plant is located) to the Administrator to postpone the applicability of such requirement to such source for not more than one year. If the Administrator determines, after balancing the risk to public health and welfare which may be associated with a postponement, that compliance with any such requirement is not reasonable in light of the projected useful life of the plant, the availability of rate base increases to pay for such costs, and other appropriate factors, then the Administrator shall grant a postponement of any such requirement.

"(3) The Administrator shall, as a condition of any postponement under paragraph (2), prescribe such interim requirements as are practicable and reasonable in light of the criteria in paragraph (2).

"(j)(1) The Administrator may, after public notice and opportunity for presentation of views in accordance with section 533 of title 5, United States Code, and after consultation with the Federal Energy Administrator, designate persons to whom fuel exchange orders should be issued. The purpose of such designation shall be to avoid or minimize the adverse impact on public health and welfare of any suspension under subsection (a) of this section or conversion to coal to which subsection (b) applies or of any allocation under section 8 of the Energy Supply and Environmental Coordination Act of 1974 or the Emergency Petroleum Allocation Act of 1973.

"(2) The Federal Energy Administrator shall issue exchange orders to such persons as are designated by the Administrator under paragraph (1) requiring the exchange of any fuel subject to allocation under the preceding Acts effective no later than forty-five days after the date of the designation under paragraph (1), unless the Federal Energy Administrator determines, after consultation with the Administrator, that the costs or consumption of fuel, resulting from such exchange order, will be excessive.

"(3) Violation of any exchange order issued under paragraph (2) shall be a prohibited act and shall be subject to enforcement action and sanctions in the same manner and to the same extent as a violation of any requirement of the regulation under section 4 of the Emergency Petroleum Allocation Act of 1973."

SEC. 3. IMPLEMENTATION PLAN REVISIONS.

Section 110(a) of the Clean Air Act is amended in paragraph (3) by inserting "(A)" after "(3)" and by adding at the end thereof the following new subparagraph:

"(B) For any air quality control region in which the Administrator determines the applicable primary air quality standard is being exceeded, the Administrator shall review the applicable implementation plan and no later than ninety days after such determination report to the State on whether such plan can be revised in relation to fuel burning stationary sources without interfering with applicable national primary ambient air quality standards which the plan implements. If the Administrator determines that any such plan can be revised he shall notify the State that a plan revision may be submitted by the State within three months after the date of notice to the State of such determination. Any plan revision which is submitted by the State after notice and public hearing shall be approved or disapproved by the Administrator, after public notice and opportunity for public hearing, but no later than three months after the date required for submission of the revised plan."

SEC. 4. MOTOR VEHICLE EMISSIONS.

(a) Section 202(b)(1)(A) of the Clean Air Act is amended by striking out "1975" and inserting in lieu thereof "1977"; and by inserting after "(A)" the following: "The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the interim standards which were prescribed (as of December 1, 1973) under paragraph (5)(A) of this subsection for light-duty vehicles and engines manufactured during model year 1975."

(b) Section 202(b)(1)(B) of such Act is amended by striking out "1976" and inserting in lieu thereof "1978"; and by inserting after "(B)" the following: "The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the standards which were prescribed (as of December 1, 1973) under subsection (a) for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model year 1977 shall contain standards which provide that emissions of such vehicles and engines may not exceed 2.0 grams per vehicle mile."

(c) Section 202(b)(5)(A) of such Act is amended to read as follows:

"(5)(A) At any time after January 1, 1975, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1)(A) with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977. The Administrator shall make his determination with respect to any such application within sixty days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A) of this subsection) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1977."

(d) Section 202(b)(5)(B) of the Clean Air Act is repealed and the following subparagraphs redesignated accordingly.

SEC. 5. CONFORMING AMENDMENTS.

(a)(1) Section 113(a)(3) of the Clean Air Act is amended by striking out "or" before "112(c)", by inserting a comma in lieu thereof, and by inserting after "(hazardous emissions)" the following: ", or 119(f) (relating to energy-related authorities)".

(2) Section 113(b)(3) of such Act is amended by striking out "or 112(c)" and inserting in lieu thereof ", 112(c), or 119 (f)".

(3) Section 113(c)(1)(C) of such Act is amended by striking out "or section 112(c)" and inserting in lieu thereof ", section 112 (c), or section 119(f)".

(4) Section 114(a) of such Act is amended by inserting "119 or" before "303".

(b) Section 116 of the Clean Air Act is amended by inserting "119 (b), (c), and (e)," before "209".

SEC. 6. PROTECTION OF PUBLIC HEALTH AND ENVIRONMENT.

(a) Any allocation program provided for in section 8 of this Act or in the Emergency Petroleum Allocation Act of 1973 shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the country designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

(b) In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversions to burning coal to which section 119 of the Clean Air Act applies, the Department of Health, Education, and Welfare shall, through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency, conduct a study of chronic effects among exposed populations. The sum of $3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

(c) No action taken under the *Clean Air* Act, or under section 8 of this Act for a period of one year after initiation of such action, shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 856). However, before any action under section 8 of this Act that

has a significant impact on the environment is taken, if practicable, or in any event within sixty days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 102(2)(C) of the National Environmental Policy Act, to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a thirty-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act by the appropriate Federal agency. Any action taken under section 8 of this Act which will be in effect for more than a one-year period or any action to extend an action taken under section 8 of this Act to a total period of more than one year shall be subject to the full provisions of the National Environmental Policy Act notwithstanding any other provision of this Act.

SEC. 7. REPORTS.

The Administrator of the Environmental Protection Agency shall report to Congress not later than January 31, 1975, on the implementation of sections 2 through 6 of this Act.

SEC. 8. COAL CONVERSION AND ALLOCATION.

(a) The Federal Energy Administrator shall, to the extent practicable and consistent with the purposes of this Act, by order, prohibit, as its primary energy source, the burning of natural gas or petroleum products by any major fuel-burning installation (including any existing electric powerplant) which, on the date of enactment of this Act, has the capability and necessary plant equipment to burn coal. Any installation to which such an order applies shall not be prohibited from using petroleum products or natural gas unless the installation is located in a region described in the first sentence of section 119(b)(1), and the Administrator has made the finding specified in section 119(b)(2)(A)(I) with respect to emission from such installation. A prohibition on use of natural gas and petroleum products under this subsection shall be contingent upon the availability of coal, coal transportation facilities, and the maintenance of reliability of service in a given service area. The Federal Energy Administrator may require that fossil-fuel-fired electric powerplants in the early planning process, other than combustion gas turbine and combined cycle units, be designed and constructed so as to be capable of using coal as a primary energy source instead of or in addition to other fossil fuels. No fossil-fuel-fired electric powerplant may be required under this section to be so designed and constructed, if (1) to do so would result in an impairment of reliability or adequacy of service, or (2) an adequate and reliable supply of coal is not available and is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Federal Energy Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner or operator to recover any capital investment made as a result of the conversion requirements of this section.

(b) The Federal Energy Administrator may by rule prescribe a system for allocation of coal to users thereof in order to attain the objective specified in this section.

(c) It shall be unlawful for any person to violate any provision of this section, or to violate any rule, regulation, or order issued pursuant to any such provision.

(d)(1) Whoever violates any provision of subsection (c) shall be subject to a civil penalty of not more than $2,500 for each violation.

(2) Whoever willfully violates any provision of subsection (c) shall be fined not more than $5,000 for each violation.

(3) It shall be unlawful for any person to offer for sale or distribute in commerce any product or commodity in violation of an applicable order or regulation issued pursuant to subsection (b). Any person who knowingly and willfully violates this paragraph after having been subjected to a civil penalty for a prior violation of the same provision of any order or regulation issued pursuant to subsection (b) shall be fined not more than $50,000 or imprisoned not more than six months, or both.

(4) Whenever it appears to any person authorized by the Federal Energy Administrator to exercise authority under this section that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of subsection (c), such person may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by subsection (c).

(5) Any person suffering legal wrong because of any act or practice arising out of any violation of subsection (c) may bring an action in a district court of the United States, without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment or writ of injunction. Nothing in this paragraph shall authorize any person to recover damages.

(e) Authority to issue orders, or rules under subsections (a) and (b) of this section shall expire on midnight, June 30, 1975, but the expiration of such authority shall not affect any administrative or judicial proceeding pending on such date which relates to any act or omission before such date.

SEC. 9. EXTENSION OF CLEAN AIR ACT AUTHORIZATIONS.

(a) Section 104 of the Clean Air Act is amended by striking "and $150,000,000 for the fiscal year ending June 30, 1974" and inserting in lieu thereof ", $150,000,000 for the fiscal year ending June 30, 1974, and $150,000,000 for the fiscal year ending June 30, 1975."

(b) Section 212 of such Act is amended by striking "three succeeding fiscal years." and inserting in lieu thereof "four succeeding fiscal years.".

(c) Section 316 of such Act is amended by striking "and $300,000,000 for the fiscal year ending June 30, 1974" and inserting in lieu thereof ", $300,000,000 for the fiscal year ending June 30, 1974, and $300,000,000 for the fiscal year ending June 30, 1975".

Mr. MUSKIE. Mr. President, the Committee on Public Works has again examined the legislation passed by the House to amend the Clean Air Act to facilitate energy conservation. We have determined, on the basis of information available to us, that the enactment of limited amendments to the Clean Air Act at this time will be of value.

We do not believe, however, that amendments as far-reaching as the House bill are necessary, and it is for that reason that the committee has taken the rather unusual step of meeting in executive session yesterday to consider the House bill, and to report, by way of this amendment, to the Senate as a whole those amendments which we consider to be necessary at this time. We bore in mind the admonition of the distinguished chairman of the full committee that we should at this point separate from the controversial issues that have been generated by the attempts to enact emergency energy legislation those elements which are relatively noncontroversial, which have been agreed upon by a sufficient number on both sides of the Capitol so that they have a chance to reach the President's desk in the relatively near future, and it is in this spirit, Mr. President, that the Committee on Public Works has considered what is needed and proposes this amendment in the form of a substitute to H.R. 14368 which deals only with those aspects of the House bill which are critical. Not only is the Committee prepared to offer a substitute, but we are prepared to go immediately to conference with the House Interstate and Foreign Commerce Committee for the purpose of determining what can be agreed upon at this time and sent to the President.

We believe that prior to the Memorial Day recess, the President can have legislation which is needed to continue the Nation's effort to achieve greater energy conservation and to provide the automobile industry with the certainty needed to proceed with the development, certification and production of 1976 model year automobiles.

Mr. President, the amendments which I have offered fall into five categories:

First. The committee proposes to modify the coal conversion proposal of the House to narrow its application to assure, at a minimum, protection of public health.

Second. The committee proposes to limit exceptions to the Clean Air Act to permit coal conversions to areas where public health-related primary ambient air quality standards are not now exceeded. Further, no coal conversions could take place where the conversion itself would cause public health standards to be exceeded.

Third. The committee proposes to adopt an identical provision to the House bill relating to auto emissions to end any doubt as to what auto emission standards will be required for the 1976 model year vehicle.

Fourth. The committee proposal would clarify the relationship between the National Environmental Policy Act and the Clean Air Act.

Fifth. Finally, the committee proposes to extend Clean Air Act authorization for 1 year.

Let me expand upon these points briefly, for the RECORD.

The Committee on Public Works has tried to respond to the need to continue our efforts to utilize our domestic fuel supplies where such utilization will not interfere with the health of our people. We recognize that the winter of crisis is behind us. We have tried to anticipate future crises, whether those crises result from spot-shortages of fuel or international disputes.

It is in the context of standby authority and in recognition of the need to continue energy conservation efforts that this legislation is proposed. We are not, under the threat of crisis, abandoning

our environmental goals, but we are trying to propose a mechanism which will balance those environmental goals with what we perceive to be the long-term energy needs of the country.

In addition to other provisions which are identical to the House bill and the earlier conference agreement, the committee has retained the emergency suspension features of earlier proposals. Only the final date has been changed. Under this provision the Administration could waive, temporarily, clean air requirements where there was a demonstrated unavailability of conforming fuel. Waiver authority continues until June 30, 1975, but waivers can be granted only when fuels with the pollution characteristics required by State clean air implementation plans are unavailable.

The amendments to both the coal conversion and clean air section would, in accordance with a proposal advanced by Senator BUCKLEY, prohibit coal conversion in air quality control regions where primary air quality standards for sulfur oxides and/or particulates are now being exceeded.

Thus, there would be, by statute, a bar to further deterioration of already unhealthy air.

Further, pursuant to another Buckley amendment, no specific conversion could be ordered if the coal to be used in a specific facility would cause concentrations of SO_2 or particulate in excess of national primary ambient air quality standards.

The floor is protection of public health. This floor combined with the June 30, 1975, expiration date on issuance of conversion orders, should assure minimal environmental risks while providing an adequate opportunity to examine the implications of the policy we propose.

I would like at this point, Mr. President, to compliment the distinguished Senator from New York for these two amendments to the bill, which, in my judgment, improve it enormously.

In the near-term, coal conversions resulting from this act may be as few as a dozen, but those conversions can and will take pressure off the oil market without endangering public health.

They can and will stimulate long-term investment in development of domestic coal resources. And they can and will provide a basis for future legislation to increase our capability to use coal.

This limited program can and will be initiated while the Congress continues to review the Clean Air Act and examines the need for broader authority to reduce dependency on foreign fuels.

As a part of that review Congress must determine the extent to which our major fuel burning stationary sources are going to have multiple energy use and environmental control capacity. And we must determine the impact of such policies on consumers.

In order to examine the environmental implications of these proposals, the Administrator of the Environmental Protection Agency is required to report to Congress on the impact of conversion.

Also, in order to maximize the potential use of limited resources, the Administrator is required to review State air quality implementation plans to determine whether or not different fuels with different pollution characteristics can be burned in designated air quality control regions without threatening public health.

Under the Conference agreement of last year, this review triggered a mandatory revision of State clean air plans. Under this bill, the States retain the authority to determine whether or not, on the basis of the review by the Administrator, a revision of any aspects of applicable implementation plans is desirable. A key feature in the proposal is the reaffirmation of State authority to make both clean air and economic growth decisions. For all practical purposes the preemption of prior legislation has been replaced with advice and assistance.

The committee bill also includes certain noncontroversial provisions of the House bill which have been before the Senate in the earlier, vetoed bill. I ask unanimous consent to include in the RECORD at the end of my remarks appropriate portions of that legislative history modified to reflect the changes in the amendment.

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

(See exhibit 1.)

Mr. MUSKIE. Mr. President, the committee bill does not include provisions of the House-passed bill relative to air quality transportation and land use controls; fuel economy studies; energy conservation studies; and energy company reporting.

The committee has included two additional amendments which were not included in the House-passed bill. We have extended for 1 year Clean Air Act funding authority. Though we have commenced hearings to review the Clean Air Act and though we are committed to a thorough review before any necessary modifying legislation is proposed, we believe it is altogether possible that the schedule of congressional activities this summer and fall may make difficult full and adequate consideration of major changes in clean air policy.

The committee wants adequate time to review the act. We want to know the results of the reports required by these amendments, and we want to have an opportunity to review, in detail, the findings of the National Academy of Sciences, expected this summer, as to the adequacy of present health-related standards and the optional control strategies which might be available to achieve those goals.

It is our intention to continue this review through the fall, as the schedule of congressional activities permits. The committee would hope to have legislative proposals on the Clean Air Act completed by early in the next session of Congress.

Mr. President, another provision in this legislation relates to clarification of the relationship between the National Environmental Policy Act and the Clean Air Act. As my colleagues know, at the time the National Environmental Policy Act was enacted in 1969, its principal sponsor, Senator JACKSON, agreed with members of the Senate Public Works Committee that the environmental review procedures were intended to apply to mission agencies—agencies whose activities impacted the environment—and not to environmental protection agencies.

The courts have repeatedly upheld the position to which Senator JACKSON and I agreed nearly 5 years ago. Unfortunately, the Environmental Protection Agency has chosen, as a result of the pressure from the other body, to ignore that intent, to ignore those court decisions, and to proceed to prepare environmental impact statements as required by section 102(2)(c) of the National Environmental Policy Act.

Mr. President, I am deeply concerned that this policy will result in extensive litigation which will interfere with both the goals and the time schedules of the Clean Air Act.

Let me provide just one example. Under the bill that passed the House and in accordance with the substitute proposed by the Senate, the auto industry could apply to the Administrator of the Environmental Protection Agency for an additional 1 year in which to meet statutory auto emissions standards. Under the law, the Administrator would have 60 days in which to make his findings. Every Senator knows that the National Environmental Policy Act procedure requires much more than 60 days to prepare an impact statement. It would take but one court, holding that the Administrator's finding on this issue was subject to those procedures, to derail the production schedules of the auto industry. Chaos would result. The Congress would be asked to respond in a panic situation.

But it is not just this kind of major chaos which I fear. The Environmental Protection Agency has, under the Clean Air Act, a wide variety of responsibilities, including registration of fuel additives, regulation of toxic emissions, establishment of test procedures for automobiles and other authorities which are major actions in the context of the proposed voluntary regulations. Should the policy forced on Administrator Train be held mandatory by the courts, the disruption to American business and the adverse impact on the environment could be equally severe.

We cannot afford to take the risk of creating confusion and doubt in the minds of the American people as to issues the magnitude of these. The amendment which is contained in the substitute would make clear, without any doubt, that regardless of Mr. Train's "voluntary" action, there is no legal responsibility on the part of the Agency to comply with the procedures of the National Environmental Policy Act. With the adoption of this amendment, Mr. Train could freely develop a policy examining the environmental and other implications of environmental regulations without sacrificing either environmental goals or regulatory certainty. He could determine the appropriate actions for this kind of review and he could make such review voluntarily. But there would be a statutory bar to any court holding

that EPA's voluntary compliance with NEPA could be construed to be mandatory.

Mr. President, as I have indicated, we have tried to narrow these amendments to those which reflect our continuing concern with energy conservation and the critical need to answer pressing questions such as auto emission standards, Clean Air Act authorizations, and the NEPA/EPA controversy.

This is a good bill. It protects public health, but it permits coal conversion. It facilitates energy conservation. And it promotes self-sufficiency. It creates certainty for the auto manufacturers.

The bill provides adequate opportunity to review fully the implications of the 1970 Clean Air Act, taking maximum advantage of the studies of the National Academy of Sciences and others, and it clears up what I believe to be a grave and threatening controversy engendered as a result of the decision of application of NEPA to EPA.

I strongly urge that my colleagues adopt this substitute—and that they do so without amendment so that we may speedily go to conference, consider the other House proposals on which we have held no hearings, and return to this and the other body with a compromise agreement which can be sent to the President in fulfillment of our responsibilities on this issue.

SECTION 2. SUSPENSION AUTHORITY

This bill adds a new section 119 to the Clean Air Act which will permit the Administrator of the Environmental Protection Agency to suspend until not later than June 30, 1975—or 1 year after enactment—any stationary source fuel or emission limitation, either upon his own motion or upon the application of a source or a State, if the source cannot comply with such limitations because of the unavailability of fuel. The Administrator of the Environmental Protection Agency is directed to give prior notice to the Governor of the State and the chief executive of the local governmental unit where the source is located. He is also directed to give notice to the public and to allow for the expression of views on the suspension prior to granting it unless he finds that good cause exists for not providing such opportunity. Judicial review of such suspension would be restricted to certain specified grounds.

The Administrator is required to condition the granting of any suspension upon adoption of any requirements that he determines are reasonable and practicable. These interim requirements must include necessary reporting requirements, and a provision that the suspension would be inapplicable during any period when clean fuels were available to such source. The Administrator would be required to determine when such fuels were in fact available. It is the intent of the committee that the Administrator in making such determination take into consideration the costs associated with any changes that would be required to be made by the source to enable it to utilize such fuel. No source which has converted to coal under section 119, however, could be required under this provision to return to the use of oil or natural gas.

The suspension would also be conditioned on adoption of such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to the health of persons. This would authorize not only requirements that a facility shutdown during air pollution emergencies, but also—for example—a requirement that it keep a reserve supply of clean fuels on hand to be burned to avoid such emergencies.

In recognition of the need to balance energy needs with environmental requirements and the unique problems facing any source which converts to coal in response to the emergency, the amendment would authorize sources which are either ordered to convert to coal or which began to convert to coal during the 90-day period prior to December 15, 1973, to continue to use coal in compliance with the Clean Air Act as amended by this act, until as late as January 1, 1979. The authorization would only apply if the source were placed, after notice and opportunity for oral presentation of views, on a schedule approved by the Administrator of the Environmental Protection Agency. The schedule must provide a timetable for compliance with the fuel or emission limitations of the applicable implementation plan no later than January 1, 1979.

All compliance schedules under section 119(b) must also provide for compliance with interim requirements that will assure that the source will not cause concentrations of pollutants in excess of primary standards.

The committee emphasizes that the Administrator would not be able to approve a plan under section 119(b) for a utility generally. Rather, each plan approval must be for a specific plant.

There are three basic reasons for the decision to encourage continued burning of coal until at least 1979. First, in order to encourage the opening of new coal mines to increase energy supplies, the committee intends to encourage an ongoing substantial demand for such coal. Without reasonable likelihood that new coal mines will be able to market their new production, the opening of new mines and expansion of existing mine capacity may be regarded too risky. Second, to the extent that electric generating powerplants can be encouraged to cease burning oil and natural gas, these fuels would be available to meet other energy needs, such as production of gasoline and home heating oil. Finally, since continuous emission reduction technology is available for sources such as homes, apartment houses, and small businesses, the purposes of the Clean Air Act can be better effectuated by having low pollution oil and natural gas burned to the maximum extent feasible, in sources for which no effective clean up technology is available.

The committee believes that the priority effort of each source which is subject to section 119(b) should be to obtain low sulfur coal. If an adequate, long-term supply of low sulfur coal is available to such a source, the Administrator should only approve a plan which requires its use—and thus compliance with air pollution requirements—as expeditiously as practicable. In such a case, the Administrator would have to disapprove a plan which proposed to wait until January 1, 1979, before beginning to burn low sulfur coal. The committee believes that requiring priority consideration of the use of nonmetallurgical low sulfur coal will reduce the likelihood of extended violation of applicable emission standards.

If a source is unable to obtain an adequate, long-term supply of low sulfur coal, it may seek to come into compliance by use of a continuous emission reduction system or by use of coal byproducts which would achieve the required degree of emission reduction. In such case, the source would still be required to act expeditiously to obtain an adequate supply of coal. However, compliance with all air pollution requirements would be required not later than January 1, 1979, and by a date established by the Administrator.

It is expected that the Administrator would include, but would not be limited to, the following requirements in any compliance schedule:

First, the dates by which the source will solicit bids and enter into binding contractual agreements—or other equally binding commitment—for the procurement of an adequate fuel supply to permit continued long term operation of the source;

Second, where the coal obtained by the source has sulfur content which will require installation of continuous emission reduction equipment to enable the source to comply with emission limitations, the dates for soliciting bids for such equipment, contracting for such equipment, and installation and startup of such equipment by a date that will permit a reasonable time for necessary adjustments of the equipment to maximize the reliability and efficiency of the system prior to January 1, 1979; and

Third, reasonable interim measures which the source should employ to minimize the adverse impact on air quality.

In establishing date for contracting for coal, the Administrator should determine the earliest date that is reasonable and which will permit compliance by the time specified in this section. Because the dates for obtaining coal or continuous emission reduction systems may occur at approximately the same time for more than one source which may overburden suppliers, the Administrator is specifically authorized to establish differing dates for obtaining coal or such systems to insure availability of supplies of such coal or equipment. In making such decisions, it is expected that the Administrator will provide the earliest date for those sources in areas with the most serious pollution problems.

It is intended that when the coal available to the source necessitates the use of continuous emission reduction equipment for control of sulfur-related emissions, the source will have as much time

as necessary to install the equipment and achieve timely compliance, in order to permit orderly development of technology.

In recognition of the complex factors involved in determining schedules for the various sources, the committee intends that the Administrator have broad discretion in prescribing and approving schedules of compliance to insure that sources meet the requirements of this section without overburdening production capacity for continuous emission reduction systems for sulfur control or causing unacceptable disruption in energy production capacity.

The committee does not intend to permit delay of existing compliance schedules for control of particulate emissions. Some slight delay may be necessary in light of revised compliance schedules for control of sulfur-related emissions. However, only such minor adjustments as the Administrator determines to be unavoidable should be permitted in existing compliance schedules and emission limitations for control of particulates.

SECTION 4: MOTOR VEHICLE EMISSIONS

The committee proposal amends section 202 of the Clean Air Act to continue the emission standards established by the Administrator for 1975 model year automobiles during the 1976 model year. The effect of this provision is to maintain in the 1976 model year a Federal 49-State standard of 1.5 grams per mile of hydrocarbons, 15 grams per mile of carbon monoxide and 3.1 grams per mile of oxides of nitrogen, and a standard for California of 0.9 grams per mile of hydrocarbons, 9 grams per mile of carbon monoxide, and 2 grams per mile of oxides of nitrogen. These standards apply to automobiles produced by all manufacturers, whether or not any individual manufacturer had applied for or received a suspension under section 202(b)(5) previous to the enactment of this act.

The amendment provides that after January 1, 1975, an automobile manufacturer may seek a single 1-year suspension of the statutory standards for hydrocarbons and carbon monoxide applicable to the 1977 model year. The Administrator would be required to establish interim emission standards for 1977 model automobiles for hydrocarbons and carbon monoxide if he grants the suspension.

The bill amends section 202(b)(1)(B) of the Clean Air Act to establish a maximum emission standard for oxides of nitrogen of 2 grams per mile applicable nationwide to 1977 model year automobiles. This defers the previous statutory standard of 0.4 grams per mile of oxides of nitrogen until the 1978 model year. No administrative suspension would be possible from either the 1977 or 1978 standard. While the 1977 model year standard is a maximum of 2 grams per mile nationwide, under the amendment California retains the right under section 209 of the Clean Air Act to seek a waiver for a more stringent standard.

The committee is concerned with what may be unwarranted or, at least, untimely changes in EPA's certification test procedures for new automobile emissions. It is intended that uncertainty as to requirements for compliance with such standards be minimized. Any changes in test procedures shall be kept to an absolute minimum and should occur only where such changes improve instrumentation, reduce cost of testing or improve the reliability and validity of the test results.

Mr. President, I ask unanimous consent to have printed in the RECORD from hearings we held on the NEPA-EPA problem, a portion of the opening statement I made undertaking to spell out the legislative history of the environmental impact statement; also portions of an exchange between Senator BAKER and former EPA Administrator William Ruckelshaus defining the Agency's view with respect to its obligation under the National Environmental Protection Act; also a summary of excerpts from court decisions bearing on this issue, and a summary of NEPA's legislative history on this point to enlighten the Senate and round out the RECORD on this point.

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

At this point I would like to refer to this committee's longstanding interest in the environmental performance of governmental agencies and programs outside the environmental agencies almost from the day that we assumed jurisdiction over air and water pollution.

We were concerned and challenged by the question that at the same time that we were writing tough policy enforcing the environmental performance standards upon the private sector that the Government itself, a major polluter, was not approaching the task with clean hands.

So each time that we undertook the consideration of legislation to toughen our policy with respect to the private sector, there were those in the private sector who said, "Now, when is Uncle Sam going to measure up to what you are asking us to do?"

So we wrote language into the environmental laws, precatory language largely, trying to prod the Department of Defense, the Corps of Engineers, the Atomic Energy Commission and other Federal agencies to develop an environmental conscience. When the National Environmental Policy Act came down the pipe it was decided to use that for this purpose.

The objective language was to stimulate the development of an environmental conscience in what we later came to describe as the environmental impact agencies. That is, those agencies of the Federal Government whose activity is impacted or impacted potentially in an unfavorable way upon the environment.

We decided to use the National Environmental Policy Act for that purpose. At the insistence of the Committee on Public Works a requirement was adopted, that these environmental impact agencies before they adopted any major action, policy or program that impacted upon the environment to file an environmental impact statement.

It was not considered necessary that that requirement be imposed upon those agencies whose mission it was to protect the environment. So throughout our discussions we carefully distinguished between the environmental impact agencies and the environmental protection agencies.

It was clearly our intention (whether or not we succeeded in making that clear in the legislative history or in the statutes), to impose that requirement only upon the environmental impact agencies and that in all of our discussions, the conference between the Senate and the House, the conferences among Senators, we adopted that phraseology which didn't appear in the legislation.

We were distinguishing between the environmental impact agencies and the environmental protection agencies.

Our whole purpose, I will repeat, was to force the environmental impact agencies to take into account environmental impacts which could result from major actions taken by them. That pure and simple was the purpose.

We did not, deliberately did not want that requirement to be imposed upon the environmental protection agencies. Why not?

Number one, because it was the chief mission of environmental agencies to protect the environment. It wasn't an incidental, peripheral one. It was their chief mission.

Secondly, because it was, environmental standards to be applied were decided by the Congress of the United States and were not to be subjected to dilution by values brought into policy-making decisions by other agencies whose mission was otherwise.

We wanted the Act to impose environmental values upon the AEC, but we didn't want the Act to have the effect of permitting the AEC to impose their mission-oriented values upon EPA. That was our clear distinction.

The third reason was that, as we were writing the environmental laws, we were writing in very specific requirements as to deadlines, compliance schedules, implementation plans and so on, judicial review and all the rest.

Now to subject those very specific requirements that were written into law by the Congress of the United States to another procedure designed to be applied to mission-oriented or other mission agencies would have the effect of delaying the procedures established in the environmental laws.

This was the rationale and it was one that was developed over a decade, Mr. Train. There is no doubt in the mind of any of us who were involved in shaping NEPA what our intent was. By and large, the courts up to this point have recognized that intent and have supported it. But now having given that brief review of this committee's involvement in that issue may I read the rest of my opening statement?

Those of us who helped to formulate NEPA undertook to structure that statute to avoid the confusion which would result from applying the procedural requirements of NEPA to the environmental agencies.

Subsequently this committee extended NEPA to certain water pollution control actions, construction grants and permits for new water pollution sources.

So this has been a deliberate policy and for three years EPA policy as articulated in regulations and litigations has recognized this intent. The courts have upheld this intent and now, if I understand what has happened on the other side of the Capitol in a change in policy, not preceded by a change in law, EPA proposes to abandon these principles.

Senator MUSKIE. What are the implications of this new policy? What would happen to the pace of environmental enhancement if the courts hold that the policy cannot be as selective as the proposed regulations specify?

What would happen to standards already set to actions already in progress?

Will established health-related air quality standards be suspended pending a NEPA review? Will existing implementation plans including compliance schedules, emission limits and transportation controls be suspended pending compliance with NEPA procedure and associated litigation.

What would be the impact on the judicial review procedures specified in the Clean Air Act if a separate, independent NEPA-related judicial review is available?

How will conflicts between statutory deadlines and NEPA's regulatory time constraints be resolved? How could variances such as those required this winter to cope with energy shortages have been approved without unacceptable delay?

These are but a few of the many questions raised by EPA's proposed reversal of policy. It is because of those doubts that this policy must necessarily be the result of the legislative process. EPA is prohibited from complying with NEPA. To carry out the proposed policy requires a change in the law. The principal sponsor of NEPA in the other body has introduced such legislation.

I would hope that the result of these hearings would be the administrator's agreement to adhere to the legislative process and to abandon his unilateral course and reject this dubious policy.

U.S. SENATE,
COMMITTEE ON PUBLIC WORKS,
Washington, D.C., October 3, 1973.

To Senator EDMUND S. MUSKIE.
From Leon G. Billings.
Subject Additional Issues Regarding NEPA–EPA.

Last Friday afternoon you asked for the basic arguments to justify the position that the application of the National Environmental Policy Act to the regulatory activities of the Environmental Protection Agency would be substantive rather than procedural. This issue was addressed in joint hearings with the Committee on Interior in March of 1972. At that time, Administrator Ruckelshaus testified that EPA did not believe that the procedures of NEPA were applicable to all environmental programs. The following statements from his testimony are relevant:

"Our programs fall into two groups according to the categories set forth in CEQ's guidelines on Federal agency responsibilities under NEPA. Under the guidelines, EPA, as an environmental regulatory Agency, was not responsible for preparing impact statements for its environmental regulatory activities, but was required to prepare them for its other activities."

"We believe that most of our standards setting and enforcement activities, including the pesticides registration, water quality standards approval and enforcement, standards setting implementation plans under the Clean Air Act, and others, fall within the category of environmental regulatory activities. Accordingly, we do not believe that NEPA required impact statements for our actions under these programs. Nor do we believe that this policy should be changed until the full implications and ramifications of such change have been thoroughly examined.

There was considerable discussion of the impact of applying NEPA to EPA in an exchange of correspondence between Senator Baker and the Administrator. In response to the question:

"Assuming for the purposes of this question that all EPA activities are held subject to NEPA by the judiciary, and assuming for the purposes of this question that no legislative or regulatory relief from such a holding is forthcoming, given the Calvert Cliffs doctrine that NEPA requires an overall "balancing judgment" with respect to each "major federal action," would you interpret NEPA in such a way as to:

a. alter in any way your mandate under the Clean Air Act to establish ambient air quality standards with an adequate margin of safety at a level necessary to protect public health?

b. alter in any way the mandate of the Clean Air Act that new source performance standards be established with reference to the best available technology?

c. permit the EPA to modify any of its basic enabling statutes, on the basis of the "balancing judgment," so as to impose a less stringent standard than would otherwise have been imposed?

d. similarly, permit the EPA to impose more stringent standards than those provided for in the basic enabling Acts; and if so, against what criteria?" . . .

Administrator Ruckelshaus replied:

"In short, EPA's basic enabling statutes specify the levels at which various standards must be set, and specify the factors that must be taken into account in setting the standards. We intend to comply with these Congressional directives, to the best of our ability. We do not think that we can violate these directives by making the standards either more stringent, or less stringent, than our basic enabling statutes.

"The point is that the preparation of environmental impact statements required under NEPA is designed to set forth information concerning the environmental consequences of proposed Federal actions, the alternatives to such actions, and other related factors. The purpose of gathering this information is to lay a foundation for a balancing by the Agency. This balancing is intended to affect Federal decision-making to assure that environmental considerations be given appropriate weight.

"In other words, environmental impact statements are not merely sterile academic exercises; they are intended to—and they do—have an actual substantive effect on Federal agencies' decisions.

"Where Congress has specifically directed the factors to be considered in establishing environmental protective regulations, the Federal action often will be quite different from a decision which would result from balancing the broader range of values covered by NEPA. For these reasons, application of NEPA to our regulatory programs would pose a difficult dilemma. We cannot speculate what directives might be given to EPA by a court if it concluded that NEPA does apply to our environmental regulatory activities. As indicated above, we believe that the specific statutes governing our environmental regulatory programs are at least to some extent inconsistent wih the provisions of NEPA. Therefore, if a court concludes that we are subject to NEPA it quite logically might also go on to direct that we disregard certain limitations imposed by our basic statutes. This in turn might require us to issue standards at levels either more stringent or less stringent than those called for by our basic statutes."

CITATIONS ON NEPA–EPA QUESTION

1. *Getty Oil Company* v. *Ruckelshaus* (3rd Circuit—September 12, 1972).

"It's apparent that the Clean Air Act itself contains sufficient provisions for the achievement of those goals sought to be attained by NEPA."

2. *International Harvester* v. *Ruckelshaus* (D.C. Circuit February 10, 1973).

"Although we do not reach the question whether EPA is automatically and completely exempt from NEPA, we see little need in requiring a NEPA statement from an agency whose raison d'etre is the protection of the environment and whose decision on suspension is necessarily infused with the environmental considerations so pertinent to Congress in designing the statutory framework. To require a "statement" in addition to a decision setting forth the same consideration, would be a legalism carried to the extreme."

3. *Appalachian Power* v. *EPA* (4th Circuit April 11, 1973).

"We are convinced that while NEPA applies to "all agencies of the Federal government" and requires an impact statement for every major Federal action "significantly affecting the quality of the human environment," it is inapplicable to the action of the Administrator in seeking, through the approval of State implementation plans, to improve "the quality of human environment." (The court also cited Getty Oil 467 F.2d 359)

4. *Duquesne Light Co.* v. *EPA* (3rd Circuit June 5, 1973).

"Presented with the square holding of the 4th Circuit (Appalachian Power case), and the logically appeal pronouncements of this court, the District of Columbia Circuit Court and the District Court in Delaware, we hold that, in approving the State implementation plans, the Administrator is not required to meet the impact statement requirements of the NEPA—certainly in the context of this case."

5. *Anaconda* v. *Ruckelshaus* (10th Circuit August 8, 1973).

"The important point here is that the EPA's sole mission is to improve the quality of the human environment. To compel the filing of impact statements could only serve to frustrate the accomplishment of the Act's objectives. Moreover the legislative history which is developed in *Portland Cement Association* v. *Ruckelhaus* (D.C. Circuit June 29, 1973), clearly establishes that such a statement was not contemplated by Congress." Furthermore, no Court of Appeals has held that such an impact statement is necessary and the several decisions which have considered it have ruled that it is not. See *Appalachian Power* v. *EPA* 477 F. 2d 495, 4th Circuit April 11, 1973; *Duquesne Light Co.* v. *EPA* 3rd Circuit June 5, 1973; *Buckeye Power, Inc.* v. *EPA* 6th Circuit June 28, 1973; *International Harvester* v. *Ruckelshaus* D.C. Circuit February 10, 1973).

6. *Essex Chemical Corporation* v. *Ruckelshaus* (D.C. Circuit September 10, 1973).

This case quotes the Portland Cement case and continues the view that the regulatory functions of EPA under the Clean Air Act, in this case the new source performance standards under section 111, do not require environmental impact statements under NEPA. The court in Essex Chemical quoted the court decision in Portland Cement. "What is decisive, ultimately, is the reality that, section 111 of the Clean Air Act, properly construed, requires the functional equivalent of a NEPA impact statement."

I do not have copies of the Portland Cement case cited above or another case, *Buckeye Power, Inc.* v. *EPA* (6th Circuit, June 28, 1973). Both cases support the same concept.

1. Getty Oil.

Enforcement of a violation of a provision in an implementation plan.

2. International Harvester.

Section 202 automobile extension challenge.

3. Appalachian Power.

Challenge of approval of State implementation plan.

4. Duquesne Light.

Challenge of approval of State implementation plan.

5. Anaconda.

Challenge of substitution for State implementation plan.

6. Essex.

Challenge of new source performance standards.

LEGISLATIVE HISTORY OF NEPA

It was clearly intended, at the time Congress enacted NEPA, that environmental regulatory agencies such as those authorized by FWPCA and the Clean Air Act would not be subject to NEPA's provisions.

The debate in the Senate and the House at the time of approval of the Conference Report on NEPA is abundantly clear.

In a summary of major changes adopted by the Conference Committee which Senator Jackson (primary sponsor and floor manager of NEPA) included in the Record, the following statement appears:

"Many existing agencies such as the Na-

tional Park Service, the Federal Water Pollution Control Administration, and the National Air Pollution Control Administration already have important responsibilities in the area of environmental control. The provisions of section 102 (as well as 103) are not designed to result in any change in the manner in which they carry out their environmental protection authority."

"It is not the intent of the Senate conferees that the review required by section 103 would require existing environmental control agencies such as the Federal Water Pollution Control Administration and National Air Pollution Control Administration to review their statutory authority and regulatory policies which are related to maintaining and enhancing the quality of the environment. This section is aimed at those agencies which have little or no authority to consider environmental values." CONGRESSIONAL RECORD, vol. 115, pt. 30, p. 40423.)

Senator Muskie made the following statement as regards Senator Jackson's explanation:

"It is clear then, and this is the clear understanding of the Senator from Washington and his colleagues, and those of us who serve on the Public Works Committee, that the agencies having authority in the environmental improvement field will continue to operate under their legislative mandate as previously established, and that those legislative mandates are not changed in any way by Section 102-5." CONGRESSIONAL RECORD, vol. 115, pt. 30, p. 40423.)

Also, in a colloquy with Senator Boggs, Senator Muskie extended his comments on the understanding of the Senate as regards the relationship between FWPCA and NEPA:

"Mr. Boggs. Am I correct that the thrust of the direction contained in S. 1075 deals with what we might call the environmental impact agencies rather than the environmental enhancement agencies, such as the Federal Water Pollution Control Administration or National Air Pollution Control Administration.

Mr. Muskie. Yes. Sections 102 and 103, and I think Section 105, contain language designed by the Senate Committee on Interior and Insular Affairs to apply strong pressures on those agencies that have an impact on the environment—the Bureau of Public Roads, for example, the Atomic Energy Commission, and others. This strong language in that section is intended to bring pressure on those agencies to become environment conscious, to bring pressure upon them to respond to the needs of environmental quality, to bring pressure upon them to develop legislation to deal with those cases where their legislative authority does not enable them to respond to these values effectively, and to reorient them toward a consciousness of and sensitivity to the environment.

Of course this legislation does not impose a responsibility or an obligation on those environmental-impact agencies to make final decisions with respect to the nature and extent of the environmental impact of their activities. Rather than performing self-policing functions, I understand that the nature and extent of environmental impact will be determined by the environmental control agencies.

With regard to the environmental improvement agencies such as the Federal Water Improvement Administration and the Air Quality Administration, it is clearly understood that those agencies will operate on the basis of the legislative charter that has been created and is not modified in any way by S. 1075." CONGRESSIONAL RECORD, vol. 115, pt. 30, p. 40425.)

Finally during consideration of the NEPA Conference Report in the House of Representatives, the following exchange between Representative George Fallon and House floor manager Representative John Dingell appears:

"What would be the effect of this legislation on the Federal Water Pollution Control Agency?

Answer: Many existing agencies such as the Federal Water Pollution Control Agency already have important responsibilities in the area of environment control. The provisions of Sections 102 and 103 are not designed to result in any change in the manner in which they carry out their environmental protection authority. This provision is primarily designed to assure consideration of environmental matters by agencies in their planning and decision-making—but most especially those agencies who now have little or no legislative authority to take environmental considerations into account. (CONGRESSIONAL RECORD, vol. 115, pt. 30, p. 40925.)

SENATOR RANDOLPH ADVOCATES A RECONCILIATION OF ENVIRONMENTAL AND ENERGY POLICIES

Mr. RANDOLPH. Mr. President, I hope that we can have a prompt and a reasoned discussion on the important matters that are contained in this action, finalized by the Public Works Committee yesterday.

Senator JACKSON has informed me that there is no problem in the Interior and Insular Affairs Committee in reference to the Public Works Committee's action on this legislation today. There also will be an opportunity, of course, for the Senator from Washington (Mr. JACKSON), or others of that committee, to discuss the matters in which they may be concerned.

The proposed committee substitute for the House-passed version of the Energy Supply and Environmental Coordination Act of 1974 is concerned with matters—and I emphasize this—matters that have previously been considered by the Senate.

For the most part, what we are doing here is amending the Clean Air Act to provide that statute with additional flexibility to adjust to the realities of uncertain and inadequate energy supplies and with adjustments in the schedule for meeting Federal automobile emission standards.

All of these items have been carefully considered in the past by the Committee on Public Works. We held extensive hearings last year and participated actively in the conference on the Emergency Energy Act which included the subject matter that will be discussed today.

Mr. President, the measure before us now originally was title II of S. 3267, the Standby Energy Emergency Authorities Act, which has been discussed in recent days in this body. Members of our committee and others also have discussed the matters as part of the broader proposal presented by the Interior and Insular Affairs Committee.

Title II of that measure was deleted from the bill reported by the Committee on Interior and Insular Affairs. Since most of its provisions fall within the jurisdiction of the Committee on Public Works, we once again reviewed them in the context of the events of recent months.

During this period, members of our committee conferred with our colleagues in the House of Representatives, and it was agreed that the other body would act first on this legislation. The House did act and passed H.R. 14368 on May 1, 1974. The Committee on Public Works then met and approved the substitute version which, as I have indicated, is now before the Senate for consideration.

All members of the Committee on Public Works have been greatly concerned with this problem. They have been diligent in their attention to both the short-term and long-range ramifications of the energy situation, particularly as they relate to our efforts to improve environmental quality. In the preparation of this measure which we consider today the chairman of our Subcommittee on Enirvonmental Protection, Senator MUSKIE, made valuable contributions, as did the ranking minority members of the full committee and subcommittee, Senators BAKER and BUCKLEY. Our success in bringing this measure promptly to the Senate also was greatly facilitated by the efforts and participation of the other members of the committee, Senators MONTOYA, GRAVEL, BENTSEN, BURDICK, CLARK, BIDEN, STAFFORD, WILLIAM L. SCOTT, MCCLURE, and DOMENICI.

One of the problems that we have dealt with in this legislation, which is of great importance, is our efforts to be realistic in meeting problems imposed by inadequate and uncertain fuel supplies.

We recall, Mr. President, that last year during the energy crisis, particularly last winter, a number of electric generating plants were permitted to switch temporarily from the use of oil to coal.

The legislation we have in the Senate today clarifies and revises the legal basis for this coal conversion so that the Federal Energy Administrator can mandate this step, in appropriate cases, to provide substantial relief from the unavailability of short supplies of clean fuels.

I turn aside at this moment to note that one firm, a utility company in New England, had purchased $20 million worth of coal, some 500,000 tons of coal, for use in its reconversion process. Waivers had been granted by the State of Massachusetts to permit this action. Then the Federal Environmental Protection Agency, acting, I am sure, on their interpretation, of the Clean Air Act found that the reconversion could not move forward, even for a temporary period of time.

Therefore, we provide in this legislation, for electric utilities and other major fuel-burning facilities to continue to burn coal after June 1975, when the present regulations, under the Clean Air Act, Mr. President, might prevent the necessary—and I use the word advisedly—burning of coal. My amendment contains language temporarily postponing compliance with certain standards of reduction of automobile emissions. These provisions are identical to those earlier approved—I want to emphasize "those earlier approved"—by the Senate and House conferees, and later ratified by the Senate itself.

This legislation clarifies and revises the legal basis for coal conversion so that the Federal Energy Administrator can mandate this step in appropriate cases to provide substantial relief from short supplies of the clean fuels. It provides authority to continue burning coal after June of 1975, when regulations under the Clean Air Act as it presently stands might prevent the necessary burning of coal.

The amendment also contains language temporarily postponing compliance with certain standards for the reduction of automobile emission standards. These provisions are identical to those earlier approved by a Senate-House conference and ratified by this body.

Mr. President, although the energy crisis has been temporarily alleviated, it is not over. Continuing energy shortages and the real prospect of future crises are now part of our way of life.

The provisions of the legislation before the Senate are part of an arsenal that is being accumulated to help us react responsibly to present and potential energy supply situations. This measure must be passed so that we can meet without delay in conference with the House of Representatives to bring it to final action.

I hope that Senate will act promptly and affirmatively so that we can go on to the next step in meeting the challenge imposed by the energy crisis.

Mr. President, since enactment of the Air Quality Act of 1967 and the Clean Air Amendments of 1970, the American people have not done well in finding a suitable, or equitable, balance between energy and the environment. I emphasize, energy and environment. For it seems that the advocates of both energy and the environment have adopted a national posture of one versus the other, to the substantial disadvantage of domestic energy supplies.

At stake now is the adequacy of the commitment by the Congress, by government, by industry, and by the American people toward simultaneous achievement of national environmental and energy goals. For we must assure that both these goals are not jeopardized.

Rather, we must achieve a reconciliation between the extreme positions of environmental advocates and the proponents of unconstrained energy consumption. For an equilibrium must be reached between the three forces of economic, social, and environmental interests.

The challenge is there, Mr. President, the question is one of national acceptance and a solid commitment by the American people toward meeting our country's social and energy policies consistent with a concurrent national commitment to environmental policies. The goal attendant to each of these policies can be achieved if the approachment of our national capability to their solutions is reasonable and not fanatical.

As a result of the recent oil embargo, the Congress and the American people are now faced with the formulation of national energy and environmental policies to insure sufficient domestic energy supplies to meet our country's long-term economic requirement—consistent with Federal and State long-term environmental goals.

Mr. President, the legislation under consideration today represents an initial attempt at a reconciliation between energy and environmental policies. The proposed amendments to the Clean Air Act were originally written last December by Senate and House conferees on S. 2589, the Emergency Energy Act of 1973. The legislation under consideration today, H.R. 14368, the Energy Supply and Environmental Coordination Act of 1974, represents a refinement on the earlier measure. Nevertheless, it must not be viewed as a final answer to our present need for a reconciliation of environmental and energy policies. Rather, H.R. 14368 must be viewed as a first attempt toward finding the equilibrium position between long-term economic, social, and environmental concerns—of which I spoke earlier.

Substantial increases in coal utilization will be required as part of the many faceted solution to our country's energy problem. The challenge will be to carry it out in an environmentally responsible manner at acceptable costs to the producer and consumer.

This legislation reaffirms that compliance with the primary ambient air quality standards advocated in the Clean Air Act is a basic environmental goal. While temporary variances in emissions standards will be necessary in some instances, handling these on a case-by-case basis rather than through blanket exceptions will allow the necessary consideration in arriving at decisions which are fair to the utilities concerned and at the same time provide maximum protection to air quality.

In 1967, when the Committee on Public Works formulated the Air Quality Act, we knew the full implications of the policies we were enacting would be difficult to predict. Later, in 1970 we knew the Clean Air Amendments represented perhaps the most significant economic policy to be enacted in the interest of promoting environmental quality.

The premises on which this legislation was formulated are still valid. And in formulating the Energy Supply and Environmental Coordination Act of 1974 every attention was devoted to assure the basic integrity of present Federal and State programs are not undermined because of an overreaction to the energy crisis facing our country.

It would be a mistake to view these amendments to the Clean Air Act as a retreat from our earlier commitment to clean air. Rather, they are a realistic short-term response to the current energy situation and a need to provide for coal reconversion in this legislation.

The extensions are simply temporary actions to deal with the next 5 years. As such this measure provides Federal and State government with realistic tools to cope with environmental-energy issues attendant to coal conversion.

The legislation authorizes the Federal Energy Administrator to direct the conversion of electric utilities and major industrial facilities with the capability to use coal to discontinue their use of natural gas or oil. In order to facilitate these reconversions a 1-year exemption is provided from the requirements of the National Environmental Policy Act for an environmental impact statement.

There then remains the need to provide a mechanism for addressing the issues attendant to present Federal and State air pollution control standards.

PRESENT EPA AUTHORITY

An examination of the present authority of the Environmental Protection Agency to resolve energy related problems leads to the following conclusions:

First, presently EPA can grant short-term variances at the request of a State. The legislation would provide the EPA with authority to grant such variances on its own motion.

Second, in the recent Fifth Circuit Court of Appeals decision in Natural Resources Defense Council against EPA, the court held that the only procedure available for granting variances pursuant to the Clean Air Act is section 110 (f). This bill would clarify EPA's authority for permitting fuel variances in the fifth circuit.

Third, although this is not necessarily the case, the EPA believes that its authority is largely restricted in granting variances to the terms submitted by a State. The legislation would clarify the EPA's authority to impose interim requirements that both protect air quality and insure appropriate efforts are taken to secure continuous emission control systems or conforming fuels.

Fourth, although the Administration assumes it has authority to allow coal conversions in the furtherance of Project Independence, EPA cannot permit noncompliance with emission limitations or other terms of State implementation plans beyond statutory deadlines. The legislation would enable the EPA to allow short-term and intermediate-term conversions from oil to coal in many situations which might not qualify under present law.

Fifth, the EPA also is provided with complementary authority to allocate low-sulfur energy supplies to critical areas and sources in order to minimize adverse impacts on public health or welfare.

This legislation would provide a mechanism for providing temporary variances from applicable emission standards on a case-by-case basis rather than through blanket exceptions without provision for maximum protection of ambient air quality.

CLEAN AIR PROVISIONS

The clean air provisions incorporated in this legislation reflect a carefully thought out approach to reconciling the interrelationship between the need for a greater reliance on coal if energy self-sufficiency is to be successfully approached and a concomitant need for protection of the long-term integrity of environmental protection programs. The measure under debate incorporates several minor modifications in the language of the House passed clean air provisions as well as the coal conversion provisions.

The intent is to provide a mechanism

for the reconversion to coal of the few major energy facilities which now have the capability to use coal but are using natural gas and oil. Later, the Congress will examine the issues attendant both to requiring existing energy facilities to possess a dual fuel capability, including a coal burning capability. Now is not an appropriate time.

Mr. President, this legislation concerns itself with variances for the short-term appropriately termed phase I for an intermediate period, phase II, and for a longer term situation, phase III. The first phase authorizes temporary variances until June 30, 1975, to permit conversions from oil and natural gas to nonconforming coal in the face of immediate and short-term energy supply problems such as occurred both during the winter of 1972 to 1973 and during the OPEC embargo last winter.

Similar suspension are available under H.R. 14368 for an intermediate term until January 1, 1979, with a potential additional 1-year extention, for those facilities which convert to coal on modified compliance schedules to achieve applicable clean air standards by 1979.

This second phase provides for modification of State air quality implementation plans so that reconversions to coal may continue for a longer time. Under these provisions, a limited number of installations will be able to elect to continue to use noncomplying fuels beyond June 30, 1975.

In order to be eligible for this extension, emissions from the converted source cannot cause or contribute to ambient air quality levels in excess of national primary—or health related—ambient air quality standards conversions cannot take place in regions where the primary ambient air quality standards are presently being exceeded.

Moreover, the new compliance schedule must mandate steady progress toward compliance with present emission limits which must be achieved not later than January 1, 1979.

The modified air pollution control schedule must include dates by which the installation's owners must either enter into long-term contracts for low-sulfur coal or the necessary emission reduction systems to achieve compliance with applicable air pollution control standards.

EXTENSION OF MOTOR VEHICLE EMISSION STANDARDS

Transportation is a necessary service, and it is provided under an extensive system of Government regulations, often heavily subsized by public funds. In many American cities, a pattern of decisions at all levels of Government has shaped a diffuse and auto-dependent transportation network. This network itself is often as much a source of air pollution and energy waste as the emissions from the individual automobiles themselves.

Actions at all levels of government will be required to change this. In the future, State and local governments will have to insure total transportation systems that are developed and operated so as to be consistent with environmental policies.

To date, principal air pollution control strategy has been federally established uniform automobile emission standards. Present emission control requirements stem from the Clean Air Amendments of 1970. In the interim period, however, it has become apparent that additional time is warranted for achievement.

In December 1973, the Senate passed S. 2772, a bill extending for an additional year the emission standards applicable to 1975 model automobiles. This action resulted from extensive study by the Committee on Public Works on the total question of motor vehicle pollution and the requirements for reducing it. The committee felt that this was the only change in the program that was warranted at that time.

On May 1, 1974, the House of Representatives passed H.R. 14368, containing similar provisions modeled on the earlier conference action on S. 2589, which was vetoed by the President.

This legislation provides for a 1-year extension of the 1975 emission standards for hydrocarbons and carbon monoxide and gives the Administrator of the Environmental Protection Agency the authority to grant another 1-year extension.

In addition, H.R. 14368 provides an emission standards for oxides of nitrogen at 2 grams per mile in model year 1977, without any further extension of the statutory standards.

This measure does not represent a final decision by the Committee on Public Works on the appropriate standard for oxides of nitrogen or on the technology for control of automobile emissions, and their implication. Rather, the Committee is simply taking necessary action to give certainty to Detroit in its production for model years 1975 and 1976.

Mr. President, I should like to call on the Senator from Tennessee (Mr. BAKER), on this particular for an explanation of the legislations as it affects the automobile companies. We are really working, in a sense, after the fact.

Mr. BAKER. The distinguished chairman is entirely correct. As a matter of fact, as he called my attention to this matter, I was in a conversation with the distinguished junior Senator from Michigan (Mr. GRIFFIN), who was pointing out that we are in the untenable position of having forced the automobile industry into a situation where they soon will be technically in violation of the law because of our failure to date to amend the statute.

I think it is absolutely imperative from a moral standpoint, that we have an undoubted responsibility to attend to changes in the requirements of the law on automobile emissions, if for no other reason than to assure that we are being fair and square with the largest industry in the United States, the automobile industry.

We ought to keep in mind that we are not weakening the requirements of the environmental standards. We are maintaining and in some cases stiffening the requirements and are seeing to it that they are steadfastly adhered to in the automobile manufacturing industry.

The law now requires the automobile industry to devise environmental control systems. In effect they are saying to us: "You have made us do this and have caused us to spend upward of $1 billion, according to some estimates, to comply with the requirements, but you are not amending the law to permit us to come into compliance with the statutory requirements. You are requiring us to be in compliance with an extremely, stringent standard, one that we thought would be changed by now, and to go on with this business."

Our distinguished chairman, as usual, is absolutely right. We have not only a legal, but also a moral, obligation to get on with the business of making compliance with the standards a possibility.

It is my personal hope that we will act today and that the Senate will pass this bill today. I hope, then, that some staff lawyer in the automobile industry will report to his superiors that their company is no longer in legal jeopardy with respect to the emission standards.

Mr. RANDOLPH. Mr. President, I appreciate the opportunity to have had this colloquy and of raising this point with the able Senator from Tennessee (Mr. BAKER).

OPEC OIL EMBARGO

The United States' only option is our long term interest in energy self-sufficiency. This entails a greater development of nuclear electric power and more importantly a significantly increased reliance on domestic coal resources beyond levels previously considered achievable.

Before the OPEC oil embargo last year our country's ad hoc energy policy was synonymous with an imported oil policy. Despite the effects of the embargo which dramatized the desirability for energy self-sufficiency, we are now returning to the earlier posture of looking to the Middle East for new energy supplies. Under current projections by 1980 almost 50 percent, one-half of our oil supplies, would be coming from the Middle East.

Yet, recent events have demonstrated the fallacy of this proposed dependence on the Middle East—even from a short term perspective. Yet, as a Nation, we are not taking the necessary steps to assure alternate domestic supplies. One such possibility is reconversion of electric powerplants and major industrial users of imported oil back to domestic coal supplies.

The primary lesson that is to be learned from the oil embargo is that air pollution control strategies that depend primarily on fuel-switching to foreign sources of low-sulfur oil are—as declared by Senator BAKER on February 19, 1974, in this Chamber—"neither environmentally safe nor politically prudent." Quoting further from the remarks of my colleague from Tennessee, who is the ranking minority member from the Committee on Public Works, he observed:

During the past several years, several air quality regions have depended heavily upon foreign low-sulfur oil to avoid serious air quality problems. It is ironic and tragic that these communities which had most rapidly moved to meet air standards in response to urgent health problems are now confronted by the ineffectiveness of their strategy.

Returning to a greater reliance on the utilization of domestic coal supplies is unlikely to expedite the achievement of environmental goals that go beyond the protection of public health to the protection of broader societal concerns such as welfare. However, as recent events exhibit, the goal of energy self-sufficiency also will lead our country to more reliable clean air programs.

COAL RECONVERSION

In response to the Arab oil embargo, the U.S. utility industries were encouraged by the Federal Government to convert some of their facilities from oil to domestic supplies of coal. As of the end of February, some 22 units at 11 locations on the east coast had responded and made such conversions. The resultant savings in February alone were 53,140 barrels of residual oil per day. And the estimated oil savings for March were *slightly* higher, 67,980 barrels per day.

These conversions were undertaken by utility executives in response to a special message by President Nixon and encouragement by then Federal Energy Office Administrator William E. Simon when our country was faced with a national energy emergency. Such conversions also were supported by the Congress.

However, there are indications that this program is now jeopardized. On April 24, 1974, Carl E. Bagge, president of the National Coal Association, sent a telegram to President Nixon urging a reaffirmation of the administration's support for coal reconversion, declaring:

> The virtual elimination of this program would also constitute a serious breach of faith with the coal industry. At the request of former FEO Administrator Simon and in agreements signed with the Cost of Living Council earlier this year, major coal producers agreed to invest in equipment needed to expand production so that the fuel requirements of the converted powerplants could be met. Yet now they face the prospect of having the coal but not the markets.

Encouraged by the Federal Government and the promise of appropriate legislation, some 22 units at 11 powerplants on the east coast had converted to coal by the end of February. The resultant savings in February were 53,140 barrels per day of residual fuel oil or 13,280 tons per day of coal. For March, the estimated savings were slightly higher—67,980 barrels per day of oil or 16,996 tons per day of coal.

Another 15 electric powerplants with a total of 33 units have indicated they can and are willing to convert provided environmental, technical, transportation, and supply problems are solved. This second category represents a further savings of 113,991 barrels per day of oil or 28,498 tons per day of coal.

Yet on April 10, former Federal Energy Office Administrator William Simon testified before the House Government Operations Committee that because the air quality variances for all of these facilities—22 units—would expire by May 15, they would have to be reconverted back to oil.

In summary, the utility industry responded in good faith to the President's encouragement to convert to coal on either a short-term or long-term basis. Now even where a utility desires to remain on coal, reconversion to oil may be required. In short, the domestic coal industry responded to a national energy crisis but now that the crisis is over we are returning to oil ways—imported oil.

This legislation, however, enables those facilities which have access to coal supplies that do not cause or contribute to concentrations of air pollution in excess of national primary ambient air quality standards, to remain on coal subject to a commitment to meet applicable emission standards by January 1, 1979.

FEASIBILITY OF INCREASED COAL PRODUCTION

The National Coal Association estimated that the industry could produce an additional 50 million tons of coal over and above their earlier expectations for coal supply in 1974. The prediction was based on a number of assumptions. Among these were labor stability, effective enforcement of Federal and State mine, health and safety laws "without harassment or unnecessary mine closings" by inspectors, continued surface mining "with effective reclamation," adequate coal transportation, "use of present machinery and manpower without considering costs" and exemption from Federal price controls.

More recent information from the Federal Energy Office indicates that the demand for coal from expected reconversions would be less than the National Coal Association's estimate of 50 million additional tons of production capacity. Nevertheless, the association's statement points up the many problem areas affecting coal supplies which must be considered in evaluating the feasibility for a greater emphasis on coal conversion.

ENVIRONMENTAL IMPLICATIONS OF COAL CONVERSION

At the request of the Federal Energy Office, the Environmental Protection Agency conducted preliminary analyses of 37 identified electric power plants which might be required to burn coal instead of oil. Although more detailed considerations are needed, as discussed in the March 1, 1974, EPA staff report; I quote:

> In many of the situations studied, the environmental suitability of conversions to coal is heavily time-dependent. It depends on the effectiveness (or existence) of emission control systems at the time of conversion.
>
> In a number of the plants studied, the electrostatic precipitators have been allowed to deteriorate because there was not requirement for good operation once the unit was converted to oil. The collection efficiency for coal can only be approximated. Some utilities guess as low as 50 percent to 70 percent and one assumes nearly 0 percent because of the condition of the equipment. If coal were to be burned in such units before work could be done on the equipment, heavy emissions of particulate matter could be expected.
>
> The time and feasibility of repair become important factors in assessing the environmental aspects of conversion. The units would, in many cases, have to be shut down during repair and maintenances and, since units burning coal are generally planned for base-loading, the shut-downs would have to be carefully scheduled. Estimates of time of repair range from a week or two to as high as 18 months.
>
> Estimates of the feasibility of retrofit and the time required to install flue-gas desulfurization indicate that, in nearly all the plants studied, sulfur dioxide emissions would remain unchecked for much longer periods, and some cases for the life of the unit because of the infeasibility of installing such equipment.

The EPA staff report then adds the comment:

> It should be noted than many power plants would be environmentally suitable for coal-burning if the installation of good emission control systems preceded the use of coal.

Particular note should be made of the fact that reliable estimates of the quality of the coal that would be used in reconverted units was not available. However, as noted in the EPA staff report:

> A clearer picture of the available coal and its quality will emerge before decisions are made and assessemnt of the environmental aspects of these conversions can be developed on more valid bases.

The EPA staff report than recommends:

> Before any (final) decisions are reached, the range of possibilities should be discussed and the conversions and fuel qualities most responsive to both the supply of fuels and the environmental considerations selected.

Nevertheless, Mr. President, it was possible for the EPA staff to conduct preliminary analyses on the basis of carefully selected assumptions which are described in this excerpt from its report, that I request appear in the RECORD at this point in my remarks.

> Data used in the modeling effort to define plant characteristics include: stack height, stack diameter, stack temperature and gas volume when the associated boilers are operating at full load, design fuel consumption for each boiler, and the excess air used. In most cases these data are the latest available from the Federal Power Commission Form 67, as reported by the power companies. When available, updated are obtained from state and local pollution control agencies or from the plants themselves.
>
> The fuel quality (percent sulfur, percent ash, and heat content) of fuels currently being burned is obtained from the FPC data. These parameters for the coal which the plant might be required to burn are estimated from data on current and projected supplies. For existing pollution control devices within each plant, a control efficiency is assumed considering design and test data recent history of use and estimations from local agencies and the power companies. It is recognized that an electrostatic precipitator which has not been in use, or has been used in conjunction with an oil-fired boiler, will operate at an efficiency significantly less than the design efficiency. In many cases, two years or more may be required before maximum efficiency can be achieved.
>
> Standard EPA methods are used to relate quantities of fuels burned and the resulting pollutants emitted. (Reference: "Compilation of Air Pollutant Emission Factors," U.S. Environmental Protection Agency publication No. AP-42, revised April, 1973.)

Mr. President, I also ask unanimous consent that there be printed in the RECORD at this point two tables which summarize the results of these preliminary evaluations by the Environmental Protection Agency.

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

CONVERSIONS TO RESPOND TO RESIDUAL OIL SHORTAGES WITHOUT SIGNIFICANT VIOLATIONS OF PRIMARY AMBIENT AIR QUALITY STANDARDS

Plant name, location	Urged to convert to coal in FEO telegram (26 plants)	EPA region	Units for conversion	Estimated oil savings (barrels/day)	Comments
Crystal River, Red Level, Fla	No	IV	1	9,425	Measured air quality, modelling predictions, low population impact and lack of other major sources in the area all make this plant a good candidate for short-term conversion. The particulate matter collection equipment should be put into good operation before conversion if possible.
			2	12,186	
Morgantown, Newburg, Md	Yes	III	1	11,500	A good candidate for short-term conversion—no known air quality problems in impact area, good dispersion, good particulate matter collection, and no other large sources in area.
			2	11,500	
Chalk Point, Aquasco, Md	No	III	1	*2,500	A good candidate for short-term conversion—good particulate control, measured air quality acceptable, area thinly populated, no other large sources in area.
			2	*2,500	
Sutton, Wilmington, N.C	Yes	IV	1, 2	*5,672	A good candidate for short-term conversion—no known air quality problems, dispersion appears good from the tall stacks, the short stacks may cause some problems, but they are not expected to be severe or frequent.
			3	*3,539	
McManus, Brunswick, Ga	Yes	IV	1, 2	7,890	A good candidate for short-term conversion—low population exposure, modelling predictions; some possible problems with TSP, but should not be severe.
England, Beesleys Point, N.J	Yes	II	1, 2	*9,920	A good candidate for short-term conversion—low population exposure, good air quality, modelling predictions, and no other major nearby sources.
Mt. Tom, Holyoke, Mass	Yes	I	1	*4,700	A good candidate for short-term conversion—good air quality, and low population exposure.
Danskammer, Rosetown, N.Y	No	II	1	1,900	Tentative—A good candidate for short-term conversion—low population exposure, plus reasonably good air quality. No study of this plant has been requested by FEO.
			2	2,000	
			3	4,000	
			4	6,300	
Middletown, Middletown, Conn	Yes	I	1	*1,750	A good candidate for short-term conversion—low population exposure, and good air quality.
			2	*3,540	
Montville, Montville, Conn	Yes	I	1	110	A fair candidate for short-term conversion—major impact area has low population exposure and fairly good air quality; some possible problems in pollutant channeling to nearby towns.
			2	85	
Salem Harbor, Salem, Mass	No	I	1	*1,200	A fair candidate for short-term conversion—modelling predictions fairly good air quality (AQ impact from plant less severe in winter than remainder of year).
			2	*2,600	
			3	*5,000	
Brayton Point, Fall River, Mass	No	I	3	22,000	A fair candidate for short-term conversion—good dispersion, good particulate control, and fairly good air quality.
Chesterfield, Chester, Va	Yes	III	6	12,300	A fair candidate for short-term coa. conversion—good dispersion, good particulate control, and low density area.
Deepwater, Pennsgrove, N.J	Yes	II	1	*2,680	A marginal candidate for short-term conversion—marginal air quality, dense area.
			8	*2,360	
Lovett, Tompkins Cove, N.Y	Yes	II	4	*3,630	A marginal candidate for short-term conversion—low population exposure; however, poor dispersion
			5	*4,150	
Schiller, Portsmouth, N.H	Yes	I	4	1,000	A marginal candidate for short-term conversion—possible TSP problem.
			5	1,000	
Burlington, Burlington, N.J	Yes	II	5	*2,500	A marginal candidate for short-term conversion—marginal air quality, dense impact area, and multiple industrial sources.
			6	*2,500	
Far Rockaway, Far Rockaway, N.Y	No	II	1	3,050	A marginal candidate for short-term conversion—marginal air quality, reasonable dispersion.
Bergen	Yes	II	1	*5,000	A marginal candidate for short-term conversion—marginal air quality, dense impact area, fairly good dispersion.
			2	*5,000	
Total				176,987	

PLANTS CONSIDERED TO BE NOT ENVIRONMENTALLY ACCEPTABLE FOR SHORT-TERM CONVERSIONS

Arthur Kill, Staten Island, N.Y	No	II	30	12,400	Poor candidate for short-term conversion—poor air quality area.
Ravenswood, Queens, N.Y	No	II	3N, 3S	25,600	Poor candidate for short-term conversion—poor air quality area.
Barrett, Island Park, N.Y	Yes	II	1–2	9,300	Poor candidate for short-term conversion—marginal air quality, poor particulate control.
Albany, Albany, N.Y	Yes	II	1–2–3–4	11,500	Poor candidate for short-term conversion—modelling predictions, poor particulate collection, terrain problems.
Gilbert, Milford, N.J	Yes	II	1–2–3	2,610	Poor candidate for short-term conversion—modelling predictions, constrictive terrain.
Sayreville, Sayreville, N.J	No	II	7–8	8,820	Poor candidate for short-term conversion—poor particulate control, poor air quality area, dense population in impact area.
Barbados, West Morristown, Pa	Yes	III	31	2,600	Poor candidate for short-term conversion—poor air quality area, industrial location, dense population in impact area, limiting terrain.
			41	2,600	
Cromby, Phoenixville, Pa	No	III	2	6,800	Poor candidate for short-term conversion—short stacks, very hilly region large contribution to SO_2 concentrations, uncertain precipitator efficiency.
Edge Moore, Wilmington, Del	No	III	1	1,743	Poor candidate for short-term conversion—poor particulate control, dense impact area, poor air quality.
			2	1,621	
			3	2,113	
			4	3,903	
Possum Point, Dumfries, Va	Yes	III	1	1,940	Poor candidate for short-term conversion—poor particulate control, modelling predictions, poor dispersion.
			2	1,940	
			3	3,200	
			4	6,720	
Vienna, Vienna, Md	Yes	III	5	800	Poor candidate for short-term conversion—poor particulate control, modelling predictions.
			6	800	
			7	1,700	
Mason, Wiscasset, Maine	Yes	I	3	1,302	Poor candidate for short-term conversion—poor dispersion, modelling predictions of high SO_2 TSP concentrations.
			4	1,285	
Devon, Milford, Conn	Yes	I	7, 8	7,534	Poor candidate for short-term conversion—poor air quality, probable high SO_2 impact.
Norwalk Harbor, Norwalk, Conn	Yes	I	1, 2	4,500	Poor candidate for short-term conversion—poor air quality, dense impact area.
West Springfield, Springfield, Mass	Yes	I	1, 2, 3	1,200	Poor candidate for short-term conversion—marginal air quality, dispersion problems.
South Meadow, Hartford, Conn	Yes	I	6, 7, 8	2,679	Poor candidate for short-term conversion—dense impact area, marginal air quality, poor particulate control equipment.
Somerset, Fall River, Mass	No	I	1, 2, 3, 4, 5, 6	11,000	Poor candidate for short-term conversion—poor dispersion capability, poor particulate control, proximity to Brayton Point.
South Street St., Providence, R.I	Yes	I	*121	1,275	Poor candidate for short-term conversion—poor air quality, high density impact area, poor particulate control; since conversion to coal, substantial plume opacity problems and high local readings of TSP and SO_2.
			*122	774	
Total				146,680	

*These units converted to coal.

In summary, of the 37 plants and locations EPA studied, significant violations of the primary standard for either sulfur dioxide or particulates—and in some cases both—are possible in 18 of the situations. The EPA, however, was not able to qualify the degree of health endangerment in relation to the magnitude of the violation.

OTHER CLEAN AIR ENERGY POLICY ISSUES

Nevertheless, Mr. President, a number of other environmentally related energy policy issues remain. Our national objective is successful achievement of equitable energy and environmental goals. This will require the cooperation of and leadership from the electric utility industry.

What is clear, Mr. President, is that a concerted effort by the electric utility industry, by government, and by concerned environmental advocates is essential if we are to solve the complex interrelationships between clean air, available fuel supplies, energy demand and adequate and reliable supplies of electric power.

The overriding concern is how to direct the national capability that exists for air pollution control so that it initially achieves the maximum protection of public health and later is directed toward protection of public welfare.

On April 23, 1974, the Department of the Interior's Bureau of Mines released a report entitled, "Assessment of the Impact of Air Quality Requirements on Coal in 1975, 1977, and 1980."

This report concludes that if present Federal and State air pollution control standards are enforced in mid-1975, roughly one-third of the Nation's coal supply cannot be used without violating applicable standards. By 1977, the "deficit" in conforming coal with acceptable sulfur content could reach 254 million tons and it could grow to 275 million tons in 1980.

The Bureau concluded, however, that this shortfall could be reduced to as little as 199 million tons in 1975—and 190 million tons in 1980—if, first, stack gas "scrubbers" are widely used at new electric utility plants that cannot get conforming coal; second, if variances from clean air standards are provided for some of the facilities where the coal contains too much sulfur; or, third, if coal supplies can be better matched with emission standards by allocating coal supplies among various air quality control regions to reflect environmental factors.

With regard to stack gas cleaning the Environmental Protection Agency has stated that flue gas desulfurization facilities are available. Therefore, there does not appear to be a need for a shutdown of powerplants for nonconformity with air pollution requirements. The Environmental Protection Agency concluded in January 1974, that—

(1) . . . some utilities . . . have applied greater efforts to defending their lack of progress or to attempting to change existing emission requirements than they have in controlling CO_x emission.

(2) . . . Vendors . . . generally offer guarantees for these systems that are comparable to the guarantee provided for other equipment purchased by a utility . . . guarantees now offered by vendors are appropriate; . . . the utility creating the pollution must assume the remaining risks associated with control of that pollution.

(3) . . . these costs, while substantial, are reasonable and will not impose an undue burden on either the electric utility industry or its customers.

The Federal Power Commission disagrees with the Environmental Protection Agency. A February 25, 1974, report of the Federal Power Commission declared that strict adherence to 1975 air pollution control standards on a national basis will endanger the reliability of electric service in seven out of the nine electric reliability regions. The areas most severely affected will be the East Central Area Reliability Council, Southeastern Electric Reliability Council, and Mid-America Interpool Network, which together cover about a third of the country.

The Federal Power Commission concluded that if variances are not granted for this affected capacity, either to burn available fuels or use some form of supplemental controls, a deficient power supply situation would prevail and curtailments of electric service would be necessary. The noncomplying capacity in 1975 would be in Ohio, Indiana, West Virginia, Kentucky, Tennessee, Alabama, Illinois, and Missouri.

In summary, the Federal Power Commission is of the opinion that flue gas desulfurization facilities are neither available in the quantity needed nor do they have a reliability compatible with operating steam electric plants. Even when emission control systems of demonstrated reliability become available, considerable time will be required to retrofit existing generation facilities.

CONCLUSION AND RECOMMENDATION

During my 15½ years in the Senate, I have been deeply involved in energy and environmental questions. Throughout this period there has been an inclination by some people to place the entire blame for the energy crisis on environmental protection programs. I consider this evaluation to be in error.

Both energy and environmental goals can be achieved if there is commitment on the part of all affected parties. As duly elected representatives of the American people, Members of Congress enacted environmental protection laws designed to protect public health. These policies are now the law of the land.

In some instances, earlier established Federal and State compliance schedules now appear unduly optomistic. Nevertheless, the basic goals still are valid.

The provisions of the Energy Supply and Environmental Coordination Act of 1974 are in no way a retreat from the commitment of the Congress to put an end to environmental pollution and enhance the quality of our environment. Rather the legislation simply facilitates short-term and intermediate-term variances from some of the requirements of the Clean Air Act in order to accommodate the more recently adopted national objective to promote greater energy self-sufficiency through coal reconversion.

Therefore, for the reasons I have discussed today I urge enactment of H.R. 14368, the Energy Supply and Environmental Coordination Act of 1974.

Mr. President, I shall close in just 2 or 3 minutes.

I want to emphasize very strongly as my own opinion that the energy crisis may be temporarily set aside also. There may be an easing of the impact of this problem, but I can say that this problem is not over. Let us think for just a moment of the consequence of what is happening as a result of the increased price which American consumers are paying for fuel—fuel of many types. It is a continuation of the energy problem when the price rises, let us say, 10 cents on the gallon, whether it is regular or high test gasoline. From the standpoint of the consumer, the increased price, the inflationary spiral, really skyrockets and is in effect a part of the energy problem, which is a continuing one, regardless of whether there is an embargo.

We do have to consider the conservation of fuel in this country at this time. Yesterday I endorsed and spoke for the continuance of the 55-mile-an-hour speed limitation. I am gratified that the Senate in its reasoned judgment kept the 55-mile-an-hour limit and did not act yesterday to increase the limit by 5 miles an hour.

We must not be complacent. We must not be apathetic. We must be very careful to assess the situation properly. I think that to do it properly we shall have to do what is in the legislation before us. These shortages and the real prospects of future problems will be our way of life. So the provisions before us now are a part of what I like to call an arsenal of techniques that must be accumulated to help the American people react responsibly not only to current conditions, but also to the potential supply situations which could become very, very acute in the coming months.

This measure must be passed so that we can meet, without delay, in conference with the House of Representatives. I believe that we can have a rather quick conference in bringing this matter through the conference process, and placing the legislation on the desk of the President, unimpaired, with the items that have been vetoed, I will say to the able chairman of our subcommittee (Mr. MUSKIE), by the President of the United States.

We have tried to bring to the Senate this bare-bones legislation to take care of automobile emissions and the reconversion to coal. I trust that we shall act affirmatively. We will, of course, be challenged to do the job that is necessary to be done. We must move ahead, and we must do so in a knowledgeable way, realizing that we have an opportunity—and the American people want us to embrace it—to act.

I thank my colleagues, especially the chairman of the subcommittee (Mr. MUSKIE), the ranking minority member of the subcommittee. (Mr. BUCKLEY), and the ranking minority member of the committee (Mr. BAKER).

Mr. MUSKIE. Mr. President, I thank my good friend, the chairman of the Committee on Public Works (Mr. RANDOLPH), for his statement and for his unfailing cooperation with the members of the committee, so as to reach agreement to move the legislation to the floor. What we have before us today is consistent with that pattern.

Mr. BAKER. Mr. President, the Public Works Committee amendment to H.R. 14368, the Energy Supply and Environmental Coordination Act of 1974, will grant significant new authority to the Environmental Protection Agency and the Federal Energy Administration. While the need for such authority is not as critical to the Nation's energy problems as it appeared last winter when we considered and passed similar legislation, which was later vetoed, it is still necessary and desirable.

The bill will give automobile manufacturers an added year and, if need be, 2 years, to solve any remaining problems which they may have with the new catalyst emission control systems that will be introduced on the 1975 models. Setting a level of 2 grams per mile for emissions of nitrogen oxides in 1977 will give the manufacturers the incentive to develop and introduce cleaner engines with better fuel economy and driveability

such as the stratified charge engine and diesel.

More important, the bill will encourage use of our plentiful supplies of domestic coal in preference to foreign oil. It will do this by authorizing the Federal Energy Administration to require that plants capable of burning coal do so and to order that new plants be designed to burn coal in addition to or instead of natural gas or petroleum products. The Environmental Protection Agency will be authorized to grant short-term suspensions of clean air requirements with appropriate safeguards until June 1, 1975, or 1 year from enactment, whichever is earlier. EPA also will be permitted to allow plants which convert to coal to have until 1979, or in some cases 1980, to meet the primary, health-related standards in State implementation plans under the Clean Air Act. The action of the Public Works Committee on the coal conversion-related sections of the bill probably reduces the number of plants which may be converted in compliance with Clean Air Act requirements but makes it more certain that such conversions can be continued beyond July 1, 1975, by reducing the possibility that conversions will be tied up in administrative or judicial delays.

This is accomplished by changing the test which must be met before a plant can be converted from the House bill which requires that the source "will not materially contribute to a significant risk to public health" to a requirement that conversions be allowed where primary ambient air quality standards are not exceeded now and will not be exceeded as a result of the conversion. We understand that enough plants can be converted under this authority to spur significant new coal production at an orderly pace. Another problem in the House bill which the action of the committe has corrected is to remove the prohibition on enforcement of coal conversion orders after June 30, 1975. Therefore, coal conversions can continue in effect under FEA orders.

In order to permit FEA to order coal conversion where a plant has the capability of burning coal, the requirements in the House bill for a plant-by-plant environmental balancing and for prioritization of plants before any are ordered to convert have been removed as a result of our committee's action. This should also reduce the potential for administrative or judicial challenge to coal conversion orders.

The House bill would provide that those who voluntarily converted to the use of coal between September 15, 1973, and the date of enactment could continue to burn coal under certain conditions. In this context, "voluntary conversion" means having applied for a waiver from Clean Air Act requirements or having entered into a contract to purchase coal or having made a substantial investment in necessary plant equipment to burn coal. In many cases, these voluntary converters never in fact burned coal or did so only for several days. Therefore, in order to permit FEA to order those plants to convert where the potential for energy savings is greatest and to authorize EPA to keep air quality at a maximum, the Senate bill cuts down the period for voluntary conversion to the September 30 to December 15, 1973, period which was contained in S. 2589, the vetoed energy emergency authorities bill.

Section 119, as added by section 2 of the committee amendment, provides for treatment of sources which voluntarily converted to the use of coal during the period September 15 to December 15, 1973, or which are prohibiting by FEA order from burning petroleum products or natural gas and therefore must burn coal. It provides that those who convert to the use of coal may not be prohibited from burning coal and may receive an extension of clean air requirements to 1979, or in some cases 1980, where such a source "is located in an air quality control region in which applicable national primary ambient air quality standards are not being exceeded." As used here, the word "applicable" is intended to refer to those pollutants which are emitted from a powerplant, such as sulfur dioxide and particulates. This new section, of course, does not affect the other substantive provisions and procedures of the Clean Air Act and the implementation plans developed persuant to it under which a source may choose to convert to coal so long as emission controls or conforming fuels insure compliance with emission limitations, implementation plans, and other requirements of the act by the applicable deadlines under the act.

The authority section 8 grants to the Federal Energy Administrator to require that new fossil fueled electric powerplants be designed and constructed to be able to burn coal instead of or in addition to other fossil fuels has been made discretionary in the committee amendment, rather than mandatory as in the House bill. Some of the factors which must be considered in FEA's determination include the anticipated impact of the new source performance standards and the requirements of State implementation plans which will apply to such plants under the Clean Air Act.

Many of the provisions of H.R. 14368 as passed by the House do not relate directly to the Clean Air Act or to the need to conserve energy resources. Therefore, as Senator MUSKIE indicated, the committee deleted section 11 of the House bill on industry data reporting, section 3(b), transportation controls; section 7, energy conservation study; section 8, reports; and section 9, fuel economy study.

In view of the National Academy of Sciences clean air study we commissioned and our present hearings which will extend into June, a 1-year extension of Clean Air Act funding authorizations at fiscal year 1974 levels is included in the committee amendment.

Mr. President, the committee amendment probably does not satisfy anyone's wishes completely, but I believe it is a workable and productive compromise. It achieves the immediate adjustments in the Clean Air Act that are required while deferring any more fundamental readjustments that may be needed until after the comprehensive hearings in which we are now engaged.

I commend the distinguished chairman of our committee (Mr. RANDOLPH) and the most able chairman (Mr. MUSKIE) and ranking minority member (Mr. BUCKLEY) of the Environmental Pollution Subcommittee for this excellent legislation which they have worked so hard to produce, and I urge its prompt passage by the Senate.

Mr. BUCKLEY. Mr. President, I want to express my appreciation as a member of the Public Works Committee for the leadership and sense of purpose we have seen in the activities of the chairman of the committee, Senator RANDOLPH, the chairman of the subcommittee, Senator MUSKIE, and the ranking minority member of the full committee, Senator BAKER. We have seen responsible legislation and a responsible approach to an enormously important problem.

We have seen, in the atmosphere of the energy crisis, a rare application of intelligence and balance in meeting our energy needs in a responsible manner.

Members of the Public Works Committee and the Subcommittee on Environmental Pollution I believe have distinguished themselves in the manner in which they have approached this problem. We have in the substitute that was introduced by Senator MUSKIE a more precise attack on the problems that now face us, especially in light of the situation in which the automobile industry finds itself.

The substitute amendment, in other words, has discarded all those extraneous provisions in the House version that could be controversial and that could delay the attempt to provide that degree of certainty with respect to emission standards without which the automobile industry simply cannot proceed with its scheduled production.

So, in the first instance, we are keeping faith, although belatedly, with the largest employer in the United States.

In the second instance, we are doing it in a manner which will not compromise essential environmental goals.

The other aspect of the amendment is that it grants the necessary authority to the EPA to suspend sulfur emission limitations where conversions to nonconforming fuels are required to meet energy needs during the period of the coming winter.

In other words, this authority is extended until July of 1975; but in providing the authority to suspend the sulfur emission standard beyond 1975 we do not in the process threaten health, as in every instance the language of the amendment makes clear that primary standards shall be met, that primary standards shall not be compromised where human health is at stake.

There are those who will say that the language of the amendment is too restrictive, in that it will not permit conversions from oil to coal in sufficient measure to alleviate the drain on oil in the event there should be a recurrence of an oil embargo.

I point out, Mr. President, that our coal-producing capacity is not such at this time as to permit a much larger conversion than is contemplated by the proposed legislation. In other words, we have

not yet seen a stimulation of an expansion of coal-producing capacity sufficient for large-scale conversions from oil.

There is another feature of the amendment on which I would like to comment, and that is the encouragement it gives to the States to review the implementation plans that are to go into effect in July 1975.

Before the energy crisis came to national attention, before the prospect of shortages of petroleum was injected into the thinking of our planners, many States adopted plans that would move ahead of the statutory requirements and move toward the meeting of secondary standards. This is all well and good under normal circumstances; but in meeting secondary rather than health-related standards, many State plans would require a shift from coal to residual oil, which is that kind of oil in which we have our largest dependence on foreign sources. I understand that at the present time we import approximately 90 percent of the residual fuels we consume on the east coast.

Thus, by encouraging the States to review their implementation plans, they can take into consideration the availability of scarce fuels and perhaps slow down the rate at which we advance toward our ultimate need to meet those secondary standards.

As I suggested earlier, Mr. President, in studying the proposed legislation, the Committee on Public Works decided to eliminate those portions of the House bill which were either controversial or which were extraneous to the essential task of finally establishing automobile exhaust standards for the coming production models and the flexibility required by the Administrator of EPA to grant variances. We have eliminated all those areas which could be controversial and which could delay action on this essential legislation.

Therefore, I hope that not only will the Senate adopt the substitute amendment, but also that Members of the Senate will restrain themselves in any efforts to "Christmas tree" this legislation, as it is far too important to the economy to invite delays. If this substitute is adopted, I believe there should be no difficulty in coming to a rapid agreement with the House conferees as to the nature of the legislation that can be enacted in short order for submission to the President.

Mr. JACKSON. Mr. President, I rise in support of amendment No. 1303, an amendment in the nature of a substitute of H.R. 14368, the Energy Supply and Environmental Coordination Act of 1974.

The amendment proposed by the Senate Public Works Committee to the House passed measure makes a number of changes which I believe will substantially improve the bill. While important *amendments* to the Clean Air Act have been retained and perfected, a number of provisions that are redundant with other legislation have been altered or omitted.

H.R. 14368 contains a number of provisions which were originally in S. 2589, the Energy Emergency Act, which was passed twice by the Senate and vetoed by the President on March 6.

After the Senate failed to override that veto, lengthy negotiations were held between the Congress and the administration to arrive at a substitute energy emergency measure more satisfactory to all parties. In the Senate, this measure was introduced as S. 3267. In the House, the identical provisions were divided into two bills: H.R. 13834 and the present bill H.R. 14368. The bills were moved separately by the House in the interest of expediency and this same procedure is now being followed in the Senate.

Mr. President, I commend both the House and the Senate Public Works Committee for their timely and responsible action in moving this urgently needed legislation.

GRANTS-IN-AID FOR STATE GOVERNMENT

Mr. President, it has become evident that the State governments have been carrying a considerable burden in conducting energy allocations and conservation programs. This has resulted in severe drains on their treasuries. For example, under section 5(b) of the Emergency Petroleum Allocation Act:

> The President may delegate all or any portion of the authority granted to him under this Act to such officers, departments, or agencies of the United States, or to any State (or officers thereof), as he deems appropriate.

The Allocation Act does not authorize grants-in-aid to State government to support the exercise of delegated authorities. During the recently ended embargo the performance of State and local government in meeting the challenge of energy shortages was excellent.

In support of that view I would like to read to my colleagues several excerpts from the March 15, 1974 report of the Federal Trade Commission, "An Evaluation of the Mandatory Petroleum Allocation Program."

In response to the question, "How successful have been the management and administration of the allocation program?" the FTC report states:

> "One of the most important elements of the program has been the role and performance of the states. Under the regulations, the state offices are provided set-aside supplies to alleviate emergencies and hardships. In actual practice, their role has gone much beyond the original expectations. By providing basic information, by being responsive to citizen concerns, by matching supplier and purchasers, and by judiciously allocating their set-aside supplies, the states have in the main kept the program afloat. Moreover, they have filled the vacuum as the regional offices were building their organization."

Subsequently, the reports notes:

> The States have played a significant and valuable role in the allocation program, often backstopping delayed decision-making by the FEO."

Section III–E of the FTC's report details the "role of the States" in the administration of the mandatory petroleum allocation program.

Several of the findings set forth therein are particularly noteworthy:

> Under the mandatory allocation regulations, the States are responsible for allocating the State set-aside to meet emergencies and hardships and for resolving complaints from end-users. In actual practice, the States have played a very special, and much larger role during the first six weeks of the allocation program that goes far beyond what is defined by the Regulations.
>
> By matching suppliers and purchasers at all levels, by judicious use of the State set-aside, and by providing basic data on which to base FEO's response to regional imbalance in gasoline, the States have kept the allocation program afloat while FEO was building an organizational and procedural base at the Federal level. . . .
>
> The states really came to the fore in dealing with the gasoline crisis. Not only did they meet spot shortages by using the set-aside, but they also aided FEO by providing detailed information about state consumption patterns and the nature and scope of shortages within the state. In addition, the states were a major catalyst in bringing about FEO action to correct the imbalances. In states that received more fuel, distribution of the additional supplies was planned and supervised by the state allocation office. In retrospect, it is difficult to see how FEO could have responded effectively to the gasoline crisis had there not been state allocation offices. . . .
>
> In several states—for example, Massachusetts, Maryland and Iowa—the state allocation office was better prepared and more sophisticated in its operation than FEO. However, most states did not have staff and data systems in place to deal with the shortages and, as a result, had to mobilize ad hoc organizations on short notice with many of the same problems experienced by FEO though on a smaller scale.
>
> The states have played a particularly valuable role in meeting the needs of priority end-users, especially for agriculture and emergency services in rural areas and small towns. . . .
>
> . . . . there are several improvements that would enhance the strengths states now bring to the allocation program. These include: . . .
>
> . . . . the states were nearly unanimous in pointing out the need for funds to acquire the staff and systems needed for an effective state allocation program. Some consideration should be given to ensuring that the state offices resources match their responsibilities.

Although the embargo has ended, spot shortages continue and promise to worsen during the summer if energy conservation cannot be made a reality. For so long as this situation continues, the role of the States will continue to be most important. With this will continue the severe strain on State treasuries which has been imposed by the development and implementation of plans to compliment and support those of the Federal Government.

In passing the Federal Energy Administration Act the Congress enacted a second statute which has the potential to make financial demands upon the States For example section 5(a) of that act requires that the Administration shall "develop effective arrangements for the participation of State and local governments in the resolution of energy problems."

Section 7(d) states that:

> The Administrator may utilize, with their consent, the service, personnel, equipment, and facilities of Federal, State, regional, and local public agencies and instrumentation, with or without reimbursement therefor, and may transfer funds made available pursuant to this Act, to Federal, State, regional, and local public agencies and instrumentalities, as reimbursement for utilization of such services, personnel, equipment, and facilities.

Once again however, no provision is made for the appropriation of the funds

which, in my view should be granted to the States in payment for that part of the nationwide burden that they have shouldered.

In enacting the Energy Emergency Act Congress provided for the needs of the States. Section 123 authorized funds for the Administrator of the Federal Energy Emergency Administration to make grants to States for the purposes of implementing authority delegated to them, or for the administration of appropriate State or local conservation measures where exempted from Federal conservation regulations under the act.

Section 127 authorized an appropriation to the Federal Energy Emergency Agency to carry out its functions and to make grants to States under section 123, of $75 million for each of the fiscal years 1974 and 1975. In addition for the purpose of making payments under grants to States to carry out energy conservation measures, $50 million was authorized to be appropriated for fiscal year 1974 and $75 million authorized to be appropriated for fiscal year 1975. Also, for the purpose of making payments to States for unemployment assistance, $500 million was authorized to be appropriated for fiscal year 1974.

This funding authority was annulled by the President in his veto of the emergency bill.

These same provisions are retained in S. 3267 which I am confident we shall soon pass. However, we are here concerned with ongoing programs, ones which have been in effect for over 5 months; ones that are making a vital contribution, ones which must continue.

As the FTC report notes, by the end of February 40 States were experiencing problems in their energy programs due to funding shortages. There is every indication that the situation has worsened. State budgets cannot stand the strain. We are confronted with a choice between supporting proven, effective, in place programs and thus ensuring their continuance and that of seeing them terminated. If we choose the latter, we are opting for control of local problems by a Washington bureaucracy. I do not believe such to be efficient, effective, or desirable.

I had intended to call upon my colleagues to support an amendment, H.R. 14368, to insure the expeditious channeling of funds to where they may be most effectively expended. In the interest of expeditious action on this measure, however, I will not offer the amendment at this time, but will propose language in conference committee to provide grants-in-aid to State government.

Mr. President, I ask unanimous consent that extracts from the FTC report and an FEO report on State programs be inserted at this point in the RECORD.

The PRESIDING OFFICER. There being no objection, the articles were ordered to be printed in the RECORD, as follows:

(Staff report to the Federal Trade Commission, March 15, 1974)

AN EVALUATION OF THE MANDATORY PETROLEUM ALLOCATION PROGRAM, JANUARY 15 TO FEBRUARY 28, 1974

E. THE ROLE OF THE STATES

Under the mandatory allocation regulations, the States are responsible for allocating the State set-aside to meet emergencies and hardships and for resolving complaints from end-users. In actual practice, the States have played a very special, and much larger role during the first six weeks of the allocation program that goes far beyond what is defined by the Regulations.

By matching suppliers and purchasers at all levels, by judicious use of the State set-aside, and by providing basic data on which to base FEO's response to regional imbalances in gasoline, the States have kept the allocation program afloat while FEO was building an organizational and procedural base at the federal level.

Based on the FTC sample case analysis, the products involved in allocation cases at the state level are heating oil, diesel fuel and other middle distillates which account for over 60% of state cases in the FTC sample, and gasoline which accounted for over 36% of the total. These figures should be reversed during the summer months as gasoline consumption increases and the use of #2 oil for heating tapers off.

As would be expected, the overwhelming majority of state cases involve use of the State set-aside. However, nearly 10% of the FTC sample cases were considered "assignment of supplier" cases by the states which, in fact, do not have the *de jure* authority to perform this function under the federal allocation Regulations. In fact, states appear to be performing this function on at least an informal basis much more frequently than the 10% figure suggests.

As mentioned earlier in this chapter, the states generally move much faster than FEO in resolving cases. This should be expected since most state cases are emergency and hardship cases in which fast action is required. In addition, there is generally less paperwork required or used at the state level. The other side of this is that states generally do not do as well as FEO in recording either the allocation decisions made or why they were made. FTC field teams noted the lack of explicit criteria for use of the State set-aside in 15 states and reported that 9 of the 50 states do not even have systems that permit them to keep track of the rate at which the State set-aside is used. On balance, however, the quick action of states in meeting emergency needs appears to have been crucial in maintaining public confidence and reducing panic buying.

The most frequently mentioned problems at the state level concern relations with FEO and suppliers. For example, 18 states reported considerable difficulty in obtaining compliance by suppliers with State set-aside allocation orders—a potentially serious problem when emergency and hardship needs are involved. Interviews with state officials and/or company representatives indicate that these difficulties arise principally from two sources: local distributors affiliated with larger oil companies have been seeking approval from corporate officials before complying with state directives which delays delivery of the needed supplies, sometimes for days. In addition, there have been instances in which state directives prove to be confusing in regard to what is to be delivered and where it is to be delivered.

With respect to FEO, 28 states complained about FEO's failure to inform them of FEO decisions affecting suppliers and purchasers in the state. (See chart, next page.) An even more common problem was the need to use the State set-aside to supply petitioners who have sought FEO help and not yet obtained it. Nearly 75% of the states—37 of the 50—cited this as an important problem. In general, states experienced the same confusion and frustration in dealing with FEO as did suppliers and wholesale purchasers.

The states really came to the fore in dealing with the gasoline crisis. Not only did they meet spot shortages by using the set-aside, but they also aided FEO by providing detailed information about state consumption patterns and the nature and scope of shortages within the state. In addition, the states were a major catalyst in bringing about FEO action to correct the imbalances. In states that received more fuel, distribution of the additional supplies was planned and supervised by the state allocation office. In retrospect, it is difficult to see how FEO could have responded effectively to the gasoline crisis had there not been state allocation offices.

COMMON STATE OFFICE PROBLEMS—PROBLEM CATEGORIES BY FEO REGIONS

MANAGEMENT PROBLEMS

National FEO operations

Contact with National FEO (Delta, Training, Interpretations Policy):

Region I: None.

Region II: None.

Region III: Pennsylvania, West Virginia, Maryland, District of Columbia.

Region IV: North Carolina.

Region V: Michigan, Illinois, Wisconsin, Minnesota, Indiana, Ohio.

Region VI: Texas, New Mexico.

Region VII: Nebraska, Missouri.

Region VIII: Montana, North Dakota, South Dakota, Colorado, Utah.

Region IX: Arizona.

Region X: None.

Total States: 21.

Regional FEO operations

Data, Training, Interpretations, Policy:

Region I: Maine, Vermont.

Region II: New York.

Region III: Pennsylvania, Delaware, Virginia, West Virginia, Maryland, District of Columbia.

Region IV: North Carolina, Georgia, Alabama, Mississippi, Tennessee, Kentucky.

Region V: Michigan, Illinois, Wisconsin, Minnesota, Indiana, Ohio.

Region VI: Texas, Louisiana, New Mexico.

Region VII: Nebraska, Kansas.

Region VIII: Wyoming, North Dakota, South Dakota, Utah.

Region IX: Arizona, Hawaii.

Region X: Washington, Oregon.

Total States: 34.

Feedback on Case Resolutions:

Region I: None.

Region II: New York.

Region III: Pennsylvania, Delaware, West Virginia, Maryland, District of Columbia.

Region IV: North Carolina, South Carolina, Georgia, Alabama, Mississippi, Tennessee, Kentucky.

Region V: Michigan, Illinois, Wisconsin, Minnesota.

Region VI: Texas, Louisiana, Oklahoma, New Mexico.

Region VII: Nebraska, Missouri.

Region VIII: Wyoming, North Dakota, South Dakota, Utah.

Region IX: Arizona.

Region X: None.

Total States: 28.

Delay in Processing Petitions Causing Interim State Set-Aside Use:

Region I: Maine, New Hampshire, Massachusetts, Connecticut.

Region II: New York, New Jersey.

Region III: Delaware, Virginia, Maryland, District of Columbia.

Region IV: North Carolina, South Carolina, Tennessee.

Region V: Michigan, Illinois, Minnesota, Indiana, Ohio.

Region VI: Texas, Louisiana, Arkansas, Oklahoma, New Mexico.

Region VII: Iowa, Nebraska, Missouri.

Region VIII: Wyoming, North Dakota, South Dakota, Colorado, Utah.

Region IX: California, Nevada, Arizona, Hawaii.

Region X: Washington, Idaho.

Total States: 37.

State operations

Funding and/or Staffing:

Region I: Maine, New Hampshire, Rhode Island, Massachusetts, Connecticut.

Region II: New York, New Jersey.
Region III: Delaware, Virginia, West Virginia, Maryland, District of Columbia.
Region IV: North Carolina, South Carolina, Florida, Alabama, Mississippi, Tennessee, Kentucky.
Region V: Illinois, Minnesota, Indiana, Ohio.
Region VI: Texas, Louisiana, Arkansas, New Mexico.
Region VII: Iowa, Nebraska, Missouri, Kansas.
Region VIII: Wyoming, North Dakota, Colorado, Utah.
Region IX: California, Nevada, Hawaii.
Region X: Washington, Alaska.
Total States: 40.
Use of State Set-Aside:
Region I: None.
Region II: None.
Region III: None.
Region IV: None.
Region V: None.
Region VI: None.
Region VII: None.
Region VIII: None.
Region IX: None.
Region X: None.
1. Supplier Delay in Providing Set-Aside:
Region I: Maine, New Hampshire, Vermont.
Region II: None.
Region III: Pennsylvania, District of Columbia.
Region IV: None.
Region V: Illinois, Minnesota, Indiana.
Region VI: Texas, Louisiana, Arkansas, New Mexico.
Region VII: Missouri.
Region VIII: Wyoming, North Dakota.
Region IX: Hawaii.
Region X: Washington, Oregon.
Total States: 18.
2. Lack of Specific Criteria for Allocating Set-Aside:
Region I: Connecticut.
Region II: New York.
Region III: Pennsylvania, Virginia.
Region IV: Georgia, Mississippi.
Region V: Illiniois, Indiana.
Region VI: Texas, New Mexico.
Region VII: None.
Region VIII: Wyoming, South Dakota, Utah.
Region IX: Arizona.
Region X: Idaho.
Total States: 15.
3. Lack of Adequate Accounting System in Using Set-Aside:
Region I: None.
Region II: None.
Region III: None.
Region IV: Mississippi.
Region V: None.
Region VI: Texas, Arkansas, New Mexico.
Region VII: Missouri, Kansas.
Region VIII: Utah.
Region IX: California, Nevada.
Region X: None.
Total States: 9.

GENERAL PROBLEMS

Liaison with Federal Allocation Officers:
Region I: None.
Region II: None.
Region III: Delaware, District of Columbia.
Region IV: Kentucky.
Region V: Michigan, Illinois, Minnesota, Ohio.
Region VI: Texas, Louisiana, Arkansas, New Mexico.
Region VII: None.
Region VIII: North Dakota, South Dakota.
Region IX: Hawaii.
Region X: Washington, Alaska, Oregon, Idaho.
Total States: 18.
Authority to Enforce Allocation Orders:
Region I: None.
Region II: None.
Region III: None.
Region IV: None.
Region V: Michigan, Illinois.
Region VI: Texas, Louisiana, Arkansas, New Mexico.
Region VII: Missouri.
Region VIII: South Dakota.
Region IX: Arizona.
Region X: None.
Total States: 9.
Unrealistic 1972 Base Period:
Region I: None.
Region II: None.
Region III: Pennsylvania.
Region IV: None.
Region V: Minnesota.
Region VI: None.
Region VII: None.
Region VIII: None.
Region IX: Arizona, Hawaii.
Region X: Idaho.
Total States: 5.
Priority End-Users Competing with Non-Priority End-Users at Retail Gasoline Stations:
Region I: Maine, Vermont, Connecticut.
Region II: New York, New Jersey.
Region III: Delaware, Virginia, West Virginia, Maryland, District of Columbia.
Region IV: North Carolina, South Carolina, Florida, Alabama, Tennessee.
Region V: Indiana.
Region VI: Louisiana.
Region VII: Missouri.
Region VIII: Wyoming, Colorado.
Region IX: California, Nevada, Arizona, Hawaii:
Region X: None.
Total States: 24.

In several states—for example, Massachusetts, Maryland and Iowa—the state allocation office was better prepared and more sophisticated in its operation than FEO. However, most states did not have staff and data systems in place to deal with the shortages and, as a result, had to mobilize *ad hoc* organizations on short notice with many of the same problems experienced by FEO though on a smaller scale.

The states have played a particularly valuable role in meeting the needs of priority end-users, especially for agriculture and emergency services in rural areas and small towns. This can be further seen from a comparison of state and regional cases in the FTC sample which shows that a high proportion of state cases involve high priority end-uses. Figures which reflect this are as follows:

	Percent of cases in FTC sample	
	States	FEO regions
Agricultural production	17.1	15.9
Transportation services	12.4	12.7
Space heating	21.6	10.5
Industrial and manufacturing	9.0	10.3
Total high priority	60.1	49.4

Prior to February 1, each state was assigned a Federal Allocation Officer (FAO) who was usually stationed in the state capital in close proximity to the State Office of Petroleum Allocation. While a number of these people have since returned to their former agencies and it appears that the FAO concept has been dropped, this position deserves further consideration. Where conditions were right—a skilled, active FAO stationed close to the State Office—the FAO proved invaluable to the States in providing liaison with the Federal Energy Office regional staff.

At the same time, there are several improvements that would enhance the strengths states now bring to the allocation program. These include:

Most states need better systems for forward planning in energy distribution and consumption. All but the most sophisticated state allocation offices experienced some difficulty in carrying out the greatly expanded role they were asked to play in FEO's efforts to correct regional imbalances in gasoline.

Again, except for a few cases such as Massachusetts, Iowa, and Maryland, states could use assistance in establishing a means for monitoring use of the State set-aside.

Consideration should be given to structuring a formal role for State Offices in monitoring the adequacy of the petroleum distribution system to ensure that rural areas and small towns do not suffer shortages as they did during February.

Improved systems for communicating with the FEO regional office would go a long way toward alleviating those problems that have existed between FEO and the states when FEO takes an action concerning an end-user or supplier in the state.

Finally, the states were nearly unanimous in pointing out the need for funds to acquire the staff and systems needed for an effective state allocation program. Some consideration should be given to ensuring that the state offices resources match their responsibilities.

FEDERAL ENERGY OFFICE, OFFICE OF ENERGY CONSERVATION—STATE GOVERNMENT ENERGY CONSERVATION STATUS REPORT FEBRUARY 1974

State and Governor	State gasoline "rationing" plan			State plan to ration in future?	State energy conservation plan in effect?	Current speed limits (P/E)[1]	Other conservation measures, State Agency Carpooling plan (SAC)
	Mandatory	Voluntary	Local				
Alabama, George Wallace			None	No plans	Yes	70 mph Inst	(SAC) and statewide energy conference on Mar. 12.
Alaska, William Egan			do	do	Yes	50 mph P and E	(SAC) and compact fleet cars, conservation media campaign.
Arizona, John Williams			do	Standby	Yes, late February	55 mph posted	(SAC) and minibus mass transit plans for Phoenix.
Arkansas, Dale Bumpers			do	No plans	Yes	55 mph P and E	(SAC) and compact fleet cars, conservation publications.
California, Ronald Reagan			Yes on counties		Not presently	do	(SAC) and compact fleet cars, conservation media campaign.
Colorado, J. Vanderhoof			None	No plans	Not presently (planning)	do	(SAC) and compacts and mass transit and media campaign.
Connecticut, Thomas Meskill			Yes on counties		Not presently	50 mph P; 55 mph E	Do.
Delaware, Sherman Tribbitt	Yes				do	55 mph P and E	(SAC) and compacts and mass transit and conservation seminar (March.)
Florida, Reuben Askew			Yes on counties		do	do	(SAC) and media campaign and regional conservation seminars.
Georgia, Jimmy Carter			None	Standby (April)	Yes, late February	do	(SAC) and mass transit (Atlanta), media campaign.

State and Governor	State gasoline "rationing" plan: Mandatory	Voluntary	Local	State plan to ration in future?	State energy conservation plan in effect?	Current speed limits (P/E)[1]	Other conservation measures, State Agency Carpooling plan (SAC)
Hawaii, John Burns[2]	Yes				Not presently (planning)	do	(SAC) and compacts and mass transit and media campaign.
Idaho, Cecil Andrus			None	No plans	do	do	(SAC) and compact fleet cars, media campaign.
Illinois, Daniel Walker			Yes in Chicago	Minimum dollar purchase plan.	Not presently	do	(SAC) and compact fleet cars, conservation seminars held.
Indiana, Dr. Otis Bowen			None	No plans	Yes	do	(SAC) and Indy-mass transit, media campaign and compacts.
Iowa, Robert Ray			do	do	Not presently	do	(SAC) and compact fleet cars, media campaign and seminars.
Kansas, Robert Docking			do	do	do	70 mph P and E	(SAC) and conservation seminars.
Kentucky, Wendell Ford			Yes on cities		do	55 mph P and E	(SAC) and compact fleet cars, media campaign and seminars.
Louisiana, Edwin Edwards			None	No plans	do	do	(SAC) and compact fleet cars.
Maine, Kenneth Curtis			do	do	Yes	55 Intst.; 50 other	(SAC) and compact fleet cars, media campaign and seminars.
Maryland, Marvin Mandel	Yes				Not presently	55 mph P and E	(SAC) and mass transit plans, conservation media and seminars.
New Mexico, Bruce King			None	Standby	Yes	do	(SAC) and compacts and mass transit and media campaign.
New York, Malcolm Wilson	Yes				Yes	do	(SAC) and compacts and media campaign and conservation seminars.
North Carolina, James Holshouser		Yes			Not presently	do	(SAC) and compacts and mass transit plans and seminars.
North Dakota, Arthur Link			None	No plans	do	do	(SAC) and compacts and mass transit plans.
Ohio, John Gilligan			None	do	Yes	70 Intst.; 60 other	(SAC) and conservation campaign.
Oklahoma, David Hall			None	do	Yes	55 mph P and E	(SAC) and compacts and mass transit, media and seminars.
Oregon, Thomas McCall		Yes		Model, odd/even ration plan.	Yes	do	Do.
Pennsylvania, Milton Shapp		Yes			Not presently	do	Do.
Rhode Island, Philip Noel		Yes			Yes	50 mph P and E	Do.
South Carolina, John West		Yes			Yes	55 mph P and E	(SAC) and media campaign, mass transit and seminars.
Massachusetts, Francis Sargent		Yes			Yes	do	(SAC) and compact fleet cars, mass transit and media campaign.
Michigan, William Milliken			None	Standby planned	Not presently	70 Intst. (in legislation.)	(SAC) and compact fleet cars, transit, media and seminars.
Minnesota, Wendell Anderson			do	No plans	Yes	55 mph, voluntary	(SAC) and compacts and mass transit and media campaign.
Mississippi, William Waller			do	do	Not presently	70 Intst.; 65 other	(SAC) and compacts and media campaign and local seminars.
Missouri, Christopher Bond			do	Standby planned	do	55 mph P and E	(SAC) and compacts and mass transit media campaigns.
Montana, Thomas Judge			do	No plans	do	No limit day/65 p.m.	(SAC) and compact fleet cars, mass transit and media campaign.
Nebraska, J. James Exon			Yes on cities	Minimum dollar purchase plan.	do	75 Intst. 65 other	(SAC) and compacts and mass transit and media campaigns.
Nevada, M. O'Callaghan			None	No plans	Yes	55 mph, voluntary	(SAC) and compacts and mass transit and conservation seminars.
New Hampshire, Mel Thompson		Yes			Not presently	55 mph P and E	(SAC) and compacts and media campaign and seminars.
New Jersey, Brendan Byrne	Yes				do	do	(SAC) and mass transit plans, conservation seminars.
South Dakota, Richard Kneip			None	No plans	Not presently	do	(SAC) and compacts and media campaign and seminar.
Tennessee, Winfield Dunn			do	do	Yes	75 Intst. 65 other	Do.
Texas, Dolph Briscoe			do	do	Yes	55 mph P and E	(SAC) and compact fleet cars.
Utah, Calvin Rampton			do	do	Not presently	do	(SAC) and mass transit plans.
Vermont, Thomas Salmon		Yes			do	do	(SAC) and compact and media campaigns and seminars.
Virginia, Mills Godwin	Yes				Yes	do	(SAC) and media campaigns.
Washington, Daniel Evans		Yes			Not presently	do	(SAC) and compacts and mass transit and media campaign.
West Virginia, Arch Moore			Yes on counties		do	do	(SAC) and media campaign, regional seminars.
Wisconsin, Patrick Lucey			None	No plans	Yes	do	(SAC) and compact fleet cars, conservation media campaign.
Wyoming, Stanley Hathaway			do	do	Not presently	do	(SAC).

[1] P—posted; E—enforced.
[2] Acting Governor Aryoshi.

Note: Survey conducted Feb. 14–19, 1974, by Office of Energy Conservation—State and local programs.

ENERGY INFORMATION

Mr. JACKSON. Mr. President, H.R. 14368, as it passed the House, included several provisions dealing with the collection and dissemination of information by the Federal Energy Administrator.

These provisions were intended to supplement the authority conferred on the Administrator by the Federal Energy Administration Act of 1974. However, because the FEA act was still being considered by Congress while H.R. 14368 was before the House, the energy information provisions of H.R. 14368 could not be properly meshed with the final language of the FEA act.

In light of the fact that the FEA act, including substantial energy information provisions, has now become law, enactment of much of the language on this subject in H.R. 14368 is no longer necessary. In fact, adoption of some of the provisions of H.R. 14368—such as those providing subpena powers—would only duplicate authority already conferred by the FEA act.

There are, however, two provisions of H.R. 14368 relating to energy information which constitute substantive additions to the requirements of the FEA act. One of these provisions requires the Administrator to prepare quarterly reports providing information on such subjects as imports, reserves, production, inventories, and refinery runs. The other makes clear that there is no legal barrier to access by Congress to the information collected or received by the Administrator.

Because the Public Works Committee did not include the House-passed energy information sections in its substitute, I had considered offering an amendment to the substitute to add these two significant provisions.

In the interest of early action on this measure I will not offer this amendment. The conferees on the bill will have full latitude and authority to insure that there is no duplication between section 11 of the House-passed bill and the information provisions of the recently enacted Federal Energy Administration Act.

Mr. President, I ask unanimous consent that the text of both amendments be printed in the RECORD as a part of the legislative history on this measure.

The PRESIDING OFFICER. There being no objection, the amendments were ordered to be printed in the RECORD, as follows:

On page , line , insert the following: Add a new Section at the end of the bill as follows:

"GRANTS TO STATE GOVERNMENTS

"SEC. (a) There are authorized to be appropriated to the Administrator of the Federal Energy Administration for the purpose of making payments as grants to states, $30,000,000 for the fiscal year 1974 and $60,000,000 for the fiscal year 1975, such sums to remain available until expended.

"(b) Such grants to states shall be made for the exercise of those authorities dele-

gated to any state (or officer thereof) under the Emergency Petroleum Allocation Act of 1973; for the fulfillment of any role which the Administrator delineates that state governments will perform in achieving the purposes of the Federal Energy Administration Act of 1974, or for the administration of state or local energy conservation programs."

Amendment to amend the Amendment in the Nature of a Substitute for H.R. 14368 by adding a new Section 10, as follows:

"Sec. 10—Energy Information Reports.

Section 15 of the Federal Energy Administration Act of 1974 is amended by adding at the end of subsection (e) a new subsection (f), as follows:

(f) In addition to other reports required by this Act, the Administrator shall prepare and publish for each calendar quarter beginning with the first complete calendar quarter following the date of enactment of this section a report containing such statistical and economic analysis, data, information, reports, and summaries of energy information obtained by him, which are necessary to keep the public fully and currently informed as to the nature, extent, and projected duration of shortages of energy supplies, the impact of such shortages, and the steps being taken to minimize such impacts, and such report shall include the following data:

(A) Imports of crude oil, residual fuel oil, refined petroleum products (by product), natural gas, and coal, identifying country of origin, arrival point, quantity received, and, where practicable, the geographic distribution within the United States. (B) Domestic reserves and production of crude oil, natural gas, and coal.

(C) Refinery activities, showing for each refinery within the United States (i) the amounts of crude oil run by such refinery, (ii) amounts of crude oil allocated to such refinery pursuant to regulations and orders of the Federal Energy Administrator or of any other person authorized to issue regulations and orders with respect to the allocation of crude oil, (iii) percentage of refinery capacity utilized, and (iv) products refined from such crude oil.

(D) Inventories on a national, regional, and State-by-State basis, of refined petroleum products by product.

(E) Production of refined petroleum products by product during the preceding calendar quarter preceding such report, anticipated production of refined petroleum products by product during the succeeding calendar quarter following such report, and any anticipated excess or shortfall of refined petroleum products by product during such succeeding calendar quarter."

Section 14 of the Federal Energy Administration Act of 1974 is amended by adding at the end of subsection (c) a new subsection (d), as follows:

"(d) Notwithstanding any other provisions of law, energy information collected and received by the Administrator may be disclosed to the Congress, or any Committee of Congress, upon request of the Chairman."

Mr. JACKSON. Mr. President, I ask unanimous consent that James Barnes, Lucille Langley, and William Van Ness have the privilege of the floor during the consideration of the pending matter.

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

Mr. McCLURE. Mr. President, I ask unananimous consent that Mike Hathaway of my staff be accorded the privilege of the floor at all stages of the proceedings on the pending bill.

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

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

Mr. BUCKLEY. I yield.

Mr. McCLURE. Mr. President, one question has been raised which I think demands a little more analysis than has been given it. I do not intend at this time to do any more than raise the question and point to the fact that there may ultimately be further legislative debate and perhaps legislative resolution of a problem which was first raised by the Senator from Maine (Mr. MUSKIE) as he dealt with the question of environmental impact statement requirements by the Administrator of the Environmental Protection Agency.

Senator MUSKIE says that the legislative history is abundantly clear that this is present law. It well may be that the courts would find that to be true, or it may well be that the courts might disagree with that finding. If the latter be the case, this is not a restatement of the law but a creation of statute.

Rather than simply pass it by at this time without comment, I think some question should be raised as to whether or not the Environmental Protection Agency in every instance should operate outside the law which applies to all other Federal agencies, requiring them to file an impact statement. The National Environmental Policy Act very definitely has a careful balance written into the statute requiring several different factors to be considered in any Federal decision, and the impact statement that is required of other Federal agencies requires a balancing of those factors in the statement and discussion of that balance in the promulgation of the statement.

The Senator from Maine is quite correct that there are times when decisions required of the administrator by the statute are not sufficiently long to give him the opportunity to develop an environmental impact statement within the time frame required by the statutes. It is very true. It is equally true of all other administrative agencies which must meet the requirements of the impact statement law. It is also suggested that it would subject the Administrator's decisions to prolonged litigation, and this is possibly true. That is equally true of other administrative agencies.

While I do not intend at this time to attempt to change the language that has been inserted in this measure, because I think it needs a more thoughtful and lengthy discussion than we would give it today, I do think the question ultimately will have to be resolved by Congress, after a full debate of the extent to which the Administrator of the Environmental Protection Agency should be exempted from a law which applies to every other Federal Administrator but, under this language, not to him.

I believe that the balancing of public discussion that is required in the development of the impact statement in many, if not most—if not all—of the Administrator's decisions would be in the public interest, even though it might at times make it more difficult for the Administrator to arrive at a decision.

I take this time—and I thank the Senator from New York for yielding this time to me—only to raise the issue as a subject for continuing discussion and perhaps ultimate resolution; because I believe a serious fundamental question which has been raised, which ought to have a full discussion and final decision by Congress.

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

Mr. BUCKLEY. I yield.

Mr. MUSKIE. I understand that we have been making a record on this question.

Let me make the point, as the originator of the environmental impact statement, as the author of it, as the prime force in having the requirement to prepare an environmental impact statement included in the National Environmental Policy Act, as to what its intention was.

It was our intention to inject into the decisionmaking of mission-oriented agencies environmental values that were not previously taken into account. In the discussion of this proposal—which I repeat was mine—we developed phraseology to distinguish between two categories of agencies: we referred to the agencies to be covered as environmental impact agencies and the agencies to be excluded as environmental protection agencies. the courts understood that.

For example, in International Harvester against Ruckelshaus, which was decided in the District of Columbia Circuit, on February 10, 1973, the court said this and it captures the essence of the legislative intent right on the nose:

> Although we do not reach the question whether EPA is automatically and completely exempt from NEPA, we see little need in requiring a NEPA statement from an agency whose raison d'etre is the protection of the environment and whose decision on suspension is necessarily infused with the environmental considerations so pertinent to Congress in designing the statutory framework. To require a "statement" in addition to a decision setting forth the same consideration, would be a legalism carried to the extreme.

I would like to be able to persuade the distinguished Senator from Idaho and the distinguised Senator from New York to my point of view, but I make the limited point on which I hope the Senators would agree. That point is that the environmental laws written since NEPA was written were developed on the basis of an assumption that NEPA did not apply. Thus, we wrote into the laws many specific regulatory requirements and deadlines that did not take into account the potential delay that would be cranked in by a NEPA application or values that might be cranked in that were not reflected in the standard setting procedures of the environmental law.

If we want to undo and crank in NEPA, what we would need is a thorough committee review in both Houses as to the impact, in specific detail, on environmental laws.

When one looks at the list of current and future rulemaking actions possibly affected I think the point is clear.

Mr. President, I ask unanimous consent to have printed in the RECORD a list of current and future rulemaking actions possibly affected by this decision.

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

CURRENT AND FUTURE RULEMAKING ACTIONS POSSIBLY AFFECTED BY EIS PROVISION

AIR

1. SIP variances from fuel/sulfur regulations.
2. SIP revisions to implement Clean Fuels Policy.
3. Transportation control plans.
4. Complex source review regulations.
5. New source performance standards:

Group II: Asphalt plants, petroleum refineries, petroleum storage tanks, iron and steel (basic oxygen furnaces), sewage sludge incinerators, brass and bronze, and secondary lead smelters

Group IIA: Primary copper, lead, and zinc smelters.

Group III: Aluminum reduction, ferro-alloy plants, kraft pulp mills, iron and steel (electric furnaces), phosphate fertilizer plants, and stationary gas turbines.

6. Lead additive regulations (to limit lead content of leaded grades).
7. Approval of SIPs to implement secondary standards for particulate matter.
8. Supplementary control systems regulations.
9. Regulations to prevent significant deterioration.

Mr. MUSKIE. I will not give a complete recital of the list at this time but I have placed it in the RECORD for the perusal of Senators.

Mr. McCLURE. Mr. President, will the Senator yield further?

Mr. BUCKLEY. I yield.

Mr. McCLURE. The thing that concerns me is whether or not the balance that is written into the National Environmental Policy Act is also a balance which is always followed at EPA in their decisions.

Mr. MUSKIE. Mr. President, if the Senator will yield, on one point clearly it is not and that is the underlying basis of the Clean Air Act. We said in the Clean Air Act that health and health alone shall dictate the primary air quality standards; that neither economic nor technological considerations should compromise those standards. How rapidly that should be achieved is a compromisable issue but on the standards the entire Congress said that the health basis shall be the only basis. If NEPA applies, presumably that basis could be followed.

Mr. McCLURE. I did not raise the point of whether NEPA had a balancing requirement with respect to the Clean Air Act, but under other acts—

Mr. MUSKIE. I just said with respect to the clean air standards Congress itself did not compromise health considerations by economic or technological considerations, and that was clear. Nobody was fooled by it; that was clear.

Mr. McCLURE. I do not argue that point with the Senator from Maine. I think that is obvious.

Mr. MUSKIE. That is the heart of my point.

Mr. McCLURE. The question is whether or not the Environmental Protection Agency should be exempted from filing impact statements in the broad range of the subjects and not just the Clean Air Act.

Mr. MUSKIE. The question is the same. NEPA was designed to insure that mission-oriented decisions like those of the Atomic Energy Commission must take into account environmental considerations. NEPA was not designed in the view of one of its authors, namely, me, to enable the Atomic Energy Commission to compromise environmental standards set by the Environmental Protection Agency. It is that simple. If Congress decides that the Atomic Energy Commission, or the Corps of Engineers, or other mission-oriented agencies should have the right and power to compromise environmental values, that certainly is the prerogative of Congress.

What I object to is to see that result achieved through the backdoor and nonlegislative means.

Mr. McCLURE. Let us make a distinction here and it needs to be made because apparently I have not made myself understood. I do not quarrel with the fact that Congress has set standards in the Air Quality Act. There is no question about that. The question I have is the implication of a statement or a policy that the Environmental Protection Agency does not have to balance factors where they are mandated by Congress, because the National Environmental Policy Act said they must be balanced.

Mr. MUSKIE. That question depends on whether NEPA applies to EPA, and on that the Senator and I disagree.

Mr. McCLURE. That is the point I am trying to make: Not the air quality standards set by Congress, but the balancing requirements of the National Environmental Policy Act which many people feel are not being adequately carried out by the decisions of the Environmental Protection Agency.

The question does not come at this time whether the goals of the Air Quality Act should be compromised. The question is: Absent those goals and standards mandated by Congress, the Environmental Protection Agency should reach a balanced judgment.

Mr. MUSKIE. That is my point. What is the Senator going to balance the health standards against? The Senator is talking about balancing as though those values would be balanced against some unknown.

The people who want to achieve this balancing judgment by imposing NEPA on EPA want to compromise those environmental values by forcing the agency to take into account values Congress has already taken into account and decided in favor of the environmental values.

What is the purpose of the balancing exercise in the name of health standards? What is the purpose? Is it to protect them?

Mr. McCLURE. I would say that the Senator is focused on the Air Quality Act.

Mr. MUSKIE. It is as good an illustration as any of what I am talking about.

Mr. McCLURE. It is not because Congress set those standards in that instance. It said, "Do not balance it; apply these standards." But Congress did not in every environmental field say, "Ignore balance." It specifically said to apply balance except where Congress specifically provided otherwise, as we did in the Air Quality Act.

The development of the environmental impact statement is the guarantee of public input and discussion that will bring about the balance Congress required in the Environmental Policy Act.

Mr. MUSKIE. It really is not quite that simple. First, this amendment applies only to the Clean Air Act.

Mr. McCLURE. That is correct.

Mr. MUSKIE. Second, with respect to the Clean Water Act Congress legislated a clarification of the application of NEPA to the Clean Water Act and the intent is that the regulatory functions of NEPA with regard to water pollution are not covered by NEPA.

With respect to air, the health basis is simply the underlying philosophy but it is translated across the board—with respect to the automobile stationary forces, implementation plans of the States—and in each case addition of the balancing judgment required by NEPA means other agencies not concerned with the environment should have the opportunity to dilute the philosophy of the Clean Air Act, as reflected in the standards set under that act. I tried to use a simple illustration, which I think is pertinent, but I am happy to get into the more complex standard-setting procedures of EPA; but they are the same as what the courts have held insofar as the courts have spoken on it.

Mr. McCLURE. Either the Senator misses my point or he does not want to debate my point.

Mr. MUSKIE. I see the Senator's point. The Senator does not see my explanation.

Mr. McCLURE. The Senator's explanation is tied to the Clean Air Act.

Mr. MUSKIE. Yes.

Mr. McCLURE. Would the Senator permit me to make my statement? I would appreciate that. I thank him for his courtesy.

The question is not involved with the standards set under the Clean Air Act, because the Congress has mandated them, and I know the amendment we are dealing with here today should deal only with the Clean Air Act. That is why I am not attempting to go into any change in the amendment that is adopted in the bill. But the statement of the Senator from Maine goes far beyond this amendment and he has said that the Environmental Protection Agency should be exempted from the balancing that is required of all other agencies, and I am saying that the Environmental Policy Act requires that balancing. We start off with a fundamental disagreement or misunderstanding, perhaps, of what the environment is.

We debated this in the Interior and Insular Affairs Committee, of which the Senator from New York and I are both members, for hours on end in trying to adopt a definition of the term "environment," because there are people who have a narrow definition of the term "environment" that excludes all economic, social, and political considerations that go into the entire environment of a person in this country. One cannot ignore part of it without in some way damaging the environment in which people live.

What good does it do for us to have

clean air and clean water for people who are starving to death or freezing? There is a balancing that is required in some of these decisions, and what I am suggesting is that Congress recognize that at the time the National Environmental Policy Act was adopted, it inserted into the Environmental Policy Act the consideration of factors broad enough, much broader, I believe, than some people have suggested that the term "environment" embraces.

There are those who believe, apparently, that the only thing in the environment that is worth protecting is what God put in it. I would suggest that there are many things that man put in it that are worthy of protection as well. Man has made it possible for men and women to live better than animals and make them less subject to the forces of nature, and those things are worthwhile and they are worth protecting, and the National Environment Policy Act recognizes that from that necessity. I do not think the Environmental Protection Agency should be exempted from the principle that applies to every other agency, to determine whether or not they have made a proper evaluation of the tradeoffs that are required in these decisions.

Again, I would say I know this amendment in the bill applies only sc far as the Clean Air Act is concerned. I take this time only so that I do not want this discussion to assume that I accept this rationale as being applicable to every decision made by the Environmental Protection Agency, because I believe we are running into a great deal of trouble because of that very narrow, limited interpretation of the word "environment," and the very narrow and limited interpretation of the responsibility of the Environmental Protection Agency.

I think it is an important fact which the Congress must sometime at least confront—that the Environmental Protection Agency is not God Almighty, that the Environmental Protection Agency has at times put blinders on in ignoring some of the factors which Congress directed it should consider, and I think the environmental impact statement should be directed toward those broad considerations in a manner which would not interfere with the ability to make decisions by the Environmental Protection Agency which would in the long run best be served by that policy, and certainly as the public, the people of the country who live here in this total environment, would best be served by that interpretation of the Act.

I am quite sure, despite statements that have been made that court decisions always find the other way, there are court decisions that have found that the Environmental Protection Agency must make that balanced finding and that the decisions that the Environmental Protection Agency makes are sometimes indeed major Federal decisions which require an impact statement as required by the NEPA Act itself.

I thank the Senator again for yielding this time.

Mr. BUCKLEY. Mr. President, I think the colloquy we have just listened to is an enormously useful one. I think it touches a subject that must be studied at great length at an appropriate time.

I must confess that I do not share the distinguished Senator from Maine's apprehensions as to the effect of the House Appropriations Committee action. As I read that statute, it does not in any degree change existing law, though; to the extent that NEPA impacts on EPA, there has been no change whatever; therefore, curative amendments are not required. But I do believe the NEPA procedure requires a check list, as it were, that is enormously useful, and it is one that I believe from time to time the EPA could have availed itself of with great benefit to all concerned.

But I do agree that what we are discussing here affects only the Clean Air Act, and I do hope that at some later time we might have a chance, in a review of the NEPA legislation, to have the opportunity to explore further whether or not environmental needs, broadly defined, would not be better served by bringing EPA under the overall umbrella of requiring impact statements.

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

Mr. BUCKLEY. I yield.

Mr. MUSKIE. I would like to make the point which I made in my opening statement, that adoption of this amendment would not prohibit Mr. Train from filing "voluntary" statements which he has announced he will file, but it would prohibit the imposition of mandatory requirements which would have the effect, conceivably, of upsetting statutory EPA procedures.

So, as I understand what the Senator is saying, it seems to me this amendment is consistent with his view of what ought to be done if Mr. Train follows through on the "voluntary" statements.

Mr. BUCKLEY. I thank the Senator from Maine for that clarification. He does, of course, state the intent of his amendment—that it does not preclude voluntary compliance.

I would say that one thing I am a little concerned about with reference to the Senator from Maine's statement, namely, that it was not the intention of the environmental policy legislation to affect environmental protection agencies, and I say that because I believe the debate at the time named the National Park Service as an environmental agency.

Mr. MUSKIE. No. What we had in mind, may I say to the Senator—and I appreciate this opportunity to clarify that—was those environmental protection agencies with regulatory authority, without spelling out the authority in the statute. We wanted to exclude agencies whose legislators responsibility could be offset by that legislation. It is in that limited sense, not in the overall sense, including the Park Service, the Forest Service, and all the rest, that we used the term environmental protection activities.

Mr. McCLURE. Mr. President, will the Senator yield just briefly, because I think it would be instructive if we included in the RECORD at this point, so that people reading the RECORD might have it forthwith, without having to go outside the RECORD to determine what it is I am trying to say, the applicable part of the statute?

The National Environmental Policy Act in title I, section 101, includes in its first subsection the following language:

> To use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

I think it is useful to have that language from the Environmental Policy Act included in this act.

Mr. President, I thank the distinguished Senator from Maine for yielding.

Mr. MUSKIE. Mr. President, I subscribe fully to that philosophy. I did so at the time I offered the environmental impact statement amendment to the act.

Mr. BUCKLEY. Mr. President, I yield to the distinguished Senator from Maryland.

Mr. MATHIAS. Mr. President, I call up my amendment which is at the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. MATHIAS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

> On page 17, after line 2, add a new paragraph (c).
>
> "(C) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

Mr. MATHIAS. Mr. President, I asked that the clerk not read the amendment further because the language is very simple. It eliminates a surcharge on downtown parking.

The language is similar to that of the bill as passed by the House of Representatives. It is a part of the bill which has already been passed in the other body. It is language with which we are familiar because the Senate adopted similar language. I feel that it is necessary language, not because I have any lack of concern over the congestion in downtown Washington, which brings about many problems, including the problem because it is a complex problem, a problem with social overtones, a problem

with economic overtones, it goes to the heart of every urban concern we have.

This is not a decision which should be made by any single agency. It is a problem of a complex nature. Many countries in the world have attacked the problem of downtown traffic in a variety of ways. I think we ought to have before us some of the alternatives, some of the several different kinds of solutions, and not merely be restricted to a single, rather dull, blunt economic club which can be waved over the heads of those who have to commute into urban areas in order to earn a living. We ought to have a full variety of solutions available before we make the decision. I should like to see an economic surcharge provision included in the pending bill as it is included in the House bill.

Mr. MUSKIE. Mr. President, I fully understand the Senator's concern and his point of view.

This provision, which was included in the earlier conference report on this general subject, is not included in the Senate bill at this point because the Senate committee has never held hearings on this subject. The House committee has. It included the provision in the legislation last December and insisted upon it vigorously in conference. We accepted it at that point for the purpose of that legislation.

Mr. MATHIAS. Mr. President, I think the fact that we have not had hearings in the Senate is all the more reason to withhold this particular power at this time.

Mr. MUSKIE. I understand the Senator's point. The other reason why we did not include the provision in the bill at this time is that we thought that in the emergency, favorable terms have appeared during the past few months, and we ought at least to discuss this issue again in conference.

We would not have a meaningful discussion if the issue were not in conference, and we fully expect to have a discussion. We fully expect that the House will be vigorous in its presentation of its point of view. We are conscious of the fact that the Senator from Maryland and others share that point of view. We will fully take that matter into account as we get into the conference.

Mr. MATHIAS. Mr. President, I am reassured by the opinion or view just expressed by the distinguished Senator from Maine. I want to be assured, however, that there is a body of opinion in the Senate which questions whether or not that particular power should be delegated at the expense of those who have to earn their living by driving into metropolitan areas all over the country. We believe that the variety of other solutions should be examined very carefully before we take action.

Mr. MUSKIE. Mr. President, I may say further that it was the purpose of the earlier conference agreement in that the parking surcharge provision should be set aside so that we could have hearings this year. The Senate committee fully expects to have hearings sometime this year on this issue.

Mr. MATHIAS. Mr. President, with that assurance, on which I know I can rely, and know that all Senators can rely, that this problem will get some sympathetic consideration from the conferees, I will not insist on a vote on this amendment at this time.

Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The question is on agreeing to the amendment offered by the Senator from Maine.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the third reading and passage of the bill.

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

Mr. MUSKIE. Mr. President, I am happy to yield to the distinguished Senator from Idaho.

Mr. McCLURE. Mr. President, I know that we are fighting a time constraint under the previous unanimous-consent agreement. However, I think that there is a potential conflict, or a bit of a conflict, between two of the acts we are dealing with. That conflict comes up because of the change that we have made in the coal conversion sections of the bill that did not exist under the previous sections of the bill, when we had agreed that the Federal Administrator could mandate coal conversion.

We can now under this arrangement only suggest it and stimulate it. However, if the State or local regulations are more stringent, we can suggest to them that they change those restrictions, but we cannot mandate them. The result could be that under a strict State statute, some State standards may require the use of low sulfur fuel beyond that necessary to meet primary or secondary standards under the act.

It might be felt that the Federal Administrator must allocate the low sulfur fuel and leave the rest of the country to buy whatever higher sulfur fuel might exist.

There is a section in this act that we are now considering which seeks to say that that result would not necessarily occur, and that whatever changes are necessary in the administration of the Mandatory Allocation Act would occur because of the amendment to this act.

Mr. MUSKIE. The Senator is correct. The Senator raised this point in the executive meeting of the Public Works Committee yesterday, and I think it has been resolved in section 6(a), which reads:

> Any allocation program provided for in section 8 of this Act or in the Emergency Petroleum Allocation Act of 1973 shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the country designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

To give this meaning in my own words, it is the intent of this provision to insure that clean fuels and conforming fuels are used, with the highest priority given to protecting primary ambient air standards, which are the health protection standards, and that beyond that, fuel should be distributed in accordance with the general authority of the administrator.

Mr. McCLURE. So that it could not, then, result in violation of primary ambient air standards in one area of the country in order to comply with stricter standards in some other State or local area?

Mr. MUSKIE. The Senator is correct.

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

Mr. McCLURE. I yield.

Mr. RANDOLPH. I wish to reaffirm what the able Senator from Maine (Mr. MUSKIE) has stated. The Senator from Idaho (Mr. McCLURE) addressed this subject in a very knowledgeable manner within the committee's executive session on this legislation. I appreciate, as I am sure all of us do within the committee, the opportunity to clarify this point as it has been done by Senator MUSKIE.

As I noted, I wish to reaffirm what Senator MUSKIE has said.

I think it is important and necessary to clarify situations of this type. I again commend the Senator from Idaho for bringing this matter to our attention, so that it could be handled and clarified in this manner.

Mr. McCLURE. I thank both Senators for their information. That is certainly in accord with my understanding.

Mr. President, during consideration of the bill before us, I believe that it is important that we keep in mind another bill—considered and passed last year—the Emergency Petroleum Allocation Act. When Congress passed that measure, we granted the President of the United States the authority to take fuel from one State, and give it to another. Not only did we grant that authority, we directed him to exercise it.

The changes in the Clean Air Act being considered today are directly related to that allocation authority granted last year. And, one of the key issues involved is the setting of sulfur standards by local or State governments which are far stricter than those required by Federal law. Are we, in effect, to reward cities and States which set unreasonable standards for the sulfur content of fuels, and penalize regions which have not. Are we to see continued use of home heating oil by utilities and industries, who could use coal or residual fuel oil? I believe that it is essential that local and State governments recognize their responsibility to set reasonable standards for fuel composition, and not bow to political pressures with the hope that the Federal Government will bail them out, at the expense of their neighbors.

Obviously, it would be politically advantageous for any locality to demand almost zero sulfur content for any fuel burned within its boundaries, if they could be certain that they would receive adequate fuel supplies at their neighbor's expense. I believe the Congress should be firmly on record as opposed to such actions. During these times of continuing fuel shortages and continuing concern for clean air, every State, county, and

city has an obligation to carry its share of the burden, and not to expect to burn all natural gas or home heating oil, while others burn 3 percent sulfur coal.

I am pleased to join with my colleagues on the Public Works Committee in introducing this proposed legislation. It does not represent—as some have charged—a "gutting" of the Clean Air Act—nor does it represent an ideal solution to the critical energy problems facing this country.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 14368) was read the third time.

Mr. BUCKLEY. Mr. President, I yield 1 minute to the Senator from Tennessee.

Mr. BAKER. Mr. President, I rise only to make a statement with regard to my personal relationship to this measure. As the senior Republican on the committee, it has been my duty to follow the development of the automobile emissions section and the coal conversion section of the bill.

It is the responsibility of each Member of the Senate, of course, to determine whether or not he has a conflict of interest. It is my judgment that I do not. But so the RECORD will be entirely complete, and everyone will understand what the situation is, I would point out to my colleagues that I am the owner of a partnership interest in a substantial tract of land in Tennessee which I purchased from my father's estate, on which there are known coal reserves and known oil and gas reserves. I am not involved in production of either oil and gas or coal, but lest I be misunderstood, I wanted to make that statement.

The PRESIDING OFFICER. The bill having been read the third time, the question is: Shall it pass?

The bill (H.R. 14368) was passed.

Mr. MUSKIE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GRIFFIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MUSKIE. Mr. President, I move that the Senate insist on its amendments to H.R. 14368 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 Mr. RANDOLPH, Mr. MUSKIE, Mr. MONTOYA, Mr. JACKSON, Mr. BIBLE, Mr. BAKER, Mr. BUCKLEY, and Mr. FANNIN conferees on the part of the Senate.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States, transmitting the Protocols for the Extension of the Wheat Trade Convention and the Food Aid Convention constituting the International Wheat Agreement, 1971, was communicated to the Senate by Mr. Marks, one of his secretaries.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will now resume the consideration of S. 3267, which the clerk will state.

Mr. ROBERT C. BYRD. Mr. President, I believe the final order of yesterday provided for the Senate's taking up the education bill at this time, rather than the energy bill.

The PRESIDING OFFICER. That was at 12 o'clock.

Mr. ROBERT C. BYRD. No; I prepared the order that upon the disposition of the House message, and no later than 12 o'clock noon, the Senate would go to the education bill.

EDUCATION AMENDMENTS OF 1974

The PRESIDING OFFICER (Mr. HATHAWAY). Under the previous order, the Chair lays before the Senate the unfinished business, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 1539) to amend and extend certain acts relating to elementary and secondary education programs, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time that has been consumed by the quorum call not be charged against either side.

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

RECESS

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate stand in recess until the hour of 12:30 p.m. today, and I ask unanimous consent that the time for the recess not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to; and at 11:57 a.m. the Senate took a recess until 12:30 p.m., at which time the Senate reassembled at 12:30 p.m., when called to order by the Presiding Officer (Mr. NELSON).

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (H.R. 6574) to amend title 38, United States Code, to increase the maximum amount of Servicemen's Group Life Insurance to $20,000, to provide full-time coverage thereunder for certain members of the Reserves and National Guard, to authorize the conversion of such insurance to Veteran's Group Life Insurance, to authorize allotments from the pay of members of the National Guard of the United States for group life insurance premiums, and for other purposes.

The enrolled bill was subsequently signed by the Vice President.

EDUCATION AMENDMENTS OF 1974

The Senate continued with the consideration of the bill (S. 1539) to amend and extend certain acts, relating to elementary and secondary education programs and for other purposes.

Mr. TOWER. Mr. President, I suggest the absence of a quorum, and ask unanimous consent that the time be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HATHAWAY. 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. HATHAWAY. Mr. President, during the consideration of the present bill in the committee, I gave a great deal of study to the inequities and anomalies in Public Law 81–874, the so-called impact aid program. During this time, I attempted to analyze the basic rationale for the program and then develop an approach to the distribution of this aid which would be more fully in keeping with the basic intent of the original act. I made a proposal on this matter which was not accepted by a majority of the committee, at least in part, because the data upon which a projection of its impact could be based was unavailable. Today, I am submitting an amendment which would simply mandate that the necessary data be collected as part of a general collection of Public Law 81–874 data by the new National Center for Educational Statistics. But before calling up this amendment, I would like to explain my proposal, for the information of my colleagues.

The basic intent of the impact aid program, as I understand it, is to reimburse those areas which are somehow injured as a result of the proximity of a tax-free Federal installation. In many cases, there certainly is such injury. An example would be a military installation occupying relatively valuable land and which pays its employees lower-than-average wages for the area. But in the al-

most 30 years since the initiation of this program, there have been changes in the nature of Federal installations as well as Federal salary levels. The result has been many situations where the location of a Federal installation in a community, especially a facility which takes a limited amount of property and whose employees are paid considerably above the local average, is actually a significant boon to the local economy rather than any detriment to it. The relatively higher salaried Federal employees are able to live in more expensive houses (which pay higher property taxes), and they spend their salaries with local merchants, thus paying sales taxes as well as enriching the local economy. That such installations are no drag on their localities is clearly demonstrated by the tremendous howl that is raised when one of these facilities is closed down or moved.

My basic contention is that because Federal money for education is a severely limited commodity, the amounts flowing to districts which are actually being enriched by the Federal presence (even after the tax loss on the building is deducted) should be somewhat curtailed. The limited resources we have available should be channeled to those areas most in need of it (under title I and other sections of this bill) and to those areas most deserving of it, in terms of the original intent of Public Law 81-874.

In light of this, the proposal I made would attempt to measure, or at least get some indication of, the actual impact of a given Federal facility in a school district. Clearly, this "actual impact" is difficult to measure with any kind of precision. Indeed, the present program makes no attempt to take such a measurement at all, but instead assumes a uniform negative impact in all types of school districts by all types of installations. My proposal would alter this by determining how the per capita income in the individual school district related to the national per capita income. If the district figure exceeded the national figure, this would be taken as an indication that the Federal facility in that district was probably assisting in the economic strength of the district or at least was not as much a negative influence as a similar facility in a lower income district. Therefore, the "rich" district's entitlement to funds under this program would be decreased to the extent that the district's per capita income exceeded that of the Nation at large. In other words, a district whose per capita income was twice the national average would lose one-half its entitlement.

Obviously, a proposal of this kind would have to be phased in, and provision for this would have to be made. Also districts unusually heavily dependent on this program probably should be given some special consideration.

Unfortunately, the detailed impact of this or any similar proposal is impossible to determine at the present time because of the unavailability of the school district per capita income figures. I am informed that this data can be assembled and am, therefore, moving that this task be assigned to the new National Center for Educational Statistics established in the bill. In this way, the base will be available for the exploration of all alternatives for the reform of this program.

The proposal I have put forward is not set in concrete; I welcome the comments and suggestions of those interested in this problem. It is my hope that out of this year's work by the committee, which, I should say, is a significant reform in itself, and future consideration of other alternatives, we may arrive at a more rational and equitable impact aid program.

Mr. President, I ask unanimous consent that the text of the proposal I made to the Committee on Labor and Public Welfare be inserted at this point in the RECORD.

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

(3) Amend section 3(d) of PL 874, 81st Congress, as proposed to be amended in S. 1539 by adding at the end thereof the following:

"(3)(A)(i) In the case of any fiscal year beginning after June 30, 1975, if the per capita income in the school district of a local educational agency for the preceding fiscal year exceeds the per capita in the United States for such fiscal year, the amount of the payment to which such agency shall be entitled under this section with respect to children to whom a determination is made under subsection (b) for that fiscal year shall be reduced as is provided in division (ii).

"(ii) The amount by which the entitlement of any local educational agency shall be reduced shall be the percentage expressed when the product obtained by multiplying the quotient obtained by dividing the per capita income of the United States for the preceding fiscal year by the per capita income of the school district of such agency for such year by the reduction factor for that year (specified in division (iii)) is subtracted from 1.00.

"(iii) For the purposes of division (ii) the reduction factor shall be—

"(I) 1.4 for the fiscal year ending June 30, 1976;

"(II) 1.25 for the fiscal year ending June 30, 1977;

"(III) 1.1 for the fiscal year ending June 30, 1978;

"(IV) 1.0 for the succeeding fiscal years.

"(B)(i) For the purposes of subparagraph (A), the term 'per capital income' means the total personal income in the school district or in the United States, as the case may be, divided by the population in the school district or in the United States, as the case may be.

"(ii) The Commissioner shall determine the per capita income for each school district in the United States entitled to payment under this section and for the United States and determine the percentage by which the per capita income in each school district exceeds that of the United States for the purpose of subparagraph (A) and publish such determinations in the *Federal Register* between July 1 and August 31 of each even-numbered year, beginning with calendar year 1974. Each such determination shall be conclusive for each of the two fiscal years beginning after such publication.

"(iii) Determinations under divisions (i) and (ii) shall be on the basis of the average of the per capita incomes for the three most recent consecutive years for which satisfactory data is available to the Commissioner from the Department of Commerce.

"(D) The provisions of this paragraph shall not apply to any local educational agency—

"(i) with respect to which the number of children determined under subsection (b) amounts to at least 30 per centum of the total number of children who were in average daily attendance at the schools of such agency during such fiscal year and for whom such agency provided free public education; or

"(ii) during any fiscal year in which such agency receives more than 25 per centum of the funds for its total current expenditures from payments under this title as calculated without regard to this paragraph; or

"(iii) with respect to which the number of children determined under section 131 (b)(3)(C) of title I of the Elementary and Secondary Education Act of 1965 amounts to at least 10,000."

In determining the total number of children in attendance at the schools of a local educational agency pursuant to clause (i) in the preceding sentence for any fiscal year, the Commissioner shall not include any children with respect to whom a determination is made under subsection (a).

"(E) For the purposes of this paragraph, the term 'United States' means the fifty States and the District of Columbia."

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

Mr. HATHAWAY. I yield.

Mr. PELL. I commend the junior Senator from Maine for his efforts in the committee and here on the difficult problem of impact aid reform. He had some very constructive thoughts in some of the amendments that we considered in the committee, but we did not know the full effect of those amendments, and for that reason they were not acted upon at that time.

Mr. President, this is why I think the proposal of the Senator from Maine in his data collection amendment is excellent. It would give us the information we might need at another time in order to make a better judgment and evaluation on those factors. So I believe that the Senator's approach is correct.

Does the Senator from Maine wish to call up his amendment at this time?

Mr. HATHAWAY. I do. I believe that it is appropriate to call up my amendment. It would mandate that information regarding school district per capita income be collected and the information be examined along with other information concerning the impact aid program.

I have already explained the amendment and the need for it. I hope that the information it produces will be helpful to the committee.

The PRESIDING OFFICER. It would require unanimous consent for the Senator to call up his amendment.

Mr. HATHAWAY. Mr. President, I ask unanimous consent that my amendment be considered at this time.

The PRESIDING OFFICER. Who yields time?

Mr. HATHAWAY. Mr. President, I ask that the Senator from Rhode Island yield me 1 minute.

Mr. PELL. Mr. President, I yield 1 minute to the Senator from Maine.

Mr. JAVITS. Mr. President, reserving the right to object, may I know what the amendment is about?

Mr. HATHAWAY. It is basically an amendment calling for a study to get in-

formation with respect to the income level in impacted aid school districts. It has no actual effect on the allocation at this time.

Mr. JAVITS. Mr. President, is this the amendment to the McClellan amendment?

Mr. HATHAWAY. No. It is a separate amendment. It would require unanimous consent to call it up.

Mr. JAVITS. Is the amendment of the Senator from Arkansas being set aside for this purpose?

Mr. McCLELLAN. My amendment has not been called up as yet.

Mr. JAVITS. I have no objection.

The PRESIDING OFFICER. Without objection, the Chair recognizes the Senator from Maine.

Mr. HATHAWAY. Mr. President, I ask that the amendment be read.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 293, line 21, omit "and";

On page 293, line 25, omit the period and insert in lieu thereof ", and" and the following new subsection:

"(6) an estimate of the per capita income for the area served by each local educational agency which is entitled to financial assistance under such sections 3(a) and 3(b) for the second preceding fiscal year, such estimate to be based on the Bureau of the Census 1970 decennial census or other suitable data as may be available and to include a listing of the specific procedures and assumptions used in deriving such estimate and an analysis of any data or other procedural limitations."

Mr. HATHAWAY. Mr. President, I have already explained the amendment in my previous remarks. I do not see any necessity to re-explain it. It simply calls for the collection of per capita income data for impacted aid school districts and will have no effect on the allocation of funds under this program.

Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine.

The amendment was agreed to.

Mr. HATHAWAY. I thank the Senator from Rhode Island for accepting the amendment.

Mr. McCLELLAN. Mr. President, I call up my amendment No. 1304, which has some 30 cosponsors, and ask that it be read.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. McCLELLAN. Mr. President, I ask unanimous consent that the further reading of the amendment be discontinued.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment will be printed in the RECORD.

The amendment is as follows:

On page 131, beginning with line 16, strike out through line 10 on page 152 and insert in lieu thereof the following:

(2) (A) (i) Section 103(a) of such title I is amended to read as follows:

"SEC. 103. (a) (1) There is authorized to be appropriated for each fiscal year for the purpose of this paragraph 3 per centum of the amount appropriated for such year for payments to States under section 143(a) (other than payments under such section to jurisdictions excluded from the term 'State' by this subsection, and payments under part B), and there shall be authorized to be appropriated such additional sums as will assure at least the same level of funding under this title as in fiscal year 1973 for the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and to the Secretary of the Interior for payments pursuant to paragraphs (1) and (2) of subsection (d). The amount appropriated pursuant to this paragraph shall be allotted by the Commissioner (A) among the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands according to their respective need for grants under this part, and (B) to the Secretary of the Interior in the amount necessary (i) to make payments pursuant to paragraph (1) of subsection (d), and (ii) to make payments pursuant to paragraph (2) of subsection (d). The grant which a local educational agency in the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands is eligible to receive shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purposes of this title.

"(2) In any case in which the Commissioner determines that satisfactory data for that purpose are available, the grant which a local educational agency in a State shall be eligible to receive under this part for a fiscal year shall (except as provided in paragraph (3)) be determined by multiplying the number of children counted under subsection (c) by 40 per centum of the amount determined under the next sentence. The amount determined under this sentence shall be the average per pupil expenditure in the State except that (A) if the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, such amount shall be 80 per centum of the average per pupil expenditure in the United States, or (B) if the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, such amount shall be 120 per centum of the average per pupil expenditure in the United States. In any case in which such data are not available, subject to paragraph (3), the grant for any local educational agency in a State shall be determined on the basis of the aggregate amount of such grants for all such agencies in the county or counties in which the school district of the particular agency is located, which aggregate amount shall be equal to the aggregate amount determined under the two preceding sentences for such county or counties, and shall be allocated among those agencies upon such equitable basis as may be determined by the State educational agency in accordance with basic criteria prescribed by the Commissioner.

"(3) (A) Upon determination by the State educational agency that a local educational agency in the State is unable or unwilling to provide for the special educational needs of children described in clause (C) of paragraph (1) of subsection (c), who are living in institutions for neglected or delinquent children, the State educational agency shall, if it assumes responsibility for the special educational needs of such children, be eligible to receive the portion of the allocation to such neglected or delinquent children, but if the State educational agency does not assume such responsibility, any other State or local public agency, as determined by regulations established by the Commissioner, which does assume such responsibility shall be eligible to receive such portion of the allocation.

"(B) In the case of local educational agencies which serve in whole or in part the same geographical area, and in the case of a local educational agency which provides free public education for a substantial number of children who reside in the school district of another local educational agency, the State educational agency may allocate the amount of the grants for those agencies among them in such manner as it determines will best carry out the purposes of this title.

"(4) For purposes of this subsection, the term 'State' does not include the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.".

(ii) Section 103(b) of such title I is amended by striking out "aged five to seventeen, inclusive, described in clauses (A), (B), and (C) of the first sentence of paragraph (2) of subsection (a)" and inserting in lieu thereof "counted under subsection (c)".

(B) Section 103(c) of such title I is amended to read as follows:

"(c) (1) The number of children to be counted for purposes of this section is the aggregate of (A) the number of children aged five to seventeen, inclusive, in the school district of the local educational agency from families below the poverty level as determined under paragraph (2) (A), (B) two-thirds of the number of children aged five to seventeen, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (2) (B), and (C) the number of children aged five to seventeen, inclusive, in the school district of such agency living in institutions for neglected or delinquent children (other than such institutions operated by the United States) but not counted pursuant to section 123 for the purposes of a grant to a State agency, or being supported in foster homes with public funds.".

(C) (i) Subsection (d) of section 103 is redesignated as paragraph (2) of subsection (c).

(ii) The first sentence of such paragraph (2) as redesignated by this section is amended to read as follows:

"(A) For purposes of this section, the Commissioner shall determine the number of children aged five to seventeen, inclusive, from families below the poverty level on the basis of the most recent satisfactory data available from the Department of Commerce for local educational agencies (or, if such data are not available for such agencies, for counties); and in determining the families which are below the poverty level, the Commissioner shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census.".

(iii) The second sentence of paragraph (2) of such subsection (c) (as redesignated by this section) is repealed.

(iv) The third sentence of such paragraph (2) is amended to read as follows:

"(B) For purposes of this section, the Secretary of Health, Education, and Welfare shall determine the number of children aged five to seventeen, inclusive, from families above the poverty level on the basis of the number of such children from families receiving an annual income, in excess of the current criteria of poverty, from payments under the program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act; and in making such determinations the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census for a nonfarm family of four in such form as those criteria have been updated by increases in the Consumer Price Index. The Secretary

shall determine the number of such children and the number of children of such ages living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, on the basis of the caseload data for the month of January of the preceding fiscal year (using, in the case of children described in the preceding sentence, the criteria of poverty and the form of such criteria required by such sentence which were determined for the second calendar year preceding such month of January) or, to the extent that such data are not available to him before April 1 of the calendar year in which the Secretary's determination is made, then on the basis of the most recent reliable data available to him at the time of such determination.".

(v) The fourth sentence of such paragraph (2) (as redesignated by this section) is amended by striking out the word "When" and inserting in lieu thereof the following: "(C) When"; and by striking out "having an annual income less than the low-income factor (established pursuant to subsection (c))" and inserting in lieu thereof "below the poverty level (as determined under paragraph (A) of this subsection)".

(vi) Section 103(e) of such title is repealed.

(D) Section 103 of such title I is amended by adding at the end thereof the following:

"(d)(1) From the amount allotted for payments to the Secretary of the Interior under clause (B)(i) in the second sentence of subsection (a)(1), the Secretary of the Interior shall make payments to local educational agencies, upon such terms as the Commissioner determines will best carry out the purposes of this title, with respect to out-of-State Indian children in the elementary and secondary schools of such agencies under special contracts with the Department of the Interior. The amount of such payment may not exceed, for each such child, 40 per centum of (A) the average per pupil expenditure in the State in which the agency is located or (B) 120 per centum of such expenditure in the United States, whichever is the greater.

"(2) The amount allotted for payments to the Secretary of the Interior under clause (B)(ii) in the second sentence of subsection (a)(1) for any fiscal year shall be, as determined pursuant to criteria established by the Commissioner, the amount necessary to meet the special educational needs of educationally deprived Indian children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. Such payments shall be made pursuant to an agreement between the Commissioner and the Secretary containing such assurances and terms as the Commissioner determines will best achieve the purposes of this title. Such agreement shall contain (A) an assurance that payments made pursuant to this subparagraph will be used solely for programs and projects approved by the Secretary of the Interior which meet the applicable requirements of section 141(a) and that the Department of the Interior will comply in all other respects with the requirements of this title, and (B) provision for carrying out the applicable provisions of sections 141(a) and 142(a)(3).".

(E) Such title I is amended by striking out parts B and C and inserting in lieu thereof the following:

"PART B—STATE OPERATED PROGRAMS

"PROGRAMS FOR HANDICAPPED CHILDREN

"SEC. 121. (a) A State agency which is directly responsible for providing free public education for handicapped children (including mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education), shall be eligible to receive a grant under this section for any fiscal year.

"(b) Except as provided in section 124, the grant to which a State agency shall be entitled under this section shall be an amount equal to—

"(1)(A) 50 per centum of the average per pupil expenditure of all the local educational agencies in the State, or

"(B) 50 per centum of the average per pupil expenditure of all the local educational agencies in all the States,

whichever is greater,

multiplied by—

"(2) the number of such children in average daily attendance, as determined by the Commissioner,

at schools for handicapped children operated or supported by the State agency, including schools providing special education for handicapped children under contract or other arrangement with such State agency, in the most recent fiscal year for which satisfactory data are available.

"(c) A State agency shall use the payments made under this section only for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of such children, and the State agency shall provide assurances to the Commissioner that each such child in average daily attendance counted under subsection (b) will be provided with such a program, commensurate with his special needs, during any fiscal year for which such payments are made.

"(d) In the case where such a child leaves an educational program for handicapped children operated or supported by the State agency in order to participate in such a program operated or supported by a local educational agency, such child shall be counted under subsection (b) if (1) he continues to receive an appropriately designed educational program and (2) the State agency transfers to the local educational agency in whose program such child participates an amount equal to the sums received by such State agency under this section which are attributable to such child, to be used for the purposes set forth in subsection (c).

"PROGRAMS FOR MIGRATORY CHILDREN

"SEC. 122. (a)(1) A State educational agency or a combination of such agencies, upon application, shall be entitled to receive a grant for any fiscal year under this section to establish or improve, either directly or through local educational agencies, programs of education for migratory children of migratory agricultural workers or of migratory fishermen. The Commissioner may approve such an application only upon his determination—

"(A) that payments will be used for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of migratory children of migratory agricultural workers or of migratory fishermen, and to coordinate these programs and projects with similar programs and projects in other States, including the transmitttal of pertinent information with respect to school records of such children;

"(B) that in planning and carrying out programs and projects there has been and will be appropriate coordination with programs administered under part B of title III of the Economic Opportunity Act of 1964;

"(C) that such programs and projects will be administered and carried out in a manner consistent with the basic objectives of clauses (1)(B) and (3) through (12) of section 141(a); and

"(D) that, in planning and carrying out programs and projects, there has been adequate assurance that provision will be made for the preschool educational needs of migratory children of migratory agricultural workers or of migratory fishermen, whenever such agency determines that compliance with this clause will not detract from the operation of programs and projects described in clause (A) of this paragraph after considering the funds available for this purpose.

The Commissioner shall not finally disapprove an application of a State educational agency under this paragraph except after reasonable notice and opportunity for a hearing to the State educational agency.

"(2) If the Commissioner determines that a State is unable or unwilling to conduct educational programs for migratory children of migratory agricultural workers or of migratory fishermen, or that it would result in more efficient and economic administration, or that it would add substantially to the welfare or educational attainment of such children, he may make special arrangements with other public or nonprofit private agencies to carry out the purposes of this section in one or more States, and for this purpose he may use all or part of the total of grants available for any such State under this section.

"(3) For purposes of this section, with the concurrence of his parents, a migratory child of a migratory agricultural worker or of a migratory fisherman shall be deemed to continue to be such a child for a period, not in excess of five years, during which he resides in the area served by the agency carrying on a program or project under this subsection. Such children who are presently migrant, as determined pursuant to regulations of the Commissioner, shall be given priority in this consideration of programs and activities contained in applications submitted under this subsection.

"(b) Except as provided in section 124, the grant to which a State agency shall be entitled under this section shall be an amount equal to—

"(1)(A) 50 per centum of the average per pupil expenditure of all the local educational agencies in the State, or

"(B) 50 per centum of the average per pupil expenditure of all the local educational agencies in all the States, whichever is greater,

multiplied by—

"(2)(A) the estimated number of such migratory children aged five to seventeen, inclusive, who reside in the State full time, and

"(B) the full-time equivalent of the estimated number of such migratory children aged five to seventeen, inclusive, who reside in the State part time, as determined by the Commissioner,

except that if, in the case of any State, such amount exceeds the amount required under subsection (a), the Commissioner shall allocate such excess, to the extent necessary, to other States whose total of grants under this sentence would otherwise be insufficient for all such children to be served in other States. In determining the number of migrant children for the purposes of this section the Commissioner shall use statistics made available by the migrant student record transfer system or such other system as he may determine most accurately and fully reflects the actual number of migrant students.

"PROGRAMS FOR NEGLECTED OR DELINQUENT CHILDREN

"SEC. 123. (a) A State agency which is directly responsible for providing free public education for children in institutions for neglected or delinquent children or in adult correctional institutions shall be entitled to receive a grant under this section for any fiscal year (but only if grants received un-

der this section are used only for children in such institutions).

"(b) Except as provided in section 124, the grant to which a State agency shall be entitled under this section shall be an amount equal to—

"(1)(A) 50 per centum of the average pupil expenditure of all the local educational agencies in the State, or

"(B) 50 per centum of the average per pupil expenditure of all the local educational agencies in all the States, whichever is greater,

multiplied by—

"(2) the number of such children in average daily attendance as determined by the Commissioner, at schools for such children operated or supported by that agency, including schools providing education for such children under contract or other arrangement with such agency, in the most recent fiscal year for which satisfactory data are available.

"(c) A State agency shall use payments under this section only for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of such children.

"RESERVATION OF FUNDS FOR TERRITORIES

"SEC. 124. There is authorized to be appropriated for each fiscal year for purposes of sections 121, 122, and 123, an amount equal to not more than 3 per centum of the amount appropriated for such year for such sections for payments to the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands under each such section. The amounts appropriated for each such section shall be allotted among the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands according to their respective need for such grants, based on such criteria as the Commissioner determines will best carry out the purposes of this title.".

(F) Section 144 of such title I is amended by striking out the first sentence and inserting in lieu thereof the following: "If the sums appropriated for any fiscal year for making the payments provided in this title are not sufficient to pay in full the total amounts which all local and State educational agencies are eligible to receive under this title for such year, the amount available for each grant to a State agency eligible for a grant under section 121, 122, or 123 shall be equal to the total amount of the grant as computed under each such section. If the remainder of such sums available after the application of the preceding sentence is not sufficient to pay in full the total amounts which all local educational agencies are eligible to receive under part A of this title for such year, the allocations to such agencies shall, subject to adjustments under the next sentence, be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amount so appropriated. The allocation of a local educational agency which would be reduced under the preceding sentence to less than 85 per centum of its allocation under part A for the preceding fiscal year, shall be increased to such amount, the total of the increases thereby required being derived by proportionately reducing the allocations of the remaining local educational agencies, under the preceding sentence, but with such adjustments as may be necessary to prevent the allocation to any remaining local educational agency from being thereby reduced to less than 85 per centum of its allocation for such year.".

(G)(i) Part D of such title I (including all references thereto) is redesignated as part C.

(ii) Section 141(a)(4) of such title is amended by striking out "section 145" and inserting in lieu thereof "section 433 of the General Education Provisions Act".

(iii) Section 141(a)(1)(B) of such title is amended by striking out "maximum".

(iv) Section 141(c) of such title is repealed.

(v) Section 143(a)(2) of such title is amended by striking out "maximum".

(vi) Section 142 of such title is amended by striking out "described in section 141 (c)" and inserting in lieu thereof "provided for in section 122".

(vii) Section 142(a)(1) of such title is amended by striking out "section 103(a)(5)" and inserting in lieu thereof "section 121".

(viii) Section 143(a)(2) of such title is amended by striking out "or section 131".

(ix) Section 143(b)(1) of such title is amended to read as follows:

"(1) 1 per centum of the amount allocated to the State and its local educational agencies as determined for that year under this title; or".

(x) The third and fourth sentences of section 144 of such title are each amended by striking out "section 103(a)(6)" and inserting in lieu thereof "section 122".

(xi) Section 146 of such title is amended by striking out "section 141(c)" and inserting in lieu thereof "section 122".

(xii) Section 147 of such title is amended by striking out "section 141(c)" and inserting in lieu thereof "section 122".

(xiii) Section 403 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is amended by adding at the end thereof the following new paragraph:

"(16) For purposes of title II, the 'average per pupil expenditure' in a State, or in the United States, shall be the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available), of all local educational agencies as defined in section 403(6)(B) in the State, or in the United States (which for the purposes of this subsection means the fifty States, and the District of Columbia), as the case may be, plus any direct current expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.".

Mr. McCLELLAN. Mr. President, how much time is allocated to this amendment?

The PRESIDING OFFICER. Three hours have been allocated to the amendment, 2 hours to the Senator from Arkansas, and 1 hour to the manager of the bill.

Mr. McCLELLAN. Mr. President, how much time has been allocated to the bill?

The PRESIDING OFFICER. Twenty hours have been allocated to the bill.

Mr. McCLELLAN. Twenty? Then we shall not get through today.

Mr. President, I yield myself 10 minutes.

Mr. President, education is the keystone in the arch of freedom and progress. For the individual, the door of the schoolhouse leads to many of the richest treasures of our society. For the Nation, increasing the availability and quality of education is vital to our national security and to our social, cultural, and economic progress.

To promote and pursue these goals was the main purpose for the enactment of the Elementary and Secondary Education Act of 1965. In passing this law, the Congress established a pattern of Federal aid to our States—and through them to the local school districts—to assist those with large numbers of poor children and to provide them more equal educational opportunities.

Undoubtedly, the most important section of this law is title I which provides funds to local education agencies for compensatory educational programs for poor and educationally deprived children in both urban and rural areas.

The present statute was enacted 9 years ago in response to a serious national problem—the educational deprivation prevailing among children of poor families. Studies and reports had shown a high correlation between poverty and low educational achievement. The problem appeared to be particularly acute in school districts with high concentrations of poor citizens—districts which have extreme difficulty in financing adequate educational programs.

Through the use of title I funds, we provided a substantial amount of assistance to pupils residing in those districts that are most in need of educational assistance. But the goal we set for ourselves to provide this assistance to those pupils and school districts most in need is not now being achieved—primarily because the formula heretofore and now used to allocate title I funds has become outdated.

This formula has created serious distortions, inequities, and imbalances in the distribution of funds to the individual States and their local education agencies. Paradoxically, the wealthy States in recent years have received disproportionately more assistance than the poorer States—which was clearly not the intent of Congress when this legislation was enacted.

The present law provides that local school districts receive title I grants on the basis of two factors:

First, the number of children in those districts from families with incomes under $2,000 a year, according to the decennial census; and

Second, the number of children from families with incomes over $2,000 from payments under the Federal program of Aid to Families with Dependent Children—AFDC.

Each school district's entitlement is computed by multiplying the total number of children from these two categories by one-half the State or national average per pupil expenditure for elementary and secondary education, whichever is higher.

When the title I formula was first placed in effect during the 1966 fiscal year, 90 percent of the children included under title I were those counted from the census, and only 10 percent were AFDC children. Now the AFDC children have overwhelmed the children counted from the census. The AFDC children now total more than 60 percent of all children included under title I.

Thus, Mr. President, title I money is now being principally distributed not on

the basis of nationally uniform census data but rather upon the basis of AFDC caseload counts—a factor that is clearly prejudicial to the interests of many of the less wealthy States—States that have the most compelling need for Federal assistance.

This paradoxical situation results from the fact that the wealthier a State is the more likely its level of AFDC benefits will be higher than is that of the less wealthy States. Thus, by its own action of paying higher AFDC benefits, a wealthy State can increase its AFDC count and receive more title I benefits. This is manifestly inequitable.

When the new 1970 census data was used for the first time in fiscal year 1974, the outdated nature of the current formula became clearly apparent.

For example, New York, which ranks very high in per capita income, $3,608, in the Nation, according to the 1970 census, received nearly 2½ times as much title I assistance during fiscal 1974 as did Texas, which ranks thirty-second in per capita income, $2,792. Thus, New York received 14.7 percent of total title I funds compared to 5.93 percent for Texas. Also, it should be noted that Texas has more poverty children than New York—7.66 percent of the national total as compared to 6.33 percent in New York. Many other States are similarly discriminated against.

What is the explanation for this significant, and I believe, indefensible disparity?

The principal reason is that New York, as a wealthy State, makes higher payments in its AFDC program than does Texas. Therefore, New York has been able to add 564,248 AFDC children to its total count of title I eligible children since fiscal 1966, while Texas has been able to add only 81,854 children to its rolls.

Mr. President, I submit the present title I formula because of its great reliance on AFDC statistics, now operates inequitably among the several States. It has become discriminatory, unfair, and unjust. The results are completely contrary to the original intent and major purpose of title I, which was to provide assistance to those school districts and to States whose ability to operate adequate educational programs is seriously impaired and made difficult by reason of concentration of low-income families in such States and districts.

While thousands of AFDC children have been added to the counts taken in the richer States over the last 8 years, 3 of the poorest States in the Nation—Arkansas, South Carolina, and Mississippi—have not been able to add a single child to their AFDC rolls. A number of other States have been able to make only small additions.

Mr. President, I am pleased to note that both the Senate in S. 1539 and the House in H.R. 69 have recognized that title I must be reformed to end the obvious discrimination being practiced against the schoolchildren residing within the less wealthy States.

But I am convinced that the title I provisions contained in H.R. 69 would be far more equitable and just than those now before us in S. 1539. The provisions in H.R. 69—and in my amendment—would restore the better balance of distribution which was in the original program that was enacted in 1965. For this reason, I have offered for myself and for 30 other Senators, an amendment which would, in effect, substitute the House formula in title I for that contained in S. 1539. My amendment would, however, retain the Senate payment rate for State agency programs—institutionalized handicapped, neglected, and delinquent children and migrants.

Both the Senate and the House bills are in agreement that the Orshansky Index—the accepted Federal Index of Poverty—should be the prime factor in determining the number of children to be covered by title I aid in any given local education agency.

However, the Senate bill places undue emphasis on the number of children whose families are receiving AFDC payments. The formula in the Senate bill would count poor children twice if their families are receiving AFDC payments, thus making higher payments to wealthy States which can afford and which provide larger welfare programs.

My admendment would reduce the emphasis on the AFDC factor by counting only two-thirds of AFDC children whose families have incomes above the poverty level.

Mr. President, every Senator should realize and understand that the base year provision in the Senate bill would insure that no local education agency will ever receive less funds than it received in fiscal year 1974. Such a provision simply adopts and perpetuates the existing inequities and discriminations that now prevail. Fairness and justice dictate that those inequities and discriminations be eliminated—not perpetuated. The Senate bill retains them—my amendment removes them. This base year provision means that during fiscal year 1975, 89 percent of the title I local education agency money would be distributed, not under the formula set out in S. 1539, but instead under the obsolete formula of existing law which in effect states that you are poor unless your family has an income of less than $2,000.

My amendment contains an 85 percent hold-harmless clause for local education agencies. This would provide the funding assurance necessary to enable proper year-to-year planning of title I programs, without freezing in the present inequitable distribution of Federal funds.

Another grave concern to me is part C of title I in S. 1539. Part C purports to furnish special grants for urban and rural areas with concentrations of children from low-income families. Bear in mind that part C funds are taken from general local education agency funds. Also note that for part C, title I funds the Senate bill provides a different formula for determining the number of children to be counted. Section 131(b)(1), page 144 of the Senate bill fixes $3,000 as the poverty level rather than using the Orshansky formula.

I confess that I do not know why this change in formula—why this $3,000 level is substituted for the Orshansky formula.

Another condition of eligibility under this part C formula is a requirement that a school district must have twice the average number of poor children in all counties of the State; or, 10,000 such children which amounts to 5 percent of the total number of such children in the county.

On April 25, 1974, an insert was placed in the CONGRESSIONAL RECORD by the junior Senator from Rhode Island, pages 11848–50, which listed counties that would receive funds from part C. A careful examination of this insert reveals that more than 25 percent of the part C funds, which are intended to go to concentrations of poor children will actually go to one of our richest States.

Under this formula, a county such as Newton County, Ark., where 43 percent of its families have a total income of less than $3,000 per year and where the per capita income is only $1,308 per year, will not receive any of these funds whatsoever. Notwithstanding that part C is purportedly aimed at aiding local education agencies containing concentrations of poor children, it miserably fails to achieve that result.

To illustrate, Westchester County, N.Y., one of the wealthiest counties in the Nation, with only 4.9 percent of its families having total incomes of less than $3,000 per year and with a per capita income of $5,059 will receive $619,833 under the part C formula in the Senate bill, S. 1539—almost double the total that will go to the entire State of Arkansas.

Mr. President, there are some 32 other counties in Arkansas in addition to Newton County to which I have referred—where more than 25 percent of the families have incomes of less than $3,000 per year, that will receive none of part C funds under provisions of S. 1539. I might mention also that the highest per capita income of any of these 32 counties is only $1,887.

I, therefore, respectfully suggest that each Senator may wish to examine part C of title I of the Senate bill and ascertain whether it is fair and equitable to, or if it discriminates against children of his State as it does to the State of Arkansas.

Mr. President, in the neighboring State of Missouri, may I point out, there are some 25 counties whose per capita incomes are less than $3,000 per year and they do not get one dime of these funds, while New York State gets 25.9 percent of every dollar of these funds.

I simply suggest that the kind of formula in S. 1539, part C Funds, to distribute monies to help to educate the poor children of this Nation, is indefensible.

The Coleman report, issued in 1966, indicated that concentrations of poverty did cause less than equal educational opportunity for many children, because of the tendency of children to learn from their classmates. Surely anyone can see that the children in Newton County, in the 25 counties in the adjoining State of Missouri, and in a number of counties in other States of the Union, need educational assistance more than

the children of Westchester County, N.Y.

On December 31, 1972, the Select Committee on Equal Educational Opportunity chaired by the senior Senator from Minnesota, issued its report. The report of a majority stated:

> It is a fundamental goal of our democratic system that life's opportunities be distributed on the basis of each individual's capacity and choice and that no individual be denied the chance to succeed because of his membership in a racial, religious, social economic or other group in society.

The children in these counties in the poorer States which I have mentioned, under this formula, are being denied equal educational opportunities by the Federal Government if we pass this bill in its present form.

Mr. President, part C of title I of S. 1539 flies in the face of this definition of equal educational opportunity. The granting of extra educational assistance to such counties as Westchester County in New York where the average per pupil expenditure substantially exceeds the per capita income in Newton County, Ark., and not grant such assistance to the poor children of Newton County, is indefensible. We should not give such Federal assistance to children and counties who need it least, while denying such assistance to children and counties who need it most. And that is exactly what part C title I of S. 1539 does.

S. 1539 will not accomplish what its authors and the committee report claim for it. It will not equitably distribute Federal aid to all educationally disadvantaged children. Instead, in many instances it actually favors educationally advantaged children. I cannot agree to nor support such a discriminatory measure.

My amendment strikes part C from the bill—my amendment seeks to carry out the true purpose of the bill—to provide Federal aid to educate children from poor families.

Mr. President, providing a sound, quality education for our children is one of the most important and responsible functions of government. Education is not only vital to the protection and continuance of our liberties and freedom but is also our obligation to posterity.

These children in the poorer counties, as I have mentioned, are part of that posterity to which we have this obligation.

Most of the children currently in our schools will spend much of their lives in the 21st century. We must provide equal opportunity in all parts of the Nation for the quality education that is required to meet the demands of the future.

My amendment is designed to and will insure that Federal assistance for education is allocated and distributed more equitably and so as to go where the need is greatest among the children and school districts of the several States.

Mr. President, I most earnestly solicit and urge all Senators' support of this amendment to the pending bill.

Mr. President, how much time did I use?

The PRESIDING OFFICER (Mr. JOHNSTON). The Senator has used 20 minutes.

Mr. McCLELLAN. I thank the Chair.

Mr. CHILES. Mr. President, will the Senator from Arkansas yield me 4 or 5 minutes?

Mr. McCLELLAN. I yield 5 minutes to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized for 5 minutes.

Mr. CHILES. Mr. President when President Lyndon B. Johnson first proposed to the Congress legislation to insure full educational opportunity for all our children, he said:

> Nothing matters more to the future of our country: not our military preparedness—for armed might is worthless if we lack the brainpower to build a world of peace; not our productive economy—for we cannot sustain growth without trained manpower; not our Democratic system of government—for freedom is fragile if citizens are ignorant.

The same goals which guided President Johnson when he introduced the Elementary and Secondary Education Act of 1965—to assist those in poverty to achieve equal education opportunity—still guide us 9 years later.

Title I of this law was enacted by the Congress to provide sorely needed financial resources to school districts which were experiencing difficulties in funding adequate educational programs to meet the needs of large concentrations of low-income families.

Title I was designed to provide such financial assistance equitably to all States—both urban and rural—on the basis of need.

But over the years, title I has become less responsive to the needs of school districts with large concentrations of children of low-income families. Thus, those children most in need of additional educational assistance have been deprived of such aid while it has been increasingly channeled to those areas that have relatively less need for such aid.

As has been so ably pointed out by the senior Senator from Arkansas (Mr. McCLELLAN) the basic cause of this problem is that the formula used to calculate and allocate title I funds has become distorted over the years and is no longer a proper reflection of the actual situation in our various States.

We in Florida have been particularly sensitive to this issue. We have been unable to add AFDC children to our rolls to the same extent as some of our wealthier States, and as a consequence, we have been discriminated against in the allocation of title I funds.

Senator McCLELLAN's amendment will help alleviate the distortion and imbalances created by the current formula and perpetuated by S. 1539. It will provide for a more equitable distribution of funds to the States most in need of such assistance.

Let us look at the example of Florida: under the bill before us, Florida would receive only 2.53 percent of the total allocations under title I. Yet, under the Orshansky definition of poverty, Florida has 3.60 percent of the poor children in the Nation. The McClellan amendment would provide 3.78 percent of the total allotment of funds—a much fairer distribution.

In monetary terms, Florida would receive $47 million in title I assistance under the committee version of S. 1539. Under the McClellan amendment, this would be increased to $69 million.

Let us now turn to part C funds. Part C of title I was designed to aid areas of the country with high concentrations of poor children. There are 12 counties in Florida with more than 25 percent of their families having incomes under $3,000 a year. One of these, Holmes County, has 32.4 percent of its families with incomes under the $3,000 level. But none of these counties receive any part C funds.

Thus, Mr. President, it is clearly evident that part C funds are not going to those school districts with high concentrations of poverty, but to areas with a lesser need and are better able to pay the costs of education. Whatever the rationale for this formula, it is not serving the stated purpose of the Elementary and Secondary Education Act.

I wish to emphasize that the McClellan amendment would retain the committee's payment rate for allocation of funds to State agencies for aid to handicapped, migrant, and institutionalized, neglected and delinquent children. Under this formula and in the existing law, State agency grants are computed using a payment rate of 50 percent of the State average per pupil expenditure or 50 percent of the national average per pupil expenditure, which ever is greater.

In addition, the McClellan amendment incorporates a provision included by the house in its version of the bill H.R. 69). This would enable the Commissioner of Education to use the migrant record transfer system data or other data which accurately reflects the actual number of migrants in a given area.

The time has come, Mr. President, for a fair distribution of title I funds. I believe that quality education should be the birthright of all Americans, so that children throughout our great Nation will be given the true opportunity to learn.

It is for these reasons that I cosponsored the McClellan amendment and urge its approval by the Senate.

Mr. PELL. Mr. President, this entire question of title I allocation is about as complicated and involved a problem as one could find.

The Library of Congress has run off innumerable tables for the study of the subcommittee. Indeed the Library has set up its own computer capability to do this. We worked long, hard, and diligently both in the subcommittee and full committee to arrive at a formula that would be fair to the Nation's poor and disadvantaged children, no matter where they are.

We went through a variety of projections of figures in the committee, in order to arrive at a consensus. We sought to really focus on the question of where the kids were. As we moved ahead, we felt that the various special categories already contained in title I should be maintained. Unfortunately, the House formula and Senator McCLELLAN's formula exclude part B, the special incentives grants to the States exceeding the

national average and part C payments where there are extra concentrations of disadvantaged children. We also maintained 100 percent payment for the handicapped migrant and Indian children whose payment would now be cut to 50 percent.

That meant that our formula initially allocated $1.5 billion, because the other $0.3 billion was being allocated according to those special areas I mentioned above. Naturally, if you are dealing with $1.5 billion, the charts do not compare favorably with a formula distributing $1.8 billion.

The fact is that the disadvantaged children seem usually to be concentrated in urban areas. This is where the poverty seems most acute, where the rats still run around, where the doors are open, where the windows are boarded up. Because they are usually in the North, these urban concentrations suffer from climatic variance. The cost of living is higher because of the fuel and clothes needed to keep warm. I read in the press the other day that the cost of living in the Northeast was more than 20 percent above the national average.

These kids, who must be judged by the poverty index, by how much food they have, by how warm they are, by the nutrition they receive, by their exposure to poverty, seem to be more concentrated in the northern urban areas than anywhere else.

The way the formula worked out, it recognized this fact, and this naturally causes a problem, because it looks as though it is giving favoritism to one section of the country. It is giving favoritism to one section of the country. However, the northern urban areas are where a large number of poor and miserable children are, that is unfortunately a fact of life. We adopted this formula, to meet this need, an action which was not easy for me, because my own State had problems with it, but it seemed the best; and for that reason, I commend it to my colleagues.

Mr. LONG. Mr. President, will the Senator yield me 5 minutes?

Mr. McCLELLAN. I yield 5 minutes to the Senator from Louisiana.

Mr. LONG. Mr. President, I support the McClellan amendment because it provides a more equitable distribution of title I funds to local education agencies. The stated purpose of title I is to enable elementary and secondary schools to provide compensatory education to educationally disadvantaged children; and, all versions of the formula for computing these payments have been premised on the correct assumption that the determining factor should be based on the number of poor children within each local education agency. However, the method of determining the number of poor children in any given local education agency raises serious questions with respect to equitable allocation of these funds.

One problem with the Senate version that the McClellan amendment would correct is the greater emphasis placed on the number of children whose families are receiving AFDC payments. In Louisiana, for example, H.R. 69, the House version, lists 308,850 "Orshansky" children and 3,436 special population children for a total of 312,286. If, however, the Senate formula were used, an additional 194,321 AFDC children would be added. The result of this formula would be a double counting of poor children if their families also received AFDC payments, resulting in higher payments to wealthy States that can afford larger welfare programs, with large numbers of children on those programs.

Another problem is that there are too many disproportionate allocations of title I funds based upon the percentage of poverty level children within a given State in relation to the percentage of funds that State receives.

Under the Senate version, Louisiana's target children population represents 3.12 percent of the national total, while Louisiana's share of title I funds is only 2.33 percent of the total. The effect of the McClellan amendment is to bring these percentages much closer together, reflecting accurately the very high concentrations of needy children in certain States. In Louisiana, for example, the percentage of target children is 3.63 percent of the national total, and our grants would represent 3.28 percent of the total grants. It can be argued that we ought to be receiving a higher percentage than that. At least, this is far better justice than proposed by the committee.

An even greater problem is the title I, part C special grant distributions for urban and rural areas with large numbers of children from low-income families. In Louisiana, only 5 parishes—counties—would share in these funds, despite the fact that an additional 29 parishes with over 25 percent of the families receiving less than $3,000 per year income would receive no part C funds at all. Certain counties in more populous Eastern States with much high per capita incomes and far fewer families having total incomes of under $3,000, will receive as much as two-thirds of the amounts going to the entire State of Louisiana.

The PRESIDING OFFICER (Mr. JOHNSTON). The Chair, as the junior Senator from Louisiana, wishes to be associated with the remarks of the senior Senator from Louisiana.

Who yields time?

Mr. WILLIAMS. Mr. President, I yield myself 10 minutes.

Mr. President, I strongly oppose the McClellan amendment to the committee bill, S. 1539. His amendment would alter the formula under title I for programs for educationally disadvantaged children, and I urge my colleagues to vote against his amendment.

Mr. President, my committee has been working on the title I formula for more than 6 months. This formula is a highly complicated one, and one which is made more difficult by the lack of adequate statistics. My committee has delayed bringing this bill to the Senate floor because we wanted to make sure that we had a fair and equitable formula for all the States.

The McClellan amendment, however, would tamper with all parts of this formula, and will cause wide variations in the next few years as a result. The amendment offered by the Senator from Arkansas is almost identical to the formula adopted by the House committee with only limited debate and without carefully examining its impact in areas within the States. I caution my colleagues at the outset that if they only examine their State totals, they should not be surprised to get phone calls later this year from local districts complaining that their title I allocations have been cut.

The McClellan formula does not simply change one factor or introduce a new method of counting children. In fact, this is a completely changed approach and bears no relationship to the strengths of the existing title I formula.

This amendment cuts the amounts of per-pupil expenditures for which States can be reimbursed, and, thus, eliminates any incentive they have for raising additional amounts of money for education.

It further adopts a method of measuring poverty which is so different that 606 counties suffer a loss from what they received this year, even though the McClellan formula is based on a higher appropriations level. And, in addition, more than 250 counties throughout the country will still be relying on the 85-percent regressive hold-harmless 2 years from now.

Mr. President, I want to again emphasize that we are not talking about mythical losses for these 606 counties. These are losses of actual dollars in 42 States. It represents a decrease that these counties can expect from their fiscal year 1974 allocations, despite the fact that the McClellan formula is based on an increase in appropriations to $1.885 billion.

THE USE OF ORSHANSKY

Mr. President, the Senator from Arkansas argues that the House and Senate are in agreement that the Orshansky index should be used as the prime factor in determining children eligible under title I. He also argues that Orshansky is the "accepted" Federal index of poverty.

It is true that both the House and the Senate include the Orshansky index as part of the formula for allocating funds under title I, but there are substantial differences in the way the Senate Committee uses this index and in the way the House and the McClellan amendment would use it.

It may be that the Orshansky poverty index is much more sensitive to variations in individual family needs than a single dollar level can be.

But the Orshansky index is not without its problems. It is derived based solely on the cost of food for a family of a given size. I point out to my colleagues that under this index no further adjustments are made for variations in housing costs, transportation costs, medical costs, or for the cost of other necessary services.

Mr. President, this is the point that the Senator from Rhode Island began to develop, and it is very important to an understanding of how this abbreviated approach to a definition of poverty is being used within the Orshansky formula.

The only adjustment which is made for area of residence is a small variation for

farm or nonfarm family; but there is no adjustment for urban, suburban, or rural nonfarm cost-of-living variations.

The Orshansky index is further limited by the fact that it can only be applied against static census population figures and therefore is not reflective of changes which occur between the 10-year period of census counts. We would have no way of updating those figures until 1983.

The Senator from Arkansas argues that Orshansky is the universally accepted poverty index of the Federal Government and is adequate by itself. But it should be made clear to everyone that Ms. Mollie Orshansky, who developed this index, has forthrightly counseled the Congress against adopting this index as the sole indicator of poverty. Thus, we cannot rely on Orshansky alone and we must recognize that AFDC provides current data and an additional measure of differing regional living costs.

THE USE OF AFDC

The Senator from Arkansas further argues in support of his amendment that the Senate committee formula places undue emphasis on the number of children whose families receive AFDC payments.

Instead, the McClellan amendment proposes to effectively eliminate AFDC as a formula factor.

Mr. President, this aspect of the proposed amendment just does not make sense. First, there can be no rationale for only counting two-thirds of children from AFDC families over $4,250. This is *especially* true when you consider that poor populations are traditionally undercounted in census figures, and that most of this undercounting takes place in urban areas—the Urban League estimates a 5.3 million undercount.

Second, despite that fact that the McClellan amendment may have accompanying charts showing Senators how their States would come out, I point out to my colleagues that there are no statistics which accurately count AFDC families receiving payments over the Orshansky level. This is precisely the reason why my committee has included the entire AFDC caseload in working out the formula.

Third, I also point out to my colleagues that by counting only the AFDC children over $4,250, the Senator from Arkansas is doing precisely what he counsels against. That is, utilizing formula factors in which only some States can participate. In fact, there are a total of 26 States which could not, under his amendment, participate in this share of the money.

Now, Mr. President, much has been made of the alleged fact that so-called "wealthier" States unduly benefit from having AFDC children counted. I would like to take issue with that statement very directly. I come from a so-called wealthier State. And I challenge anyone to tell me that in the cities and the more rural areas of my State that there is not poverty. I further challenge anyone to tell me that costs are not higher in the State of Michigan than they are, for instance, in the State of Arkansas.

The facts are, Mr. President, that costs do vary across this Nation. I point out that, according to a Gallup poll, although food costs on an annual basis average $2,080 for other areas of the country, in the Eastern States food costs are $2,548 for an average family of four. Furthermore, although the national average of monthly housing rents is $81.26, in some States the average monthly rents drop as low as $47. And in New Jersey, monthly rents are $111, while in Arkansas rents average $52.

And just as family costs vary, cost to State and local governments for providing education services also vary.

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

Mr. WILLIAMS. Mr. President, I request 5 additional minutes.

Mr. PELL. Mr. President, I yield 5 minutes to the Senator.

Mr. WILLIAMS. May I ask the distinguished chairman to yield me a little additional time if I should still be talking at the end of that time?

Mr. PELL. How much time remains for the opponents of the amendment, Mr. President?

The PRESIDING OFFICER. Forty-four minutes remain to the Senator from Rhode Island, and 90 minutes to the Senator from Arkansas.

Mr. PELL. Mr. President, I yield to the chairman of the full committee as much time as he may desire.

Mr. WILLIAMS. Mr. President, for example, the average salary of teaching staff varies from a low of $7,100 in the State of Mississippi to a high of $14,000 in the State of New York. For New Jersey, the average salary was $11,750; whereas in Arkansas, this figure is $7,653.

And, in terms of the amounts these two States would be eligible for if title I were fully funded under the existing law, the State of Arkansas could receive 82.3 percent of its total per pupil expenditure from the Federal Government under this program, whereas the State of New Jersy is only eligible to receive 50 percent of its total per pupil expenditure.

Particularly, Mr. President, my colleagues should know that this AFDC issue is a very strange one. You know, we are told that it is only the large industrial States which continue to gain under AFDC, that the AFDC populations of these States keep growing, and that they have a much more substantial part of the population. Now, that is just not true. In point of fact, the top four States showing increases in AFDC payments from fiscal year 1972 to fiscal year 1973 were: Georgia, Indiana, North Carolina, and Louisiana. The State of New Jersey was 35th in ranking for increases of AFDC children.

Furthermore, it just is not true that AFDC represents a greater proportion of the Northern States' populations. Nationally, AFDC represents 11.2 percent of total population aged 0–17. For the State of Mississippi, it is 16 percent; for the State of Louisiana, it is 14 percent; for the State of Georgia, it is 15 percent; for the State of New York, it is 15.3 percent; for the State of New Jersey, it is 12.5 percent; and for the State of Missouri, it is 11 percent.

Finally, on this point, the Senator from Arkansas argues that the use of Orshansky and total caseload for AFDC in the Senate formula results in substantial "double counting" of children for title I purposes. Mr. President, because of the substantial undercounting of poverty populations by the census in the first place, this method will insure that all children in need of services are counted. Furthermore, because there are no statistics on AFDC over the $4,250 income level, this method insures that we are making allocations based on actual numbers and not estimates. And this method assures that all States will share in distribution of funds under all factors of the formula.

VARIATION IN PAYMENT RATES

Mr. President, the Senator from Arkansas has also argued that a change is needed in payment rates to the States because under existing law, and under the committee bill, these payments vary. In my view, however, the existing payment rate provision has been one of the great beauties of title I.

Yet the McClellan amendment would change all that. It will mean that those States with much lower education expenditures will only be brought up to 80 percent of the national average, and States with higher education spending will be artificially reduced to a maximum of 120 percent of the national average. Mr. President, this 120-percent ceiling at the present rates of expenditure will affect five States: Connecticut, Alaska, the District of Columbia, New Jersey, and New York. But many States are now enacting school finance reform and increasing expenditures, and many other States including Delaware, Hawaii, Illinois, Maryland, Michigan, Minnesota, Oregon, Pennsylvania, Rhode Island, Wisconsin, and Wyoming are already near this upper limit on State spending.

THE USE OF THE BASE YEAR APPROACH

The Senator from Arkansas has also argued that he is disturbed by the base year approach because it would assure all local education agencies of the funding they had in fiscal year 1974. He further argues that an 85 percent hold harmless provision is sufficient to provide these agencies stability for future planning.

As I have said before, Mr. President, this could mean a loss of 15 percent of the total funds that have been previously available to a school district. Yet we are completely changing the format for local school districts and imposing a new way of measuring poverty. Therefore, it is irresponsible, I believe, to change that format and not provide the children who are served under this program some stability.

The effect of the McClellan amendment is not a simple, continuing 85 percent hold harmless provision. A school district could receive 85 percent of its 1974 allocation in 1975, but 85 percent of that 85 percent in 1976—or 72 percent of its 1974 allocation; and 85 percent of that amount in 1977—or 61 percent of its 1974 allocation—and 85 percent of that amount in 1978—or 51 percent of its 1974 allocation. This means that a district could be reduced by close to 50 percent over that 4-year period.

The continuity that the base year ap-

proach provides is a necessity under this bill or any other bill.

URBAN AREAS

Finally, Mr. President, the Senator from Arkansas argues that the committee bill is inequitable in the way it distributes funds to States and that the formula is discriminatory. But a careful examination of the McClellan amendment shows that while many of the States may show an overall increase in funds which they receive under his proposed formula, the flow of funds within their States has the opposite effect. Mr. President, 606 counties will suffer an absolute loss under this formula in all areas of the country. The repeal of part C, changes made in payment rate, and the virtual elimination of AFDC as a factor will have great effects on distributions within every State.

Moreover, at least 35 of the 100 largest cities will lose funds under his formula, even assuming the increase in appropriations from fiscal year 1974 to 1975. Some of these cities include: Atlanta, Louisville, Wichita, St. Louis, Gary, Baltimore, Chicago, Newark, Richmond, Seattle, Los Angeles, Detroit, the District of Columbia, and Oakland.

The formula which the Senator from Arkansas offers to the Senate is a variation on the House committee formula, which was considered in one day by that committee, and was accepted by that committee without even looking at the effects that it would have within States.

I come back to this now for the third time. This has not been analyzed at all. The effects, not just at the top in State totals, but the effects within the States and the communities, means that we would be shortchanging the needs of the children of this country. Mr. President, let us not forget that under the committee formula, no local education agency will lose one penny. I urge my colleagues, for all the reasons advanced, and I am sure I am anticipating some to come, to reject this amendment.

Mr. McCLELLAN. Mr. President, I yield myself 3 minutes, I should like to ask the Senator from New Jersey a question or two.

In the Senate bill, was it the Senator's intention to exclude from participation in part C of S. 1539, 32 counties in Arkansas and 25 in Missouri, and countless numbers of counties in other States, from any participation in this grant of funds for extreme poverty areas, where the families have incomes of less than $3,000 per year? Was that deliberate, or was it accidental? I know that the Senator studied the question for 6 months.

Mr. WILLIAMS. I am looking at the counties we have listed in the grants for Arkansas. For example, Crittenden, this is the amount to be received: $48,892; for Jefferson County, $50,421; for Mississippi County——

Mr. McCLELLAN. The Senator is reading the names of counties where he has included the sums.

Mr. WILLIAMS. That is right. The amounts I have listed are for the counties I am naming in the State of Arkansas. Pulaski County is $79,564. For St. Francis, it is $34,971. These are allocations under part C, title I, as amended by the bill that was reported by the committee.

Mr. McCLELLAN. Yes; I am sure that is correct. The Senator has mentioned six of the richest counties in the State. I have a list of 32 of the counties in the State where the children are from families having incomes of less than $3,000. I am asking whether that exclusion was intentional or was inadvertent. What caused that?

In Newton County, the per capita income is $1,300 a year, where 43 percent of the families have incomes of under $3,000 a year. Not one dime has been provided from these extra, special funds for areas of high concentration of poor people. Not one dime will go to that county.

That is true throughout the Nation; it does not apply only to Arkansas. There are 25 counties in Missouri. I do not know whether that is inadvertence, after a 6-month study, or whether it is deliberate.

Mr. WILLIAMS. The operation of these formulas—either the McClellan formula or the committee's—is not that simple. That is why I say that this is worth a lot more study than the 1 day, as I am told, developed in the House. For example, I point out to the Senator, three of the counties in Arkansas that I did not mention earlier, under the formula advanced by the Senator from Arkansas, would receive less money than they would receive under the bill, S. 1539. Greene County, for example, would, under S. 1539, receive $342,740. For the first year under the Senator's amendment that would be $274,187.

Howard County has a reduction. I will not go through all the numbers, but I can state the figures under the formula allocation. Newton, Howard, and Sharp Counties show a difference and a lesser sum under the amendment offered by the Senator from Arkansas than the bill we have from the committee. There is no reduction, however, under the committee bill.

Mr. McCLELLAN. I am not talking about a reduction. I am talking about the title I, part C funds, which are supposed to help the poorest districts and the poorest children. Thirty-two counties of Arkansas have been eliminated, and 25 have been eliminated in Missouri. We can carry that all across the Nation to show that they get not a dime out of it. Yet one of the richest counties in New York State, Westchester County, under that provision, with a smaller percentage of poor children, gets a grant which is almost twice as much as is given to the whole State of Arkansas.

I do not think it is deliberate; I think the formula the Senator has presented is defective. It ought to be revised. I think the House formula is much better.

Mr. WILLIAMS. May I ask the Senator a question?

Mr. McCLELLAN. Yes.

Mr. WILLIAMS. I believe the Senator mentioned the county of Newton in the State of Arkansas.

Mr. McCLELLAN. Yes.

Mr. WILLIAMS. I did not hear exactly how he described the results.

Under the bill, my figures show that the county of Newton will receive $141,075. Under the McClellan amendment for fiscal 1975, it will receive substantially less. The figure would be $112,000.

Then, in fiscal 1976, under that provision, I gather, it is again at 85 percent held harmless. It goes down to $108,000. So the children of Newton County, for their education, would, under the Senator's amendment, be reduced to $141,000 for 1976. Under the amendment proposed, the amount would be reduced some $30,000, to $108,000.

Mr. McCLELLAN. The Senator gets away from the question. I asked him about title C. I just could not conceive how he could give me additional information justifying part C.

The PRESIDING OFFICER. The Senator's time is expired.

Mr. McCLELLAN. Mr. President, I yield myself 1 more minute.

I cannot conceive that the Senator from New Jersey, the Senator from Rhode Island (Mr. PELL), and the Senator from New York (Mr. JAVITS) would want to enact a provision under which the underprivileged counties would simply get less than one of the richest counties in the Nation. The poorest counties would not get it; the poorest counties would get absolutely nothing. I cannot conceive that that is the intent.

Mr. WILLIAMS. If Newton is one of the poorest counties, it gets more money under the bill than it would get under the Senator's amendment.

Mr. McCLELLAN. That is because it has fewer children. I think, as to the special children, the Senator made a mistake. I think the special children, those who need the dollar most——

Mr. WILLIAMS. I say that a dollar is a dollar and 80 cents is 80 cents; and if the Senator from Arkansas gives them 80 cents, they are better off with the dollar.

Mr. McCLELLAN. The Senator is not giving them a dollar for special help. He is giving it to the richest counties.

Mr. BENTSEN. Mr. President, will the distinguished Senator from Arkansas yield me 5 minutes?

Mr. McCLELLAN. I yield 5 minutes to the distinguished Senator from Texas.

Mr. BENTSEN. Mr. President, I am pleased to rise and support the amendment offered by the distinguished Senator from Arkansas, chairman of the Committee on Appropriations. I have been involved in the controversy over title I since last October, when I offered an amendment to the continuing resolution. I am sure that no school district would lose school funds because of the distortions caused by the outdated title I formula.

The essence of the problem is quite simply this: The AFDC factor in the committee formula is an unwise and unfair method of determining where the poor children are living. If the argument is that title I funds should go to those districts which have increased numbers of poor and disadvantaged children, then the committee bill is deficient.

In 1968, when AFDC was placed in

the formula there were less than 580,000 AFDC children; today there are in excess of 3 million. The result has been that AFDC has overwhelmed the formula and States which cannot afford to pay substantial walfare payments have been penalized.

I do want to say, Mr. President, that the committee bill is an improvement over the current title I formula in that it counts total AFDC caseload rather than the level of AFDC payments. That is an evidence that the committee recognized the inequities in present law.

However, the committee bill, by basing its formula 40 percent on AFDC caseload keeps many of the problems inherent in present law.

By any criterion, AFDC is a poor standard of measurement. Let us look at some of the problems in the committee bill.

The first is that different States have radically different standards for determining who receives AFDC payments. For instance, half of the States allow AFDC payments if there is an unemployed father in the home, but the other half refuses payments in similar circumstances.

States vary in their requirements on the value of a homestead an AFDC recipient can own. One State allows a home of $2,500 in value; another allows a home of $25,000 in value; and many States require that recipients own no home at all.

With these widely differing standards for determining who receives AFDC, is it a fair measure of determining poverty levels and the location of poor children? Obviously it is not, and that is why I oppose it.

There are other problems with AFDC, and one is that there is substantial controversy over the accuracy of AFDC statistics. HEW found recently that over 10 percent of the AFDC caseload nationally was not eligible under the law for assistance. Another 22.8 percent received payments in excess of eligibility, and 8.1 percent were underpaid. From April to September 1973 the error rate in the AFDC program was found to be over 40 percent of the caseload. Granted that title I cannot ever be mathematically exact, but the magnitude of the error here suggests that AFDC is not a reliable source of data.

Mr. McCLELLAN. Mr. President, will the Senator repeat that again? Is that the national average of error?

Mr. BENTSEN. That was the national average in the program from April to September, 1973. It was found to be over 40 percent of the caseload, and I think that is an indictment of using it as a criterion.

Finally, the committee bill not only uses AFDC, it actually double counts AFDC children. If the formula is based 60 percent on the poverty index and 40 percent on AFDC caseload, many of the same children who are counted under the AFDC factor will have also been counted in the poverty index. So, in effect, we compound the AFDC error by multiplying it and the distortions remain.

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

Mr. BENTSEN. May I have another 3 minutes?

Mr. McCLELLAN. I yield the Senator 5 additional minutes.

Mr. BENTSEN. Mr. President, let me say that I know it is a very difficult matter to come up with an equitable title I formula. Frankly, I have explored several attempts to modify the House formula so that no State would be disadvantaged. But the efforts I made convinced me that there is no single formula that will please all States. Inevitably, someone is going to receive less than he believes he is entitled to.

But what I really deplore is the practice of reading the numbers on charts to determine which State will receive the most under the various formulas, but, in all candor, most of us realize that this is the way many Senators will judge this issue.

That is the way too many will vote on this floor this afternoon. What we ought to be looking at is where the poor children are living.

Let me just say this: The principle behind title I should be that Federal funds should be placed in school districts that have large numbers of disadvantaged children. If districts have had increases in the numbers of disadvantaged children, the formula should make allowances for that. The formula should not be based on extraneous factors which are no real indication of where the poor children are located.

The McClellan amendment is not a Southern amendment, nor a Northern amendment; it benefits States in all sections of the country that have had an influx of disadvantaged children measured on a widely accepted Federal definition of poverty. I am convinced that it is fair and reasonable, and I urge its adoption by the Senate.

I yield back to the chairman the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. I presume the other side wants to use some time.

Mr. HUDDLESTON. Mr. President, will the distinguished Senator from Arkansas yield me 15 minutes?

The PRESIDING OFFICER. Does the Senator from Arkansas yield to the Senator from Kentucky?

Mr. McCLELLAN. I yield the Senator 15 minutes.

Mr. HUDDLESTON. Mr. President, in 1965, the U.S. Congress enacted a landmark piece of legislation—the Elementary and Secondary Education Act, the first general educational aid bill in the history of this Nation. In the years since 1965, there have been numerous disagreements over education aid—over how it should be used, how much should be concentrated on one child, how it should be distributed—but there have been few disagreements over the need for such aid. Instead, such aid has come to be viewed as an essential ingredient in providing our schoolchildren with those tools and skills which will enable them to develop their own potential and meet the ever-increasing demands of daily life in a complex society.

Since the act's initiation, some 61 million children throughout the United States have participated in the title I program, the major program authorized under the law, which provides assistance for educationally disadvantaged children. Some 1.8 million school students in Kentucky have benefited from the program. In fact, last year, the State received more than $32 million in Federal funds from title I, with 229,747 children, some 27.6 percent of the elementary and secondary students in the State eligible.

Recent developments—and the deliberations over them—have, however, revealed a number of difficulties with existing law, especially the title I formula. Under the original method of distributing title I funds, local school districts were eligible for a sum equal to the number of children from families with incomes below $2,000 a year—or above, if the family was receiving aid to families with dependent children payments—times one-half the State or National average per pupil expenditure, whichever was higher. Census data was used to determine the number of children from low-income families.

From 1966 through 1972, the 1960 census data was used to identify children from families with incomes of $2,000 or less—a figure which remained stable throughout the period—while the number of AFDC children was consistently changed, as the States reported variances in eligibility.

Use of the formula had two significant results. First, because of the growth in the number of AFDC children as compared with the stable number of children from low-income families, the former, which originally accounted for approximately 10 percent of total title I children—or about 600,000 out of a total of 5.5 million in 1966—expanded by 1974 to nearly 60 percent of the total number of children eligible for title I—or about 3.6 million out of a total of 6.2 million.

Second, when the 1970 census data became available—the 1973–74 school year—severe shifts of funds were due to occur, principally because of the drop in the number of children from families with incomes of less than $2,000—and the consequent emphasis on AFDC children—and because of the movement of children during that period. For a number of rural districts, the shift in funds was to be dramatic.

To moderate the shift which was to occur—and looking forward to a new authorization bill—the Congress, for the current school year, provided that the new census data would be used but that there would be a "hold-harmless" procedure to prevent school districts and States from losing or gaining more than a certain percent of the amount which they received the previous year. This was essentially a stopgap move to prevent major gyrations in the flow of funds until the Congress could examine and revise the existing formula.

The bill passed by the House and the one reported by the Senate Labor and Public Welfare Committees represent efforts to come to grips with the problems which have arisen under the original formula and to devise an authorization standard which will be equitable and

realistic in meeting the objectives of the title—the provision of special services to those children who are educationally deprived.

Quite simply, the question is: Who is an educationally deprived child? Just how do you identify one?

S. 1539, the Senate bill, proposes one answer. It would distribute funds according to a formula which would guarantee each local school district the amount it received in fiscal 1974. From any funds appropriated in excess of this "base year" allocation, 60 percent would be distributed on the basis of the number of Orshansky poverty level children and 40 percent would be distributed on the basis of the number of children on AFDC.

Thus, under S. 1539, as reported, the greatest share of the money—89 percent—would be allocated to school districts according to what they received in fiscal year 1974 when the stop-gap formula was used. As previously noted, between 1966 and 1973, 1960 census data was used in determining the number of children from low-income families. But, in the school year 1973–74, 1970 census information was used, together with the hold-harmless provision. The latter in effect, kept the old 1960 census information pretty much intact in nonurban areas and S. 1539 would lock in this situation and use it for every subsequent year.

Also locked in to the formula would be the imbalance in AFDC children in urban areas. In 1974 the States with large numbers on public assistance received increased grants. This resulted because half as many children were counted under the census—the $2,000 limit—while a greater number of AFDC children were counted.

Therefore, funds shifted to the States which could afford the higher public assistance programs. Furthermore, funds also shifted within States to the urban areas since urban areas within States tend to have more AFDC children than rural areas.

Another problem with the Senate formula is that it would double count some AFDC children. Thus, again higher payments would be shifted to States which have large public assistance programs.

While the AFDC factor has been defended as a minor updater in the title I program, the error rate in the AFDC program is large, which raises question over its use. HEW recently found that 10.2 percent of the AFDC caseload carried nationally was actually not eligible for assistance. Another 22.8 percent received payments in excess of eligibility, and 8.1 percent were underpaid. Additionally, the error rate is not equitably distributed among the States.

Along with this, AFDC also varies within the States. The urban areas are more likely to provide higher AFDC payments and more AFDC than the nonurban areas.

The committee bill not only has the problems noted above with the count of children, but the second part of the formula—the payment rate for these children—has also produced some grave inequities. Under S. 1539, school districts are eligible to receive either one-half of the State or one-half of the national average expenditure, whichever is higher. Since there is no ceiling on the payment rate which a State can receive, the wealthier States have again benefited.

For example, the actual salary cost of providing classroom instruction in New York State in 1972 was $11,831, only slightly more than 20 percent above the national average. Yet, under S. 1539, New York would receive almost 40 percent more than the national average per pupil expenditure.

Amendment No. 1304 offered by the distinguished Senator from Arkansas poses another answer.

Under this amendment, the title I formula would be based upon new census data and new poverty criteria, the Orshansky index which defines poverty according to the number of children in the family, the sex of the head of the household, and the farm or non-farm status of the family. Although the Orshansky index is not perfect, last year, the Office of Management and Budget, after a 6-month study, concluded that it was still the best measure of poverty currently available. Furthermore, an 85 percent hold harmless over the previous year would provide the stability necessary to allow local school districts to plan ahead without locking in the present inequitable payment rates.

Under amendment No. 1304, the base reimbursement figure is also new. Each school district's total number of eligible children—those coming under the Orshansky definition plus two-thirds of those on AFDC—would be multiplied by 40 percent of the State average per-pupil expenditure, except no State would be entitled to a payment that is less than 80 percent nor more than 120 percent of the national average per-pupil expenditure. This, in effect, puts a floor and a ceiling on the variations among States. It would allow higher spending States to receive an adequate additional compensation for their title I program, but would not allow these rates to become so high that they would work to the disadvantage of other States, which may have less to spend on education. In other words, it would reduce the extremes in payments which would be made under the formula proposed in S. 1539, and group all States closer to a national average payment per student.

For the reasons stated above, I believe amendment No. 1304 which I am cosponsoring, represents the fairest and most balanced approach to meeting the needs of culturally deprived children wherever they may be—in urban or rural areas, in wealthy or less endowed states, in localities with high public assistance payments or in localities with low ones.

The residence of a child should not be the measure-stick of need. In that case, the accident of location either rewards or deprives a child.

What is required instead is a standard which relates to a child's educational opportunities and his ability to utilize those opportunities vis-a-vis those of other children in this country. That is what this amendment seeks to do. It will utilize an accepted definition of poverty to identify disadvantaged children throughout our land. It will allow the counting of two-thirds of the children on public assistance—a move which should benefit the States with large caseloads, without unduly infringing upon the funds available to States which may have a large number of children from low-income families but not necessarily receiving public assistance. It will moderate the differences in per pupil expenditures among the States—differences which exist in some cases despite major tax efforts by States with low per capita earnings—allowing wealthier States a greater reimbursement because of their larger expenditures but restricting the loss which less wealthy areas might suffer. It will recognize new conditions but phase in the losses of funds which occur as children move and eligibility rates change by limiting authorization decreases to 15 percent a year.

I believe this is a good amendment. I believe that over time it would be the best means of securing special educational assistance for those children in all parts of our Nation with special education needs. I hope the Senate will adopt it.

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

Mr. BROOKE. Mr. President, will the Senator from Rhode Island yield?

Mr. PELL. How much time does the Senator need?

Mr. BROOKE. Four minutes.

Mr. PELL. I yield the Senator 4 minutes.

The PRESIDING OFFICER (Mr. JOHNSTON). The Senator from Massachusetts is recognized for 4 minutes.

Mr. BROOKE. Mr. President, I rise in opposition to the amendment offered by the distinguished Senator from Arkansas. I support the committee formula because it sends title I funds to where the needs are greatest. I eschew any battle of the charts in considering this formula because it has become quite apparent to me, having looked at the figures inserted in the RECORD yesterday by the Senator from Rhode Island (Mr. PELL) that while some States may receive more money under the McClellan formula than do others, the fact remains that even within those States important communities will face a diminution of title I funds in the next year.

I am particularly impressed by the method of allocating funds in the committee bill by which every locality in the Nation will receive in fiscal year 1975 more title I funds than they received in fiscal year 1974. No Member of this body will be embarrassed to explain to his constituency why some important segment of his State is getting less Federal education help at a time when costs are mounting rapidly, especially in the light of the fact that title I is funded at only a fraction of the entitlement. When every school district has to look to the Federal Government for funds, it makes no sense to require some to search frantically for new revenue sources in order that others may get even more.

In my own State, Massachusetts, 11.4 percent of children between the ages of 5–17 are in families receiving AFDC. This is only slightly more than the na-

tional average of 11.2 percent. These children number some 1.87 million. Yet, if the McClellan amendment is adopted, only some 50,000 of these 1.87 million youngsters, according to HEW estimates, would be counted as title I AFDC eligibles. In contrast the committee bill *counts* all AFDC school-age children.

I do not seek the lion's share of this program for Massachusetts. As the law presently stands, and this aspect of the law is continued by S. 1539, the payment rate for title I-A for Massachusetts is 50 percent of our annual per pupil average expenditure; thus Massachusetts has an entitlement sufficient to purchase 4½ months of education for each eligible child, based on a 9-month school year. On the other hand, Arkansas would receive 82 percent of its annual per pupil expenditure, sufficient to purchase 7.4 months of education. And, I do not object because I recognize the special problems faced in Arkansas and other low-income States.

But the acceptance of this responsibility should not mean that grant-in-aid programs should be distorted to our greater disadvantage. There are poor children in Massachusetts, too, almost 117,000 of them below the Orshansky poverty level. Massachusetts would lose as much as $3.7 million under the McClellan amendment. I cannot countenance depriving overburdened school districts in Massachusetts of the funds necessary to aid their education.

I hope that my colleagues will reject the McClellan amendment so that we can move without interstate rivalry, to give our children the educational assistance which they so sorely need.

Mr. HOLLINGS. Mr. President, 9 years ago the Congress of the United States enacted one of the most important pieces of legislation in its recent history—the Elementary and Secondary Education Act of 1965.

This legislation was a landmark in our efforts to furnish all our children—black and white, city dweller and farm child—with equality of educational opportunity. It was a law of which we could all be proud.

In title I of the Elementary and Secondary Education Act of 1965 we provided badly neeed financial resources to school districts which were having difficulties in funding adequate educational programs to meet the needs of large concentrations of low-income families.

But in the 9 years since this act was approved, it has not fulfilled its promise—primarily because the money is not going to those areas where there are large numbers of deprived children.

The senior Senator from Arkansas (Mr. McCLELLAN) has eloquently summed up the situation in which we find ourselves. We face a paradox. Title I funds are being allocated in ever-in*creasing* amounts to the more wealthy areas while those that have the greatest need come away almost empty-handed.

The basic problem is the formula used to calculate and allocate title I funds has become distorted over the years and is no longer a proper reflection of the actual situation prevailing in many of our States.

We in South Carolina have been unable to add AFDC children to our rolls in order to qualify for title I funds in the same manner that many of our wealthier States have been able to do. We just do not have the money to do that.

As a result, South Carolina is clearly being discriminated against.

Although we have 2.49 percent of the poor children in the Nation as defined by the Orshansky Index of Poverty, we will receive only 1.95 percent of the funds available under title I.

I am fully cognizant of the fact that under the committee bill now before us we would receive more money this year than under the McClellan amendment. But my state supports the McClellan formula because it will provide a more equitable allocation of funds in future years—an allocation that will prevent the distortions which have plagued us in the past.

I also support the senior Senator from Arkansas' proposed abolition of part C of title I. South Carolina currently receives some money under this program. But there are 10 counties in my State where more than 25 percent of the population have incomes under $3,000 annually which do not receive any part C funds. Clarendon County has over 35 percent of such families, but it does not receive so much as a single penny of this money.

I can see no rationale for such allocations when the stated purpose of part C is to help areas with high concentrations of poor people.

Mr. President, the people of South Carolina have awaited patiently for years for a just and fair distribution of title I funds to which they are entitled. The time to make such a distribution is at hand rather than to perpetuate an unfair system. It is for this reason that I cosponsored the McClellan amendment and strongly urge its approval.

Mr. BAKER. Mr. President, the amendment of the distinguished Senator from Arkansas (Mr. McCLELLAN) is surely one of the most important and far-reaching that we will consider in connection with S. 1539 because it is directed at title I, the major Federal program of aid to elementary and secondary schools.

As a cosponsor of the amendment, I feel strongly that it will insure the fairest possible distribution of limited appropriations for the title I program and direct those funds to local educational agencies with the greatest need.

The title I formula is extremely complex, and I know that all aspects of it will be thoroughly discussed during this debate. There are several points of contention between the House approach to the formula—which Senator McCLELLAN's amendment would substitute—and that taken by the Committee on Labor and Public Welfare which especially concern me and which I would like to address in these brief remarks.

First, I believe that census figures determining the number of poor children according to the Orshansky Index are a more accurate indicator by far of the distribution of poor children throughout the States than are figures showing the number of children from families receiving aid to families with dependent children. Differences in AFDC payment levels do not reflect only differences in the cost of living between various areas of the country. They also reflect a wide variation among the States in criteria for eligibility which, as stated in the House committee's report on H.R. 69, "make AFDC statistics unsuitable for use as a major determinant in the distribution of Federal aid."

S. 1539, which would count all children from families receiving AFDC payments and which would apportion 40 percent of the funds available for title I after the "hold-harmless" provision has been satisfied according to AFDC figures, clearly makes AFDC statistics a major determinant in the new formula. In my opinion, this approach rewards States which have the fiscal capability to administer generous welfare programs and ignores the needs of poor children in States which are unable to adopt such programs. The formula approved by the House and offered by Senator McCLELLAN in his amendment would insure a more equitable apportionment of funds and would use AFDC statistics only as a minor modifier to update census statistics.

A second point on which the House and Senate bills disagree is the level of the hold-harmless provisions. By adopting a "base year" concept guaranteeing all school districts 100 percent of the amounts they received in fiscal 1974, S. 1539 would freeze into law the allocation of most title I money for future fiscal years on the basis of a formula and a fixed-income poverty level which all agree is inequitable. In fiscal 1975, the 100 percent hold-harmless clause would mean that 89 percent of the funds appropriated would be apportioned according to the old formula and the old definition of poverty and only 11 percent would be distributed on the basis of the revised formula.

While I agree that a cushion should be provided so as to obviate drastic changes in entitlements to individual school districts, I believe that the 85 percent hold-harmless provision in H.R. 69 and Senator McCLELLAN's amendment would provide adequate protection to school districts while insuring distribution of more funds on the basis of the new, more equitable formula.

Third, I am deeply concerned about the Senate committee's adoption of a new funding formula for part C of title I, grants for schools with the highest concentration of children from low-income families. Senator McCLELLAN's amendment would delete part C and discontinue the program on the basis that it saps funds from the local educational agency program and poses administrative burdens which outweigh its value. The formula by which S. 1539 would apportion over $73 million of the title I appropriation in fiscal 1975 emphasizes the difficulty of singling out school districts with a special need over and above those eligible for grants under title I.

For example, Hancock County, Tenn., which has a per capita income of $1,045 and in which 53.5 percent of the families have an income of less than $3,000 per

year, would be eligible for no money whatsoever under part C as drafted in S. 1539. Westchester County, N.Y., however, which has a per capita income of $5,059 and in which only 4.9 percent of the families have incomes of less than $3,000 per year, will receive $619,833 under part C, more than the entire State of Tennessee would be entitled to.

A formula which produces inequities such as this should not, in my opinion, be approved by the Congress—especially when it would drain badly needed money from the entire title I program, a program in which appropriations cannot keep pace with educational needs from year to year.

Mr. President, the McClellan amendment would insure a fair distribution of these limited funds on the basis of a formula which identifies, as accurately as possible, the districts where the need is and directs money to those districts as simply as possible. I urge the Senate to adopt this amendment in order to insure the continued success of the title I program throughout the country.

Mr. BAYH. Mr. President, as a cosponsor of the pending amendment, offered by the distinguished Senator from Arkansas (Mr. McCLELLAN), I urge its adoption.

This amendment would insure a more equal distribution of title I funds than the committee bill funds earmarked for special assistance to disadvantaged students. The amendment offered by the Senator from Arkansas parallels a similar one successfully submitted in the other body by my Indiana colleague, Representative JOHN BRADEMAS, who has come to be known as a leader in education legislation.

If the title I program is to succeed, it is important that the distribution of funds be fair. Yet under the committee bill sharp differences in per pupil assistance under title I would continue. Wealthier States would receive a lopsided share of title I funds. For example, one extremely wealthy county in New York—Westchester County—would reap as great a benefit from part C money as my entire State of Indiana and as much or more than 29 other States. Such unequal distribution is simply unfair.

Adoption of this amendment would follow the House formula for dispensing title I funds. Such a change would provide approximately $2 million more in title I funds to 88 of Indiana's 92 counties and more funds to less wealthy States. Indeed, unless this amendment is adopted there are a number of cities and towns in Indiana and around the country which will be unfairly penalized and shortchanged by the present formula for distributing title I funds.

Mr. President, this is an important program, one of the key categorical programs which the Congress fought to retain in its insistence that the Elementary and Secondary Education Act not be replaced with the Nixon administration's education revenue sharing. We fought to keep title I assistance alive, now we must vote to keep it fair.

We must not accept an artificial formula which provides more funds for rich States by relating the size of education assistance to a State's ability—by virtue of its greater wealth—to sustain a more generous welfare program. Yet this is exactly what will happen if the pending amendment is defeated. We will penalize the poorer States which are the very States that most need the benefit of aid for disadvantaged students.

Mr. President, this is a fair and just amendment to serve more needy students nationwide and one that will provide a needed and welcome $2 million more to aid disadvantaged students in Indiana.

Mr. KENNEDY. Mr. President, I rise to express my opposition to the amendment offered by Senator McCLELLAN.

After carefully studying the formulas in both S. 1539 and the McClellan amendment, I remain convinced that the S. 1539 formula is more equitable than the McClellan formula.

Briefly, Mr. President, the McClellan amendment does not take into sufficient consideration the increasing numbers of poverty-level children in urban areas, nor the fact that the costs of educating such children are greater in urban areas than in rural areas.

The McClellan amendment, for example, would eliminate part C. "Special Grants for Urban and Rural Schools Serving High Concentrations of Children From Low-Income Families." from title I. This is an extremely important program for Massachusetts which has such high concentrations of low-income families. By repealing part C., Massachusetts would lose nearly $2.3 million in funds that it would otherwise receive for this part under S. 1539.

Furthermore, the McClellan amendment places a payment rate ceiling of 120 percent of the national average of per pupil expenditure. This would be severely restrictive for Massachusetts, and other urban States, where the cost of living, particularly in the larger cities, is higher than the national average.

In virtually all States, the effect of this amendment will be to diminish the level of funding for cities within those States.

Most importantly, Mr. President, the McClellan amendment would virtually eliminate as one criterion in determining the numbers of poverty-level children in a State the total caseload of children aged 5 to 17 covered by the aid to families with dependent children (AFDC) program. It would include only two-thirds of those children from families with income over $4,250. This would eliminate most of the AFDC criterion for calculating the numbers of poverty children in a State. It would reduce by half the numbers of poverty children in Massachusetts to be included as eligible for the purposes of Federal funds to the State.

Mr. President, of Massachusetts' total population in the ages of zero to 17, 11.4 percent fall into the AFDC category. The McClellan amendment would effectively eliminate these from the program.

On the other hand, the McClellan amendment would rely primarily on the Orshansky index to calculate the numbers of poverty children in a State. Yet, Mr. President, the Orshansky definition of poverty alone is not sufficient. It is not updated annually, as the AFDC count is. Furthermore, it does not take into consideration variations in the costs of educating poverty children from one area to another. It is based only on the estimated cost of feeding a family, assuming that the cost will always be one-third of the cost of necessities for a family. It does not account for variations in costs of housing, variations in costs of medical expenses, or variations in costs of transportation.

Mr. President, last year Massachusetts received approximately $30.1 million from all parts of title I. Because of the increase in the cost of living over last year, additional allocations have been considered necessary for all States to continue the same programs they had last year. Under S. 1539, Massachusetts this year would, therefore, receive $37.5 million. However, under the McClellan amendment Massachusetts would only receive $33.8 million. Massachusetts would, therefore, receive an additional $3.7 million under S. 1539 as compared to the McClellan amendment.

Of our major cities, Boston would receive $9.2 million under S. 1539, compared to $7.2 million under the McClellan amendment; Worcester would receive $3 million under S. 1539, compared to $2.8 million under the McClellan amendment; and Springfield would receive $3 million under S. 1539, compared to $2.8 million under the McClellan amendment.

On the county basis, Suffolk County received $8.3 million in fiscal year 1974; it would be decreased to $7.6 million under the McClellan amendment; while it would receive $9.9 million under S. 1539. In addition, Dukes County would receive fewer funds than last year under the 15 percent "hold harmless" provision of the McClellan amendment.

Mr. President, I am completely in agreement that Federal funds, under title I, should be allocated equally to assist the States in their programs for educating their poverty children.

However, I do not believe that the McClellan amendment meets that goal, particularly with respect to Massachusetts.

It does not sufficiently take into consideration Massachusetts' cost-of-living factor. It severely penalizes our largest cities. It repeals over $2 million in special grants for Massachusetts schools with high concentrations of low-income families.

Finally, Mr. President, it creates much uncertainty for our educational administration by not assuring them of a continuity of funds from one year to the next. By not using fiscal year 1974 funds as a base year, and by setting a ceiling of 120 percent of the national average per pupil expenditure, our administrators would experience great difficulty in meeting the educational obligations they have already made.

Mr. President, in view of these implications for the State of Massachusetts, as well as for the many other States in a similar situation, I cannot support the amendment of Senator McCLELLAN. I urge my colleagues to vote against it.

QUORUM CALL

Mr. PELL. Mr. President, I suggest the absence of a quorum, with the time to be charged equally to both sides.

Mr. McCLELLAN. Mr. President, reserving the right to object, why could we not have it charged to neither side?

Mr. PELL. All right.

Mr. President, I make that unanimous consent.

The PRESIDING OFFICER (Mr. BARTLETT). Is there objection to the unanimous-consent request of the Senator from Rhode Island? The Chair hears none, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. PELL. I yield to the Senator as much time as he may require.

Mr. HATHAWAY. I rise in opposition to the amendment by the Senator from Arkansas. It is not merely because, as a member of the committee, I was one of those who supported the proposed formula in the unanimous committee vote. It is because I feel the committee formula is equitable and fair. It is one which, if it stands, will insure the support of Senators and Representatives from all the States for adequate appropriations for title I, our biggest education grant-in-aid program.

In a sense, it can be argued that the needs of practically all of our school districts are so great as to make arguments over distribution formulas academic. The money is needed wherever it is sent. But the thrust of title I, and the fact of limited resources, impels us to make every effort to put the funds where they will do the most good. And it was with both of these factors in mind that we devised the approach of the committee bill.

Providing a base year which protects States and, more importantly, local educational agencies, eliminates the uncertainties that have plagued the local administration of this program for the last 2 years. And it recognizes that whatever defects there were in the old formula, and I concede there were such defects, there were and still are needs to be met where the mony has been going.

There has been a great deal of criticism of the use of AFDC in the committee formula. But I think there is a definite place for this factor, provided its influence on the distribution is limited. The committee bill would do that by holding the AFDC factor at 40 percent. In this way the wide fluctuations caused by changes in State AFDC policy in the past will not be repeated. But, and this is the important point, there will be at least part of the formula—the AFDC factor—which will be responsive to population and economic changes which occur in between the censuses. We all saw the tremendous shifts which occurred in only 5 years which were revealed by the 1970 census. Do we have any reason to think that there will not be comparable changes over the next 10 years?

Another factor favoring the use of an AFDC element in the formula is that AFDC is more reflection of cost-of-living differentials between areas of the country than is the Orshansky index. While Orshansky recognizes differences between farm and nonfarm families, it makes no distinction between urban and nonfarm rural costs-of-living. And although my State can by no stretch of the imagination be denominated urban, I must recognize that any formula which does not take into consideration this difference cannot possibly be fully responsive to the substantial needs of the urban poor.

Finally, I should warn my colleagues not to judge the merits of the two proposals too heavily on the per-State distribution figures. For one of the important lessons gained from the work that has been done on this question, is that distribution within a State is as important as distribution among the States. Although your State may appear to gain or stay even under the proposed amendment, there may be extremely significant shifts within school districts in your State. And these shifts, even with the 85-percent local hold harmless in the amendment, could be catastrophic for many small, relatively poor school districts.

In conclusion, Mr. President, I can only repeat my original point. What we are engaged in here is based to a large extent on approximation and guesswork. Neither of these proposals—and no others of which I have heard—represent a perfect distribution of funds to those in the most need. Recognizing this fact then should lead us to try to minimize disruptions as we move from one attempted solution to another. And, any problems in the old formula which are "locked in" by this approach will disappear as appropriations under this title increase. It is for this reason that I feel the terms of the committee bill are responsible to our constituents as well as responsive to the intent of title I.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged against either side.

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

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. PELL. 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. PELL. I yield 10 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 10 minutes.

Mr. CASE. Mr. President, from the beginning, the two major problems of title I of the Elementary and Secondary Education Act have been the lack of sufficient funds to aid all our educationally disadvantaged children and the lack of a formula to distribute available funds equitably.

The provisions of the bill before us, S. 1539, that are designed to meet these problems are the very provisions that would be changed by the McClellan amendment.

For example, S. 1539 provides that no school district would receive less title I funds at any time in the future than it did in fiscal year 1974. This is designed to give school districts assurance of minimum amounts they can expect so they can plan ahead their ongoing programs.

In the first annual report on title I in 1966, one of the major problems cited was the lack of any assured level of funding. The report said:

> Local school districts also said that they were more hesitant to plan programs and hire additional personnel without assurances that a specific level of funding would be maintained over several years.

This has been a continuing problem. Local school officials still point out that a title I program cannot be a hit-or-miss, 1 year cram course. It has to be a long-term process that provides the additional educational services disadvantaged children need on a sustained basis.

The base year concept contained in the bill is a significant step toward solving this problem. It gives an Administrator assurance that he will receive funding at least equal to his present allocation and that he can plan a program accordingly.

The McClellan amendment would eliminate the base year concept and substitute for it a provision that would assure each school district only 85 percent of the amount it received the previous year. This would mean that a school district, by losing 15 percent of its previous year's allotment in each of 4 successive years, could wind up with only 49 percent of the funds it had started with. Obviously, that would not permit long-range planning of an ongoing program.

In my view, the base year concept is needed to provide for effective use of the funds the Congress provides for title I programs.

But the base year concept would not assure equitable distribution of funds under title I.

Unfortunately, we do not have sufficient information about educationally disadvantaged children to assure that title I funds will be distributed to those most in need in every case.

Ms. Mollie Orshansky of the Social Security Administration developed a poverty index based on food costs to a family of a particular size, taking into account the age and sex of the head of the household and whether it is a farm or nonfarm family.

But Ms. Orshansky has counseled Congress against using the index as the sole indicator of poverty. As she pointed out, the Orshansky formula concentrates only on "the income-food relationship, although in urban families, particularly those handicapped not only by lack of money but by minority status and large families, the cost of housing may be critical."

The Orshansky formula is further limited by the fact that it can only be applied against static census population figures and, therefore, is not reflective

of changes occurring within the 10-year periods between census counts.

To compensate for the limitations of the Orshansky index, S. 1539 contains a formula that relies in part on the number of children in a State whose parents are receiving aid for dependent children (AFDC) payments.

Under the formula in the bill, funds appropriated in excess of the amount needed to meet the base year allotments would be allocated on a ratio of 60 percent based on the Orshansky index and 40 percent based on the AFDC count.

While this formula probably will not provide full equity, it will approach that goal more closely than would reliance solely on either the Orshansky index or the AFDC count alone.

Since the McClellan amendment relies principally on the Orshansky index, I believe the formula in the bill as reported provides a greater degree of equity.

Once the number of children eligible for title I payments has been determined, the rate of payment has to be decided upon.

S. 1539 provides that the rate of payment will be 50 percent of either the average per pupil expenditure of the State or the national average per pupil expenditure, whichever is greater.

The McClellan amendment provides for a payment rate of 40 percent of the average State-per-pupil expenditure with a floor of 80 percent of the national per pupil expenditure and a ceiling of 120 percent of the national average.

The payment rate in S. 1539 would bring low spending States up to the national average and not limit the efforts of those States spending a great deal more than the national average.

In addition, the McClellan amendment would eliminate parts B and C of title I.

Part B of title I provides for special incentive payments to States that make an extra effort. This extra effort is measured by the relationship of the amount a State spends on education to the per capita income of the State.

Part C of title I provides additional funds for areas with the highest concentrations of disadvantaged children. This provision was adopted several years ago in recognition of the special problems these areas have in raising revenues for education. The amount set aside for this program is limited to 15 percent of the title I funds. The bill also restricts these payments to those school districts that have twice the State's average number of poor children or at least 10,000 disadvantaged children.

In other words, part B provides a special incentive to States to make an extra effort and part C provides extra help to school districts with the heaviest burdens. I believe both provisions are needed.

For all of the reasons I have stated, I will support the title I provisions of S. 1539 and oppose the McClellan amendment.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, I suggest the absence of a quorum, without the time to be charged against either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCLELLAN. 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. McCLELLAN. I yield 10 minutes to the distinguished Senator from Alabama.

The PRESIDING OFICER. The distinguished Senator from Alabama is recognized for 10 minutes.

Mr. ALLEN. I thank the distinguished Senator from Arkansas.

Mr. President, we have heard a lot about the Orshansky formula. This is a formula by which the definition of poverty is arrived at. It computes the minimum money income that is necessary to support a family at the lowest level consistent with the standard of living of the United States.

It is based on the amount of money needed by families of different sizes and compositions to purchase a nutritionally adequate diet, assuming that no more than one-third of the family income is spent for food.

The index is derived from three factors, one, the number of children in the family; two, the sex of the head of the family; and three, whether the family residence is farm or nonfarm.

The Orshansky index is updated annually according to changes in the Consumer Price Index. In this way it takes into account inflationary trends.

The Orshansky index was adopted by the Federal Government in 1969 as the official definition of poverty. It has been utilized in the reports of the Senate Labor and Public Welfare Committee in S. 1539 and the House Committee on Education and Labor in H.R. 69.

One might say that is a proper method of distributing the funds nationwide to the disadvantaged families, the families that live in poverty, according to a well-defined and well-recognized definition.

Translated into dollars and cents, what does the Orshansky index or formula provide as a poverty level in the United States? It is going to be updated again in June of this year, but at the present time, for a family of four, nonfarm, the amount of the poverty level in the Orshansky index or formula is said to be $4,540 in nonfarm areas and $3,860 in farm areas.

In brief, what do these two formulae provide? What is the difference between the House bill in H.R. 69 that is being translated over in the McClellan amendment to the pending bill, S. 1539? What does the bill provide?

Well, it takes all children covered by the Orshansky formula. That is one factor. Then they add to that another factor, which is two-thirds of the AFDC families—aid to families with dependent children—those families that are above the Orshansky index or level.

By setting it at that figure, two-thirds of the AFDC families above the Orshansky level, it keeps from counting these children two times, as is provided in the Senate bill.

I am frank to say that the addition of two-thirds of the AFDC families does not add one single person in the State of Alabama to the computation. Actually, it would be better just to have the Orshansky formula—that is, the poor children, the disadvantaged children. Why do we need still another factor to plow into it?

What does the Senate bill do? It takes the same Orshansky formula, but then it adds to that formula, in other words, it counts again, all children who are members of families receiving AFDC assistance.

So, as a result, under the Senate formula the disadvantaged children are counted two times. What is the use of doing that? Actually, the Orshansky formula alone should be used, because that would be to help the poor children wherever they are found. If they are found in New York, fine. If they are found in Alabama, fine. If they are found in Arkansas, fine, but do not count them twice, and that is what happens under the Senate formula.

Mr. President, the Senate committee's formula presents several problems.

First, it takes the base year. It freezes in an inequitable distribution of title I funds by using this base year allocation. The 1974 appropriation for title I resulted in the wealthier States of the country receiving increased grants because the use of the 1970 census data for the first time that year with the outdated 1965 poverty criteria resulted in half as many children being counted from the census under the formula, while at the same time a greater number of AFDC children were counted.

By freezing in these appropriations guaranteeing that no district would get less than it got in the fiscal year 1974, what happens is that, no matter what change is made in the composition of the people living in that school district and going to that school, the district would get no less than it got in 1974. So there might be one school district lying alongside another school district, and the underprivileged children from one district might move into the adjoining district, but that would not result in a reduction in the amount paid to the district losing such children. So the freezing in of these appropriations is an unrealistic approach.

What should be done is to provide money on the basis of the underprivileged children—that is what the program is for—and not count them twice; but count them once.

The McClellan amendment, which is in effect the House bill provisions, goes a step further than I feel it should go by providing that two-thirds of the AFDC children above those covered by the Orshansky formula would be counted. But that is a whole lot more realistic than the Senate committee provision—the Senate bill, if you please—which counts for a second time all those children covered by AFDC. It is counted already under Orshansky; then they are counted again, and that hardly seems fair to the Senator from Alabama.

The McClellan amendment provides an equitable title I formula which, in my opinion, will enhance the educational opportunities of deprived children nationwide.

How could any school district object to having the amount of money it received being based on the number of underprivileged children, especially where there is cranked in an addition, as provided by the McClellan amendment, of two-thirds of all those AFDC children in families of over the Orshansky level—which, by the way, as I pointed out, in urban areas at the present time is $4,540 and in farm areas is $3,860. I think we can count on that being raised possibly 10 to 15 percent when the new figures come out in June of 1974. So it is pretty well going to keep the nonfarm poverty level, just as a guess, for families of four, up in the neighborhood of $5,000 or more.

Mr. President, I refer to the formula utilized in 1973 to allocate the funds available.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. McCLELLAN. Mr. President, I yield 5 more minutes to the Senator from Alabama.

Mr. ALLEN. Mr. President, the 1973 formula utilized to allocate funds available for the Elementary and Secondary Education Act title I program, as amended, among the various States, incorporated children in families having incomes under $2,000 as determined by the 1960 census along with children in families receiving AFDC payments in excess of $2,000. The sum of these two factors was multiplied by a dollar figure equal to 50 percent of each State's average per-pupil expenditure, or, if higher, 50 percent of the national average per-pupil expenditure.

The effect of this freezing-in process this base year is that $2,000 in effect would be considered the poverty level for States that are losing the underprivileged children. It would be freezing in a poverty level of $2,000 as against the Orshansky formula, because that guarantees that they will not lose any funds from the time when the $2,000 was determined to be the top level or the poverty level.

The distribution of title I funds among the various States in fiscal 1974 was still based on the 1960 census with a hold-harmless provision. Another way of saying that is that the 1970 figures would cause them to lose, and they would be protected by the hold-harmless provision.

Several States did, in fact, receive increases in title I funds in fiscal 1974. This increase was brought about because of the disproportionate count of AFDC children.

The House of Representatives, on March 27, 1974, passed a bill—H.R. 69—providing for the allocation of title I funds on the basis of a formula embracing the Orshansky definition of poverty, which includes two-thirds of the total number of AFDC children under the Orshansky definition and a revised method of calculating the maximum grant per child. In other words, the two formulas are the same up to a point. They both make use of the Orshansky program. But then the McClellan amendment cranks in less of the second amount, so to speak.

The second count of these children cranks in only two-thirds of the AFDC children from families receiving more than the Orshansky formula level. In other words, that would prevent them from being counted twice. But the Senate provision takes the Orshansky level, which covers everybody up to the poverty level, and then cranks in everybody—all the children on the AFDC list—so they are counted twice.

The problem gets down to this, and this is the meat in the coconut: The wealthy States are able to put more children into the AFDC program than are the poorer States, the smaller States. Since they are able to do that, they get more children into the formula for the distribution of those funds.

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

Mr. ALLEN. I yield.

Mr. LONG. The usual expression is that they get the top of the tip.

Mr. ALLEN. Yes; and also, those that have, shall receive. That is another truth.

Table I compares the allocations of funds for fiscal year 1974 with allocations computed from the formula of H.R. 69. Under the proposed allocation, only four States—Alaska, New Jersey, New York, and North Carolina—and the District of Columbia receive reduced allocations. Many States received only 90 percent of their allocation in fiscal year 1974. The anticipated reduction for the four States and the District of Columbia does not represent an actual decline in the funds available for 1975 from 1974.

In allocating the funds available for the title I programs, H.R. 69 and the title I formula amendment to S. 1539 has attempted and succeeded quite well in coping with the following trends:

First. The shift of the population from the rural South to the urban areas primarily located on the east coast and the Midwest. It is estimated that between 1950 and 1970 2.7 million people migrated from the rural areas to the urban areas. Unfortunately, these people carried few portable skills with them, and, in the main, were functional illiterates.

Second. Despite the population shift mentioned previously there still remains a high concentration of children living on or below the recognized poverty level as illustrated in table II.

Third. The more subtle population shifts that have occurred within virtually all States as people left rural areas in search of opportunities in the urban areas within their State of residence.

Table II compares the percentage distribution of funds allocated for fiscal years 1974 and 1975 with the percentage distribution of needy children defined by the Orshansky definition of poverty. This table also provides for a comparison of the concentration of needy children within each State. In 19 States and the District of Columbia, the percentage share of the total amount of funds allocated exceeds the share of the total number of needy children. These 19 States are primarily located on the east and west coasts and in the Midwest. Consider as an example a State scheduled to receive 10.85 percent of the total funds allocated yet has only 6.85 percent of the total poverty number with a relatively low concentration ratio.

Those States located primarily in the South and Southeast received a percentage of available funds which is less than the total of needy children located within their borders. Ironically, it is these very same States that have the highest concentration of needy children. Obviously, those responsible for allocating funds are faced with a dilemma. On the one hand, the needs of the urban States are great. The general decline in the fortunes of the cities along with the impact of the migration of the poor to these areas has generated a great need for the infusion of Federal moneys. While on the other hand, a shift of funds away from the rural States will only exacerbate the future plight of the urban States. Given existing conditions, the distribution of available funds as illustrated in tables I and II represents a workable compromise and the most equitable distribution of funds.

The members of our distinguished Education Committee have agreed to use the Orshansky definition of poverty in helping to determine the number of children from low-income families.

The Orshansky definition of poverty has been criticized by numerous people from many viewpoints. For some, the poverty thresholds appear too high; others reflect the thresholds as being too low. Urban policymakers contend the Orshansky definition does not reflect the high cost of living in urban areas. Rural policymakers complain that the definition fails to take into consideration the lack of opportunities for employment, education, and medical services in their areas. They also complain about the Orshansky assumption that the rural poor are able to supply a portion of their own food needs. Nevertheless, the Orshansky definition of poverty has gained wide acceptance simply due to the necessity of an arbitrary convenience for measurement.

The committee has also included AFDC as a part of the formula. While AFDC is tremendously unfair in the committee report in that children are counted twice, both in the poverty index, and in counting all AFDC children and penalizes these States that cannot afford high AFDC payments, I find that the formula included in the amendment to S. 1539 and in H.R. 69 is the fairest and most equitable formula including AFDC payments.

Thirty-nine States and the District of Columbia provide payments to welfare recipients in the form of AFDC. The payments for certain families exceed the Orshansky poverty thresholds. The formula adopted in the amendment to S.

1539 and in H.R. 69 permits these States and the District of Columbia to include two-thirds of the total number of such children in the total number of children eligible for the title I program.

Data revealed by HEW on February 15, 1974, indicated that 958,800 children located in 39 States and the District of Columbia are members of families receiving AFDC payments in excess of $4,200. However, of this total figure, 812,244 children or 77 percent are located in only 7 States—California, Illinois, Massachusetts, Michigan, New Jersey, New York, and Pennsylvania. Thus, the inclusion of AFDC recipients in the formula results in the shift of a considerable portion of the total funds available to these seven States and the District of Columbia.

The formula employed in allocating the funds available for fiscal year 1974 permitted each State a maximum grant per child equal to 50 percent of the States average per pupil expenditure or, if higher, 50 percent of the national average per pupil expenditure. Under this formula, if the national average figure amounted to $929, a State could choose to receive either $464 or, if higher, 50 percent of its average per pupil expenditure. Based on a national average figure of $929, 33 States would probably receive a maximum grant per child equal to $464, whereas, 17 States and the District of Columbia would probably receive maximum grants per child ranging from $471 to $771.

This method of determining the maximum grant per child appears to be somewhat unequitable. Consider, for example, the inequities introduced into that area of the Nation where New York, New Jersey, and Pennsylvania share a common border. A child living in poverty, in Milford, Pa., would be provided a grant of $513 in Federal funds whereas the child's counterpart just a few miles across the State line in New York would generate $771 in Federal funds, and another child nearby but living in poverty in New Jersey would receive $596.

The formula included in the title I amendment to S. 1539 provides for a more equitable distribution of available funds. Under this formula each State may receive a grant per child equal to 40 percent of the State's average per pupil expenditure. However, no State will receive a grant per child less than an amount equal to 32 percent of the national average per pupil expenditure, nor will any State receive a grant per child in excess of 48 percent of the national average. Based again on a national average per pupil expenditure of $929, no State would receive less than $297.20 per child or more than $445.92 per child. Hence, the formula attempts to inject some degree of equity into the distribution of title I moneys but not to the extent that all States receive equal dollars per pupil. The formula does take into consideration the differences between States in their commitment to expenditures for education.

For several years the U.S. Office of Education allowed children of migratory fishermen to participate in the migrant education program as a part of title I, ESEA. In the past few years, however, the Office of Education has changed its mind and has deleted children of migratory fishermen from children that may participate in the migrant education program. My State, as well as numerous other States was not allowed to let large numbers of children participate in this program as a result of this ruling by the Office of Education. Children of migratory fishermen are included in the definition of a migrant child in H.R. 69 and I urge the Senate conferees to accept this definition of a migrant child when the bill goes to conference.

H.R. 69 provides for parent advisory councils in every title I school. This seems to be an undue burden upon the local education agencies participating in this program. We have long supported the inclusion of parents in the decision-making process but feel very strongly that to require a local educational agency to have an advisory council in every school is taking the matter too far. I urge the Senate conferees to work for the deletion of this section of H.R. 69.

Mr. President, I commend the distinguished committee for limiting the discretionary funds which the Commissioner of Education can use to "dole out" funds to the States and local education agencies. However, there is one program that I feel has been tremendously successful in helping our State education agencies "tool up" and stay informed about things that are happening in education in our great Nation. I am speaking of the so-called 505 program which authorizes interstate cooperative education projects.

The program in section 505—special project grants for State education agencies—of the Elementary and Secondary Education Act should be included in S. 1539. That program provides a resource for State educational agencies to use as part of an overall effort to bring quality education to our Nation's schools.

Section 505, under present law, requires the Commissioner of Education to grant 5 percent of the sums appropriated for ESEA title V, part A, to State educational agencies for experimental projects for developing State leadership or establishing educational services which hold promise of making a substantial contribution to the solution of problems common to those agencies of all or several of the States.

Given the complex structure of Federal, State, and local relationships in the governance of education, it is difficult to bring to bear in any uniform fashion the expertise required to study and resolve major problems affecting education. However, within the structure for the governance of education in the Nation, the State educational agency is the key. Strong or weak, capable or incapable, forward looking or traditional, the SEA is responsible for education within the State boundaries. When Congress enacted ESEA in 1965, it recognized that this Nation has not one, but 50 State systems of education, each one being the responsibility of its respective government.

Congress, in enacting title V of the act, further recognized that it is essential to have strong, capable, and forward looking SEA's if the citizens of this Nation are to have improved opportunities for quality education. As efforts are made to improve education, the success of those efforts largely depend on the strength and the vitality of the Nation's SEA's. It is essential that SEA's have the capacity to provide leadership in State educational matters and to plan for and manage Federal and State educational programs. As to the federally supported programs for education, the Federal Government just depends on SEA's to perform a series of leadership and management activities necessary to transform authorizing statutes into operational programs.

Since the establishment of section 505 in 1965, 68 projects have been funded throughout the Nation, including three in my home State of Alabama. Every SEA has been directly involved in one or more of these projects.

Among the noteworthy accomplishments and activities of the program are:

First. The establishment of an ongoing network of eight regional interstate projects to which all SEA's participate for staff development in such critical areas as urban education, planning, evaluation, management improvement, rural education and alternative schools, and bicultural education. The administering States of these projects are Colorado, Oregon, Louisiana, Wisconsin, Iowa, New Jersey, New Hampshire, and West Virginia.

Second. The study and development of model legislation and strategies for educational accountability, the development and field testing of processes and instruments for consolidated grants at the local level, the development of strategies and criteria for improving the management of compensatory education, and the investigation of performance-based teacher certification.

Third. In major project on school finance planning, first a small group of States and later all the States cooperated in developing a school finance data force and analyses of great value to the States, the courts, and the President's Commission of School Finance in attempts to develop more equitable and adequate State school finance programs.

Fourth. The provision of inservice training programs for chief State school officers and State school board members.

Through these and other projects the 505 program has stimulated and assisted the State education agency toward more creative and dynamic leadership and services in the utilization of Federal, State, and local resources. But the need for resources to cope with emerging educational problems continues. Rapidly changing circumstances require new and different solutions. Discontinuation of

section 505 would remove one of the more effective and adaptable tools now available to the States for fast and concerted action. The best interest of the States and of the Nation require that it be continued.

We must offer our State education agencies an opportunity to continue these programs that already have begun to have such a tremendous impact upon education in the Nation.

Mr. President, education is our most important domestic program. We know that education and earning power go hand in hand. The persons with the best educations inevitably earn the highest incomes. Good education means jobs, rising incomes, and greater purchasing power.

Education is also one of our most important defense programs. The strength and security of America against agression is bound inexorably to education.

In this time of challenge and with the security of our Nation constantly being threatened by ruthless, ambitious communism there is a compelling need for the best possible educated minds. Education is democracy's indispensable weapon. Not only must we look to our educational systems—particularly our public school system—to provide new knowledge, we must look to education as well to instill patriotism and the sense of duty to work for the preservation of freedom.

Mr. President, I am sure that all will agree that our children are our most precious asset. Upon their shoulders rest the hopes of America's future. Indeed, upon them rests the hope of our Nation and the world for peace—the hope for a good life in a free world.

The quality and completeness of our children's education will not only determine the destiny of our Nation, but the kind of world their children will live in. I agree with the words of Thomas Jefferson that—

> No surer foundation can be devised for the preservation of freedom and happiness than public education.

Mr. President, I ask unanimous consent that two tables I have prepared be printed in the RECORD.

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

TABLE I.—COMPARISONS FOR S. 1539 AND H.R. 69 TITLE I FORMULA ALLOCATION

	Total LEA only, pt. A		Total State agencies		Total State administration		Total, pt. B, special incentive grants		Total, pt. C, high concentration low-income children		Total all grants	
	S. 1539 [1]	H.R. 69 [2]	S. 1539 [3]	H.R. 69 [4]	S. 1539 [5]	H.R. 69 [6]	S. 1539 [6]	H.R. 69 [7]	S. 1539 [8]	H.R. 69 [9]	S. 1539 [10]	H.R. 69 [11]
Alabama	38, 489, 317	44, 284, 325	1, 588, 125	1, 016, 400	400, 774	453, 007	0	0	500, 000	0	40, 978, 216	45, 753, 732
Alaska	3, 202, 543	3, 543, 875	1, 551, 506	866, 858	150, 000	150, 000	600, 000	0	100, 000	0	5, 604, 049	4, 560, 743
Arizona	9, 571, 979	15, 242, 110	2, 954, 220	2, 077, 481	150, 000	173, 195	0	0	400, 000	0	13, 076, 199	17, 492, 786
Arkansas	23, 137, 182	25, 242, 953	2, 198, 943	1, 407, 323	253, 361	266, 502	0	0	300, 000	0	25, 889, 486	26, 916, 778
California	135, 447, 031	144, 873, 549	13, 770, 567	10, 969, 020	1, 492, 175	1, 558, 425	200, 000	0	9, 700, 000	0	160, 609, 773	157, 400, 994
Colorado	12, 284, 535	14, 733, 941	3, 229, 668	2, 448, 902	155, 141	171, 828	100, 000	0	700, 000	0	16, 469, 344	17, 354, 671
Connecticut	15, 614, 201	17, 331, 200	2, 398, 159	1, 895, 605	180, 124	192, 268	300, 000	0	1, 300, 000	0	19, 792, 484	19, 419, 073
Delaware	2, 764, 886	4, 451, 959	1, 215, 417	972, 333	150, 000	150, 000	100, 000	0	0	0	4, 230, 303	5, 574, 292
Florida	30, 486, 742	55, 769, 210	14, 453, 382	10, 484, 596	449, 400	662, 538	0	0	1, 600, 000	0	46, 989, 524	66, 916, 344
Georgia	45, 644, 966	48, 110, 676	2, 002, 924	1, 281, 871	476, 478	493, 925	0	0	700, 000	0	48, 824, 368	49, 886, 472
Hawaii	4, 586, 881	5, 417, 634	295, 552	236, 441	150, 000	150, 000	0	0	300, 000	0	5, 332, 433	5, 804, 075
Idaho	3, 095, 587	4, 008, 265	1, 194, 229	764, 306	150, 000	150, 000	0	0	100, 000	0	4, 539, 816	4, 922, 571
Illinois	85, 747, 651	85, 679, 664	7, 086, 934	5, 669, 547	928, 349	913, 492	0	0	5, 300, 000	0	99, 062, 934	92, 262, 703
Indiana	21, 134, 411	24, 581, 158	3, 539, 025	2, 591, 435	246, 734	271, 725	200, 000	0	700, 000	0	25, 820, 170	27, 444, 318
Iowa	15, 868, 791	16, 057, 158	1, 071, 693	857, 355	169, 404	169, 145	100, 000	0	400, 000	0	17, 609, 888	17, 083, 668
Kansas	10, 763, 600	12, 494, 833	1, 980, 163	1, 408, 972	150, 000	150, 000	0	0	400, 000	0	13, 293, 763	14, 053, 805
Kentucky	35, 336, 451	34, 493, 527	865, 828	554, 129	362, 022	350, 476	0	0	500, 000	0	37, 064, 301	35, 398, 132
Louisiana	36, 178, 824	54, 841, 554	3, 089, 389	2, 159, 712	392, 681	570, 012	2, 200, 000	0	1, 000, 000	0	42, 860, 894	57, 571, 237
Maine	6, 411, 909	6, 666, 795	755, 277	510, 368	150, 000	150, 000	100, 000	0	100, 000	0	7, 517, 186	7, 327, 168
Maryland	25, 624, 788	29, 447, 518	2, 964, 555	2, 371, 644	285, 909	318, 191	0	0	1, 200, 000	0	30, 075, 252	32, 137, 353
Massachusetts	31, 040, 931	30, 608, 511	3, 838, 650	3, 070, 920	348, 795	336, 794	500, 000	0	2, 300, 000	0	38, 028, 376	34, 016, 225
Michigan	65, 313, 982	71, 813, 815	9, 986, 682	7, 989, 345	753, 007	798, 031	3, 600, 000	0	4, 000, 000	0	83, 653, 671	80, 601, 191
Minnesota	23, 013, 374	26, 881, 731	1, 638, 927	1, 311, 141	246, 522	281, 928	3, 400, 000	0	900, 000	0	29, 198, 823	28, 474, 800
Mississippi	39, 817, 989	42, 336, 139	1, 833, 846	1, 173, 661	416, 517	435, 098	0	0	400, 000	0	42, 468, 352	43, 944, 898
Missouri	26, 583, 044	30, 714, 096	2, 449, 308	1, 676, 560	290, 322	323, 906	0	0	800, 000	0	30, 122, 674	32, 714, 562
Montana	3, 265, 432	4, 708, 796	1, 339, 618	971, 331	150, 000	150, 000	400, 000	0	100, 000	0	5, 255, 050	5, 830, 127
Nebraska	7, 925, 881	8, 971, 951	731, 123	542, 740	150, 000	150, 000	0	0	200, 000	0	9, 007, 004	9, 664, 691
Nevada	1, 315, 766	2, 220, 015	289, 848	221, 604	150, 000	150, 000	0	0	100, 000	0	1, 855, 614	2, 591, 619
New Hampshire	2, 562, 547	3, 037, 338	457, 532	316, 760	150, 000	150, 000	0	0	100, 000	0	3, 270, 079	3, 504, 098
New Jersey	57, 994, 938	51, 797, 440	7, 064, 388	5, 285, 489	650, 593	570, 829	1, 400, 000	0	3, 800, 000	0	70, 909, 919	57, 653, 758
New Mexico	8, 615, 385	13, 477, 540	1, 540, 746	1, 011, 286	150, 000	150, 000	600, 000	0	200, 000	0	11, 106, 131	14, 638, 826
New York	239, 301, 136	195, 296, 710	15, 478, 478	8, 942, 479	2, 547, 780	2, 042, 391	3, 600, 000	0	18, 900, 000	0	279, 827, 394	206, 281, 580
North Carolina	55, 920, 419	51, 557, 979	4, 848, 915	3, 103, 305	607, 692	546, 612	0	0	800, 000	0	62, 177, 026	55, 207, 896
North Dakota	4, 482, 512	4, 776, 326	1, 142, 670	741, 581	150, 000	150, 000	0	0	100, 000	0	5, 875, 182	5, 667, 907
Ohio	50, 999, 204	52, 876, 955	7, 661, 927	5, 412, 339	586, 610	582, 892	0	0	2, 000, 000	0	61, 247, 741	58, 872, 186
Oklahoma	18, 578, 182	20, 159, 610	2, 053, 090	1, 313, 977	206, 312	214, 735	0	0	300, 000	0	21, 137, 584	21, 688, 322
Oregon	9, 906, 521	14, 084, 948	3, 580, 513	2, 864, 410	150, 000	169, 493	900, 000	0	500, 000	0	15, 037, 034	17, 118, 851
Pennsylvania	77, 098, 855	80, 611, 976	7, 620, 088	6, 096, 070	847, 189	867, 080	800, 000	0	3, 700, 000	0	90, 066, 132	87, 575, 126
Rhode Island	5, 639, 400	6, 788, 566	582, 230	465, 784	150, 000	150, 000	0	0	300, 000	0	6, 671, 630	7, 404, 350
South Carolina	32, 759, 389	33, 715, 276	2, 634, 644	1, 686, 172	353, 940	354, 014	0	0	500, 000	0	36, 247, 973	35, 755, 462
South Dakota	5, 971, 328	6, 003, 698	428, 733	274, 389	150, 000	150, 000	200, 000	0	100, 000	0	6, 850, 061	6, 428, 087
Tennessee	35, 056, 235	40, 141, 578	1, 956, 474	1, 252, 143	370, 126	413, 937	0	0	500, 000	0	37, 882, 835	41, 807, 658
Texas	77, 178, 801	103, 816, 070	26, 541, 530	16, 986, 579	1, 037, 201	1, 208, 026	0	0	2, 500, 000	0	107, 257, 532	122, 010, 675
Utah	5, 041, 664	5, 634, 968	781, 289	500, 024	150, 000	150, 000	300, 000	0	300, 000	0	6, 572, 953	6, 284, 992
Vermont	2, 344, 384	3, 045, 331	810, 088	642, 015	150, 000	150, 000	500, 000	0	40, 000	0	3, 844, 472	3, 837, 346
Virginia	34, 820, 657	38, 936, 837	2, 791, 180	1, 955, 376	376, 117	408, 922	0	0	900, 000	0	38, 887, 954	41, 301, 135
Washington	16, 862, 767	20, 216, 868	3, 929, 809	3, 143, 847	207, 925	233, 607	1, 100, 000	0	1, 100, 000	0	23, 200, 501	23, 594, 322
West Virginia	18, 912, 526	17, 681, 039	977, 308	625, 477	198, 898	183, 065	100, 000	0	300, 000	0	20, 488, 732	18, 489, 581
Wisconsin	20, 901, 793	27, 806, 555	3, 237, 199	2, 589, 759	241, 389	303, 963	2, 100, 000	0	900, 000	0	27, 380, 381	30, 700, 277
Wyoming	1, 350, 092	2, 246, 096	464, 289	371, 431	150, 000	150, 000	300, 000	0	50, 000	0	2, 314, 381	2, 767, 527
District of Columbia	12, 414, 356	10, 278, 233	1, 292, 829	965, 416	150, 000	150, 000	0	0	900, 000	0	14, 757, 185	11, 393, 649
Total	1, 554, 381, 765	1, 669, 514, 895	188, 189, 507	134, 047, 718	19, 079, 487	19, 540, 052	23, 700, 000		72, 890, 000		1, 858, 240, 759	1, 823, 102, 665

[1] LEA grants in S. 1539 based on 1974 base year, 60 percent of excess distributed according to Orshansky, 40 percent according to total AFDC. Payment rate of ½ State or national APPE. Figures taken from "Education Amendments of 1974 Report Together With Supplemental and Additional Views of the Committee on Labor and Public Welfare United States Senate on S. 1539," p. 27, *table VI. Allocations* under pt. A, title I, as proposed.

[2] H.R. 69 formula is number of children below Orshansky in 1970 census plus ⅔ number of children from families on AFDC in excess of current Orshansky × 40 percent of State APPE with a floor of 80 percent of national average and a ceiling of 120 percent of national average APPE.

[3] Figures taken from "Education Amendments of 1974 Report Together With Supplemental and Additional Views of the Committee on Labor and Public Welfare United States Senate on S. 1539," p. 27, table VI. Allocations under pt. A, title I, as proposed.

[4] This formula not available at this time.

[5] 1 percent of grants to LEA and to State educational agencies or $150,000, whichever is greater.

[6] Pt. B of S. 1539 rewards States for effort above national average at rate of $1.50 per child for each 0.01 percent of effort in excess of national average. Preliminary estimates.

[7] H.R. 69 does not contain provisions for pt. B.

[8] Pt. C in S. 1539 is allocated to districts provided their target population is at least 200 percent of State average and is at least 10,000 children or 5 percent of total school population of county. Target population is defined as children below $3,000 or from AFDC families in excess of $3,000.

[9] H.R. 69 does not contain provisions for pt. C.

[10] Total is only for $1,858,240,759. Amount for outlying territories would increase this figure to $1,885,000,000.

[11] Total is only for $1,823,102,665. The amounts for outlying territories and evaluation would increase this figure to $1,885,000,000.

Note: Funds for outlying territories and evaluation not included.

TABLE II.—A COMPARISON OF THE PERCENTAGE DISTRIBUTION OF FUNDS ALLOCATED FOR FISCAL YEAR 1974 WITH THE ALLOCATION AS PROPOSED IN H.R. 69 AND WITH THE PERCENTAGE DISTRIBUTION OF CHILDREN LIVING IN POVERTY

	Percentage distribution			
	Of fiscal year 1974 allocation	Of fiscal year 1975 allocation	Of needy children Orshansky	Concentration of needy children
Alabama	2.28	2.47	3.53	29.49
Alaska	.29	.25	.16	14.55
Arizona	.71	.94	1.09	17.52
Arkansas	1.46	1.45	2.01	31.56
California	8.52	8.49	7.74	12.12
Colorado	.89	.94	.93	12.25
Connecticut	1.04	1.05	.72	7.24
Delaware	.23	.30	.23	11.95
Florida	2.51	3.61	3.89	18.90
Georgia	2.68	2.69	3.82	24.36
Hawaii	.28	.31	.25	9.65
Idaho	.25	.27	.31	12.02
Illinois	5.20	4.98	3.93	10.69
Indiana	1.41	1.48	1.60	9.02
Iowa	.99	.92	.94	9.80
Kansas	.73	.76	.84	11.46
Kentucky	2.09	1.91	2.71	25.09
Louisiana	2.17	3.11	4.01	30.07
Maine	.41	.40	.47	14.16
Maryland	1.62	2.80	1.52	11.46
Massachusetts	2.01	1.83	1.52	8.36
Michigan	4.34	4.35	2.86	9.09
Minnesota	1.42	1.54	1.28	9.49
Mississippi	2.38	2.37	3.40	41.52
Missouri	1.63	1.76	2.25	14.83
Montana	.27	.31	.32	12.95
Nebraska	.50	52	.60	11.99
Nevada	.10	.14	.14	8.74
New Hampshire	.18	.19	.19	7.70
New Jersey	3.78	3.11	2.02	8.74
New Mexico	.57	.79	1.05	26.31
New York	14.72	10.85	6.84	12.23
North Carolina	3.56	2.98	4.06	23.96
North Dakota	.34	.31	.36	15.72
Ohio	3.34	3.17	3.55	9.81
Oklahoma	1.18	1.17	1.59	19.48
Oregon	.78	.92	.70	10.28
Pennsylvania	4.87	4.72	3.96	10.56
Rhode Island	.36	.40	.32	11.00
South Carolina	2.05	1.93	2.67	29.07
South Dakota	.38	.35	.44	18.27
Tennessee	2.09	2.26	3.18	24.77
Texas	5.94	6.58	8.27	21.48
Utah	.34	.34	.40	9.97
Vermont	.19	.21	.17	11.37
Virginia	2.16	2.23	2.78	18.18
Washington	1.20	1.27	1.04	9.05
West Virginia	1.15	1.00	1.38	24.27
Wisconsin	1.38	1.66	1.35	8.73
Wyoming	.11	.15	.13	11.16
District of Columbia	.79	.61	.48	23.15
Puerto Rico	(1)	1.75	(1)	(1)

[1] Not available.

Note: Computed by dividing the total number of children age 5 to 17 living in poverty by the total number of children age 5 to 17.

TABLE III.—A COMPARISON OF THE DISTRIBUTION AMONG THE STATES OF THE POPULATION CATEGORIES AS LIVING IN POVERTY IN 1960 AND 1970

	1960 census income less than $2,000	1970 census income less than $2,000	1970 census Orshansky definition
Alabama	$4.90	$3.62	$3.53
Alaska	.10	.16	.16
Arizona	.79	1.11	1.09
Arkansas	2.99	1.97	2.01
California	4.17	8.10	7.74
Colorado	.68	1.25	.93
Connecticut	.42	.84	.72
Delaware	.15	.21	.23
Florida	2.88	3.81	3.89
Georgia	4.85	3.52	3.82
Hawaii	.18	.27	.25
Idaho	.25	.28	.31
Illinois	2.98	3.92	3.93
Indiana	1.54	1.58	1.60
Iowa	1.45	.85	.94
Kansas	.81	.84	.84
Kentucky	3.91	2.60	2.71
Louisiana	4.06	4.33	4.01
Maine	.37	.38	.47
Maryland	1.09	1.63	1.52
Massachusetts	.95	1.58	1.52
Michigan	2.52	3.16	2.86
Minnesota	1.56	1.21	1.28
Mississippi	5.15	3.73	3.40
Missouri	2.53	2.24	2.25
Montana	.29	.31	.32
Nebraska	.70	.60	.60
Nevada	$0.07	$0.15	$0.14
New Hampshire	.12	.17	.19
New Jersey	1.21	2.18	2.02
New Mexico	.76	1.06	1.05
New York	4.04	7.35	6.84
North Carolina	6.53	3.75	4.06
North Dakota	.47	.31	.36
Ohio	3.07	3.94	3.55
Oklahoma	1.71	1.41	1.59
Oregon	.48	.74	.70
Pennsylvania	3.54	3.86	3.96
Rhode Island	.24	.33	.32
South Carolina	4.18	2.72	2.67
South Dakota	.62	.41	.44
Tennessee	4.45	3.07	3.18
Texas	8.05	7.28	8.27
Utah	.24	.36	.40
Vermont	.15	.13	.17
Virginia	3.39	2.56	2.78
Washington	.67	1.12	1.04
West Virginia	2.15	1.34	1.38
Wisconsin	1.18	1.31	1.35
Wyoming	.11	.13	.13
District of Columbia	.30	.49	.48

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

Mr. WILLIAMS. Mr. President, may I ask the Senator a question on my time?

The PRESIDING OFFICER. The Senator from New Jersey is recognized. How much time is yielded?

Mr. PELL. Mr. President, I yield as much time as the Senator cares to have.

Mr. WILLIAMS. I shall be brief.

The Orshansky formula is an approach to defining the poverty level that I think falls short of an accurate method of determining the families that live in poverty or relative poverty. I wondered whether the Senator from Alabama in a part of his remarks dealt with the factors considered in arriving at poverty under the Orshansky approach.

Mr. ALLEN. Yes; I tried to touch on that to some extent.

Mr. WILLIAMS. I should like to have the Senator's observation on one of the failing factors of the Orshansky approach. As I see it, there is only one element in the cost of living that is made a part of Orshansky, and it is the trigger for the formula, which is the cost of food.

Mr. ALLEN. Yes.

Mr. WILLIAMS. There are no factors relating to the other basic essentials of life. The cost of housing and rents are not included.

Mr. ALLEN. They are included to this extent. The Orshansky formula, as the Senator from Alabama understands it, would take the consumer price index as furnished by the Department of Agriculture, and estimate that food in the average low income family would approximate one-third of the absolute, rock-bottom essentials necessary to hold the family together financially. So it does take other factors into account by estimating that they would be two-thirds, and the food one-third.

That is the way the Senator from Alabama understands it. I am sure that the Senator from New Jersey, being chairman of the committee that produced the Senate bill, which embraces the Orshansky formula, must have felt that it had some merit; otherwise he would not have included it as one of the elements in the bill.

Mr. WILLIAMS. I knew that we had to find some rational approach. This was one that was available, and unfortunately no alternative approach is available. In the bill, we provide that the Department is directed to include the other factors of the cost of living that are not included in the Orshansky formula. I frankly say that I spent some time with Ms. Orshansky. She knows how short of accurate the formula is, and she regrets it. She realizes that there is nothing else available.

In terms of the cost of living, with a multiplying factor of three the cost of food comes to be considered as one-third of the cost of living.

But no calculation is made for rent, medicine, nothing for utilities—for example, how much coal do you burn to keep a house warm in Florida, and how much in Rhode Island? That difference is not included. The fact of the matter is that in the northern areas the poor people are probably spending a very great percentage of their limited income—and we are talking about poor people—to keep warm in the winter. There are other parts of the country where there are poor people who do not have to spend a nickel to keep warm in winter. That is not reflected in the Orshansky formula.

We all know it, particularly, and most prophetically, I submit, from Ms. Orshansky herself, who recognized the limitations of her formula. But there is one thing we know, and we know it every year: the number of poor families getting aid for dependent children. That is why, faced with the limitations of Orshansky, we included a known annual factor of young people who need to live under assistance. We have included them all as part of the formula, obviously not exclusively, but as a part. It is a comprehensive approach, in a system where we just do not have the ability to press the computer button and have a readout on the most scientifically equitable basis to support the poor youngsters in this country whose education should be in part supported.

That was more than a question, and I apologize to the Senator for taking his time.

Mr. ALLEN. I appreciate the question, and I would like to have an opportunity to answer it.

The Senator from Alabama is not vouching for the Orshansky formula. He has merely noted that that is one phase of the equation in the McClellan amendment, in the House bill, and in the committee bill of the committee chaired by the distinguished Senator from New Jersey, which is now before us.

So the Senator from Alabama is not vouching for this formula. He is just stating that this is the formula that is in both bills. He is not saying that it is adequate. He feels it is inadequate to furnish the bare necessities. But he is just going on what the Senator's committee has brought to the floor here.

Another thing, while the——

Mr. WILLIAMS. Before we go to another thing, will the Senator yield——

Mr. ALLEN. Yes.

Mr. WILLIAMS (continuing). For me just to say that in part, what the Senator is arguing in support of is an amendment that effectively eliminates the

other factors in the formula and puts the total burden of distribution on Orshansky, which we now agree is inadequate.

Mr. ALLEN. No, I would respectfully disagree with the distinguished Senator, because it has the second factor of including two-thirds of those children in families receiving AFDC over the amount of the Orshansky formula. So that is being cranked in.

What the Senator from Alabama is objecting to is what the Senate committee does in not only counting the children under Orshansky, but also counting them again if they fall under the AFDC, so that one child could be counted on two occasions. It is not just a composite mix of formulas in coming up with one formula; it is the counting of one child two times that the Senator from Alabama objects to.

Mr. WILLIAMS. Well, as the McClellan amendment proceeds, as the cost of living increases, we will be moving inexorably in the direction of eliminating that other part of the formula, AFDC. That has to be the nature of things, unless we have a reduction in the cost of living, which I would hope we might see but it is not realistic.

Mr. ALLEN. Why should the children be counted twice, is what the Senator from Alabama does not understand.

Mr. WILLIAMS. Because there are so many who were not counted at all in the census figures, for one reason. We do know the annual census of needy children under AFDC. And we do know the number left out in the basic census figures was large indeed. It has been estimated that as many as 5 million families were left out.

Mr. ALLEN. Why did the Senator bring the bill back to the floor based on the Orshansky formula, if, as he is now pointing out, it is not a proper formula?

The PRESIDING OFFICER. Who yields time?

Mr. ALLEN. Hearing no answer, I yield the floor.

Mr. WILLIAMS. Excuse me. Was that directed to me? Was there a question to me?

Mr. ALLEN. What was my question?

The PRESIDING OFFICER. The question will be repeated by the Reporter.

The Official Reporter (Grant E. Perry) read as follows:

Why did the Senator bring the bill back to the floor based on the Orshansky formula, if, as he is now pointing out, it is not a proper formula?

Mr. WILLIAMS. That is a very worthy question, and, believe me, we have been under great pressure to have this bill here long before this, and we have been on a search for what I would consider a better approach than Orshansky, particularly now that we are faced with Orshansky almost pure in this amendment.

Quite frankly, this administration did not come up with figures that would guarantee the most equitable distribution. We do not have it in the bill, but it is a lot more equitable, I would suggest, in the bill the committee brought out than in this single approach of the faulty Orshansky formula.

Mr. ALLEN. I thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, is any time left in opposition to the amendment?

The PRESIDING OFFICER. There is 12 minutes remaining.

Mr. JAVITS. I yield myself 10 minutes.

Mr. President, it is very interesting to me how the text of the amendment itself defies a good many of the arguments made in its favor as against the amendment of the committee. For example, with all the decrying of the AFDC children as a proper element in the formula, it is a fact that Senator McClellan's amendment cranks in, not all the AFDC children above the poverty level, but only two-thirds of them, as if there were two-thirds of a poor child. Nonetheless, they are cranked in, so there must be some self-consciousness in the author of the amendment that this is an essential element of the situation. I will come back to that in a minute.

Also, Mr. President, with all the decrying of a base year, the fact is that though they very considerably reduced the effect of the base year, they cranked that aspect in, too, in an altered form—to wit, 85 percent of the preceding year hold harmless, and then after that 85 percent in the preceding year.

Now, Mr. President, one other thing: We are proceeding, in respect of this amendment, against a tradition, here, which has established a 100 percent hold harmless situation in respect of this very Federal aid to education. That was contained in the first continuing resolution for the current fiscal year, and was contained also in the fiscal year 1974 Labor-HEW appropriation, the definitive appropriation which obtains for this fiscal year.

Finally, Mr. President, to go further with it, we are told that in order to get precision, definiteness, we have to adopt the McClellan amendment; but the McClellan amendment puts us more than ever on an uncharted sea.

Let us just take one example of that. It is argued that the Orshansky formula is definitive for those children, and that the AFDC formula is indeterminate. But the fact is that it is complained, for example, according to an Urban League estimate, that the Orshansky formula, which is based upon the 1970 census undercounts the poor children by 5.3 million. That is an infinitely bigger margin of error, Mr. President, than even 40 percent of the children under AFDC, which would amount, on that basis, to something in the area of 3 million, even if you took it on its face.

The reason, Mr. President, for cranking in the AFDC formula, as we do and the McClellan amendment does—exactly the same thing in terms of acceptance of the principle—is that the Orshansky is a static index.

We only change it every 10 years based on the census. That will not be for 9 years to come, whereas AFDC is a moving index. It changes all the time, depending on the group of children concerned and their poverty area. So I think this is critically important because taken at its face, it is still very good until we begin to break it down.

One other thing that is critically important to break down and that is the global figure. Let us remember that the global figures taken here, by eliminating the two gifted provisions—parts B and C—relating to incentives to the States to do better in education and the unusually high concentration of low-income children, are eliminated so that the global sum used in the McClellan amendment becomes a greater sum. Certainly, no matter how we slice it, the individual amount distributable under that formula would appear to be greater.

The figures are given by States, but the money is not distributed by States. This is the key fallacy which I hope the Senate will carefully scrutinize. The money is not distributed by States but by local educational districts. So the State may, in a global sense, look good, but the State is not the entity that gets the money. The entity that gets the money is the local educational district. When we break that down into local educational districts, according to the formula proposed by the Senator from Arkansas (Mr. McCLELLAN), we find that 600 counties out of some 3,000 counties in the Nation will receive less in fiscal year 1975 than in the current fiscal year.

This, to me, is the real nail that should be driven into the internment of the McClellan amendment, the point about the populations. We are talking about people, the population of those 600 counties as compared with the population of the other 2,400. That will give us a real measure of what this means. The 600 counties are disadvantaged. They include the primary metropolitan areas of the country.

This country is no longer rural. Seventy-five percent of our people live in urban areas. Practically every State has an important metropolitan area. So those are the very key reasons why such diverse entities as the American Federation of Labor, the National Education Association, the American Federation of Teachers, and the United Automobile Workers of America, all espouse the committee's formula, because taking everything together it did the best justice. In addition, it obeyed and conformed to the tradition which we have established, because of the shifting nature of the formula bases, the tradition of a hold-harmless formula based on the preceding year.

Finally—and we shall have more time to debate this, I do not want to take more than the time allotted to me at this moment—there is one more critically important fact that I should like to point out. It is a very popular sport, Mr. President, on the floor of the Senate—and I have been here a considerable time and I have heard it countless times and have seen the game played time and time and time again—to point the finger at New York. Look at New York. Look at what has happened in New York. Look at what New York is getting.

When we do that, let us remember that no matter what we do, New York is the State that will always be ahead. Take the McClellan formula or any other formula and New York will still get a lot of money. The McClellan formula gives New York the most of any State. It gives New York

well over $200 million. Why? Because we cannot avoid the issue that there are simply more poor children in New York. There are simply that many poor children in New York. I do not care what formula we take. That is critically important. Because we cannot make it a game of sport on New York, if we want to go where the poor are, as they affect the mainstream of this country. We have got to go to all the major metropolitan areas, and New York is the biggest. We cannot use that as a stalking horse for distorting everything in order to get at New York and cost them $50 million.

One other thing. Where does this tax money come from? Arkansas schools, for example, and I do not begrudge it, get 16 percent of their total educational bill out of the Federal Government by Federal aid to education. In that hierarchy, Mr. President, it is also interesting to see where New York stands. New York stands 43d on that list, Mr. President.

New York gets out of the Federal aid to education, 4.9 percent. The national average is 7.5 percent.

I was here when my former colleague from New York, Mr. Keating, a very distinguished Senator, voted against the major education bill because he said it made an awful lot of sense—although I did not go with him because I do not follow that philosophy—but New York is paying $2½, $3, $4, $5, $6 for every dollar it gets in Federal aid to education. Forget it. Let us eliminate all Federal aid to education and we will be better off.

One other thing, Mr. President, which is critically important, in the percentage of the Federal tax paid by the various States, Arkansas pays .04 percent. New York pays 14.8 percent. Again, we do not begrudge that, but do not walk all over us because we produce all this revenue for the United States.

Mr. President, these are very, very important factors because that has been the big argument here, that New York gets so much. New York will get a lot anyhow and we cannot do anything about it. But, at the same time, let us have some perspective on why. It is that sense of perspective, Mr. President, that I am trying to introduce into this debate.

I hope very much that the Senate will have the perspective and will not distort a whole structure so painfully built up in its various parts at the last moment just because, superficially, X State gets $5,000 more or $5,000 less, without looking at what is inside the package.

I believe that the Senate has shown its ability on previous occasions to look at this situation in its totality, and not simply by the label on the bottle.

For all these reasons, Mr. President, I hope that the amendment will be rejected.

Mr. PELL. Mr. President, I should like to reinforce what the Senator from New York has just said in a far more articulate way than I did earlier. The objective is to try to get title I funds going where the youngsters suffer from the greatest misery, hunger, and poverty. It costs more money to be poor in New York than it does in many other parts of the country, to feed oneself, to clothe oneself, to warm oneself, or to keep glass in the windows, if necessary. These are facts of life.

I know that the Senator from New York wishes he did not have to receive any funds under title I at all. It is not a great distinction to have the largest number of poor in the country in one's State, but that is the position in which he is in. We are a national body here and we should, I think, have the funds go where the need is greatest.

We should also bear in mind that we have become an urban country. The Senator from New York said that 30 percent of our people live away from the cities now. Actually, only 6 percent of the people of this country are engaged in agriculture. Whether we like it or not, whether it is good for the American spirit, we are an urban country today with about 95 percent of our people not engaged in agriculture as a form of livelihood.

I yield the floor.

Mr. McCLELLAN. I yield 5 minutes to the Senator from Texas.

Mr. TOWER. Mr. President, I am pleased to be one of many Senators joining Senator McCLELLAN in offering amendment No. 1304 to S. 1539, the education bill. The amendment would substitute with minor modifications the House provisions on the formula for distributing title I funds for the formula recommended by the Senate Labor and Public Welfare Committee.

All Senators are aware of the problems that have confronted local education agencies in attempting to plan their educational programs by utilizing title I funds. They have witnessed in recent years conflicting formula changes in appropriations bills, culminating in total confusion for the local education agencies. I can, in fact, recall one school superintendent writing to my office informing me that after he has just hired new teaching personnel in response to congressional approval of a continuing resolution that included title I changes, the Congress changed the formula a few months later forcing him to lay off the teacher he had just hired.

We all knew that when we were tinkering with the title I formula it was temporary and that eventually a better method would have to be found. The Senate Labor and Public Welfare Committee has recommended a formula which, on its face at least, recognizes the instability in the funding method and the need for local education agencies to have some leadtime as to the amount of funding they are to expect. However, the formula is regressive, inequitable, and discriminatory.

The so-called Government poverty-index, the Orshansky formula, is universally accepted and the committee formula in S. 1539 adopts it. However, it continues to place undue emphasis on the aid to families with dependent children program for estimating the entitlements to the local school districts. The committee formula, therefore, counts all children within the Government poverty index as well as all children receiving AFDC.

The Senate must recall that the title I distribution formula was originally considered unsatisfactory because during the 9 years since ESEA was approved in 1965 the AFDC caseload has risen tremendously. The end effect has been that the measuring stick for the formula has not been the quantity of disadvantaged children but rather the quantity of the AFDC caseload. Since the committee formula counts the entire AFDC caseload throughout the Nation, the debate here today directly relates to the issues concerning welfare reform—an issue which even by a stretch of one's imagination only remotely relates to the Nation's educational system. Our 50 States and territories vary with respect to AFDC eligibility. Yet, the Senate formula continues to disproportionally consider AFDC caseload as a measuring stick.

The most distressing and regressive aspect of the committee formula is that it provides a 100 percent hold-harmless provision with the 1974 entitlement as the base year. This is both inequitable and contrary to the expressed intent of compensatory education as dictated by the congressional intent of title I. The fiscal year 1974 appropriations bill contained a 90 percent hold-harmless for local education agencies based upon a formula that estimated payments by utilizing 1960 census data which was taken in 1959.

Mr. President, with all due respect to the proponents of the committee's formula, I must conclude that this provision is a sham. It locks in and therefore distributes for the next 5 years, if not in perpetuity, 89 percent of all title I funding to school districts on the basis of 1960 census data plus the AFDC factor which, I might add, was based upon a high level of payments which many States do not grant to their AFDC clientele.

Consequently, Mr. President, this 1974 base year provision means that only new funding or 11 percent of the entitlements will be based upon the new formula in S. 1539, which by itself is subject to great criticism. In the interest of stability, according to the proponents of the Senate formula, the bill as currently drafted does not take into consideration changes in income levels or population shifts.

Mr. President, the Texas Education Agency has convinced me of the regressive features of this formula. The clear congressional intent of title I is to provide Federal funding for disadvantaged children. The committee formula runs contrary to that intent. In Texas, we will be providing title I funding to local education agencies where there is no longer a sufficient quantity of poor children to merit Federal assistance. In other parts of the State, the funding entitlement will be way below the actual need of the entitlements.

I am sponsoring the McClellan amendment because it allows for the maximum amount of equity and flexibility as can be imputed into this complicated formula. The Senate must recognize that some change is in order with respect to this funding formula. If we reach the premise that the emphasis upon the AFDC caseload has in fact distorted the title I program, then we must accept the

significant redirection of funding that is called for in the McClellan amendment. Texas is certainly entitled to the $20.9 million increase in funding that would inure to it if this amendment is adopted. Texas should not be penalized because its welfare requirements are more strict and its payment levels are not as high as some of the northern States. Under the pending amendment, funds would be distributed to Texas on the basis of the quantity of disadvantaged children. Some school districts will see a reduction in their funding due to population shifts. This is as it should be. Many more school districts will gain added funding due to population shifts which have resulted in severe problems in their educational programs.

The pending amendment would provide for an 85 percent hold-harmless, thus providing the necessary balance between the need for stability and the need to recognize interstate and intrastate demographic changes. It would only count two-thirds of the AFDC caseload, therefore recognizing the need for a factor in the formula to update statistical data between the census. At the same time, by counting only two-thirds of the AFDC caseload, it will avoid the double-counting problem whereby a child is counted twice because he or she is a member of a family below the Government poverty level and is receiving AFDC payments.

The end effect of the McClellan amendment in that the Government poverty index will be the primary factor in determining the formula and the AFDC caseload will again be the minor secondary factor that it originally was intended to be when the Elementary and Secondary Act was approved in 1965.

Mr. President, I urge adoption of the amendment.

Mr. McCLELLAN. Mr. President, I yield 2 minutes to the distinguished Senator from North Carolina.

Mr. ERVIN. Mr. President, I rise to urge the Senate to adopt the amendment offered by the distinguished Senator from Arkansas (Mr. McCLELLAN). I am privileged to be a cosponsor of this amendment. I cosponsored it at the request of the North Carolina State Board of Education and the North Carolina Superintendent of Public Instruction. They believe—and I share the belief—that under this amendment, the sums to be devoted to the education of disadvantaged children will be distributed far more equitably and far more fairly than under the provisions of the original bill.

For this reason, I feel that I cannot urge my fellow Senators too strongly to support the pending amendment.

I thank the distinguished Senator from Arkansas for yielding this time to me.

Mr. McCLELLAN. Mr. President, I have listened with a great deal of interest to the arguments against this amendment. I have listened to arguments that try to sustain the part C funds that are in the bill.

I hear expressed over and over that what we really want is the money to go where the children are, but I have not heard anybody say that it should go twice to any child. I suggest that under this AFDC formula, many of those children are counted twice. All of these children from families below the poverty level whose families are receiving AFDC funds are counted twice. That accounts for some of this very disproportionate amount of money that is going to some of the wealthier States, such as New York.

Mr. President, I would like to see us put into practice what we are saying here about getting this money to the poor children where they are. We are not getting it to the poor children in Arkansas, South Carolina, Texas, Michigan, or anywhere else, by counting these children twice in States where they have a very high roll of AFDC children. It takes away from those States and it gives it twice to a State like New York.

My good friend said that we talk about New York. Look at the formula, Mr. President, let us take the part C formula. Let us see what it does. We have to talk about where the inequities are.

In this part of S. 1539, the part C formula, this is the money that is supposed to go to the children in those districts or those areas where there is a high concentration of poor children, and that is according to the statement made by the distinguished manager of the bill a few days ago in this Chamber; that is the purpose of it, in order to try to reach those children where the concentration is heaviest, where there are the most poor families. That is the purpose of these part C funds.

But let us see what happens, Mr. President. In Arkansas we have 2.05 percent of the number of low-income children under $3,000. They set up a new formula here that did not go by the old formula. I do not know why. But we have 2.05 percent of the low-income children and yet we only get .41 percent of the money. How do they justify taking that money away from our children and not giving them their fair share? Then, when we look at the figures for New York it is a different story. New York has 6.94 percent of the total poor children from families with less than a $3,000 annual income and yet New York gets 25.92 percent of the money. I do not know why. I do not believe the Senator from Rhode Island (Senator PELL) would dare to say that that is equality and justice. Here is a special fund that is purportedly designed to reach the poor children where they are. In Arkansas there are 32 counties where there are more than 25 percent of families with incomes of $3,000 or less that do not get one dime of this money, not a dime.

In Missouri, a neighboring State, 25 counties with families having incomes of $3,000 or less do not get a dime of it. We cannot help but talk about New York. New York is a wonderful State; New York is a rich State, and very much so. I am not criticizing the Senator. If he can get by with this, very good. But I do not think it is fair to the other States of this Nation. I do not think it is right and just. I do not think the manager of the bill or the Senator from New York (Senator JAVITS) down in their hearts feel it is right for New York to take 25 percent plus of the money that is intended to go to the poorest children where there is the highest concentration throughout the Nation and leave out 32 counties in Arkansas, 25 counties in Missouri, 25 counties in another State, and 30 counties in another State, all across the country. Do we call that justice? Do we call that equity?

They worked for 6 months on the formula and then they say we should not jump on anybody.

I wish to point out the gerrymandering that is done here in this kind of formula to eliminate the poor children in many counties throughout the Nation, while providing the richest county in New York with over $600,000 from this fund, more than twice as much as the total amount all of Arkansas will receive. That situation applies to a number of other States. All we have to do is look across the board. We are talking about seeking equity.

I wish to have printed in the RECORD at this point on the S. 1539 formula a matter with reference to the 100 percent hold-harmless clause. Last year when this bill was before us the distinguished Senator from New York condemned that provision. I do not have time to read all of it but I would like to place in the RECORD an excerpt from his remarks made on October 3, 1973, when he said:

> I offer right now, so far as I am concerned, to cast my vote for any proposition which eliminates the hold harmless. Let us actually go ahead and put the money where the children are, just literally where the children are.

Mr. President, that is what I am pleading for today: to put the money literally where the poor children are, and not have gerrymandering.

Another matter I wish to refer to is that on the AFDC approach we count two-thirds of the AFDC children above the Orshansky level. The third we take off probably eliminates any possibility of a double count. I would like to call to the attention of my colleagues a paper entitled "Quality Control—AFDC Error Rates by State, April–September 1973," and I ask unanimous consent to have that table printed in the RECORD.

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

QUALITY CONTROL—AFDC ERROR RATES BY STATE, APRIL-SEPTEMBER 1973[1]

State	Cases with errors as a percent of total cases			Amount of payment errors as a percent of total payments		
	Ineligible	Eligible but overpaid	Eligible but underpaid	Ineligible	Overpaid	Underpaid
National average	10.2	22.8	8.1	8.9	7.1	1.4
Alabama	10.5	15.1	8.4	9.2	5.9	2.4
Alaska	14.2	13.5	5.8	12.3	6.1	.8
Arizona	9.3	23.6	7.3	8.0	7.4	1.3
Arkansas	2.2	7.1	7.3	1.8	1.8	1.9
California	8.4	17.8	7.9	6.9	5.4	1.3
Colorado	4.4	15.9	6.5	2.6	4.7	.9
Connecticut	6.5	16.2	5.4	5.5	4.5	1.1
Delaware	14.1	29.6	9.7	10.1	8.5	1.6
District of Columbia	10.9	24.5	3.8	9.9	7.6	.6
Florida	11.0	27.1	9.3	10.1	11.4	2.3
Georgia	7.0	24.9	10.5	5.2	9.1	2.7
Hawaii	4.6	19.9	5.6	4.6	5.3	1.5
Idaho	5.8	13.0	1.9	6.0	3.0	.2
Illinois	11.7	37.6	10.6	9.6	11.4	1.2
Indiana	8.0	19.5	4.4	6.8	5.8	.9
Iowa	9.7	20.0	7.3	7.7	7.0	1.4
Kansas	10.3	26.0	9.2	8.5	6.7	1.7
Kentucky	10.1	29.4	7.7	7.8	9.6	1.0
Louisiana	14.8	21.1	5.4	13.7	7.7	1.2
Maine	3.7	7.2	1.8	3.1	2.7	.6
Maryland	14.7	28.5	10.3	13.1	9.8	1.9
Massachusetts	9.6	29.7	13.5	8.0	7.1	.9
Michigan	5.7	20.3	4.9	5.2	4.9	.5
Minnesota	6.0	28.1	12.9	5.3	4.7	1.2
Mississippi	2.3	8.6	5.2	1.7	3.0	1.3
Missouri	7.1	14.2	4.4	6.2	5.4	1.4
Montana	10.3	18.6	4.2	7.2	8.2	1.2
Nebraska	6.5	10.3	2.7	5.4	2.5	.2
Nevada	2.6	7.8	4.6	1.5	1.8	.7
New Hampshire	11.9	40.9	7.5	9.2	10.8	1.2
New Jersey	4.3	18.3	4.4	3.4	5.2	.8
New Mexico	5.0	13.2	4.2	3.5	4.7	1.0
New York	17.5	31.9	11.1	16.7	9.3	1.7
North Carolina	7.7	21.3	19.2	6.5	6.6	3.9
North Dakota	1.9	8.4	1.9	.8	1.8	.1
Ohio	13.7	27.0	8.3	12.2	9.5	1.0
Oklahoma	4.1	13.5	2.9	3.1	5.1	.6
Oregon	6.3	16.2	3.5	6.4	4.3	.7
Pennsylvania	16.7	24.8	8.1	14.7	7.5	1.1
Puerto Rico	16.4	19.9	7.7	14.6	8.4	2.7
Rhode Island	4.5	21.3	3.5	3.1	6.3	.3
South Carolina	10.1	27.3	10.0	9.1	8.3	2.6
South Dakota	2.5	14.5	4.4	2.0	5.4	.9
Tennessee	9.1	12.8	6.3	7.6	4.5	1.6
Texas	10.4	16.3	3.5	8.8	6.3	1.2
Utah	5.9	14.7	3.9	5.3	3.2	.9
Vermont	10.3	27.2	6.0	11.3	7.9	.6
Virgin Islands	5.8	15.2	14.5	4.2	5.2	1.7
Virginia	5.3	27.4	13.3	3.8	8.2	2.2
Washington	4.5	10.2	2.8	4.3	2.7	.4
West Virginia	5.6	10.7	4.3	4.7	3.3	1.0
Wisconsin	4.7	14.5	16.5	3.8	2.3	1.9
Wyoming	8.0	14.2	8.6	6.5	3.5	1.8

[1] These error rates for aid to families with dependent children (AFDC) programs are based on State quality control reviews of 44,000 cases selected in accordance with established sampling procedures from an average monthly national caseload of over 3,000,000 families. On Jan. 1, 1974, all States begin an intensive 18-month effort to implement corrective action plans designed to reduce ineligible case rates to no more than 3 percent and eligible overpaid case rates to no more than 5 percent by June 30, 1975. Underpayment rates will also be reduced by this effort.

Source: DHEW-SRS, Dec. 20, 1973.

Mr. McCLELLAN. Mr. President, I call attention to the fact that of those AFDC families on the rolls in New York, 17.5 percent of them were found to be ineligible. They are counted and some of them are counted twice in arriving at the money under the general title I formula. That is in this bill.

Mr. President, this table further shows that 16.7 percent of the entire funds in New York for the AFDC program went to ineligibles. They are counted here. They are counted against poor counties in Arkansas and they are counted against the poor counties in the rest of the Nation.

The House formula was supported by a vote of 3 to 1 on 3 rollcall votes in the House, where they tried to modify this formula. We are seeking here today to move in the direction of reform. This is not complete reform. This does not get the whole job done. This moves us back, as the chart shows, nearer the direction of helping poor children instead of having them ignored as they are in many parts of the Nation under this part C, which is purportedly to help the most destitute.

Mr. President, I hope my amendment with an 85 percent hold-harmless clause will be adopted. It certainly is a great improvement over the "hold harmless" or "base year" 100 percent provision in S. 1539. Under S. 1539 only 11 percent of the money appropriated is even to be allocated under the formula. There is a 100-percent "hold harmless" provision which gives them what was done last year. From now on, not only will it be funded, but it becomes permanent law. They could never get less than they got last year, no matter how many children needed it, no matter how the situation changes. They never can get less. But that excess part which is appropriated will be subject to the allocation under the formula, and under the bill as it is now, it will be only 11 percent.

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

Mr. STENNIS. Mr. President, will the Senator yield me 2 minutes?

Mr. McCLELLAN. I yield the distinguished Senator from Mississippi 2 minutes.

Mr. STENNIS. Mr. President, first, I certainly want to thank the Senator from Arkansas for the unusual amount of work and the fine presentation he has made with respect to the very serious situation existing in this bill. I have the privilege, and it is a privilege, to be one of the Senators from one of the so-called low-income States. I am not begging for them. On the matter of education and local taxes for education, my State once led the Nation in the percentage of local taxes spent for education. I am proud of that, regardless of the so-called low per capita income.

What is right is right; what is just is just. I am sure no one intends to do a wrong to anyone, but we point out that under this formula, complex as it is—and it is difficult to get any formula applying across the Nation, I fully realize, but in a bill that is dedicated solely to compensatory education, to educating the disadvantaged children better, that being the primary purpose, really, and the only and major purpose of this bill——

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

Mr. STENNIS. May I have 1 additional minute?

Mr. McCLELLAN. I yield 2 minutes to the Senator.

Mr. STENNIS. This formula is unjust in its application.

The time for debate is limited. I think the whole story has already been told on the floor by the Senator from Arkansas, but I want to preserve the points he made in a letter addressed to many Senators under date of May 2, 1974.

I ask unanimous consent that the 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:

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C., May 2, 1974.

Hon. JOHN C. STENNIS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STENNIS: Enclosed is a copy of an amendment I intend to offer to S. 1539, the Elementary and Secondary Education Act Amendments of 1974. Other explanatory materials are also enclosed.

The Amendment would adopt the provisions of the House bill (H.R. 69) for the purpose of computing payments to local education agencies under Title I of the Elementary and Secondary Education Act of 1965. The stated purpose of Title I is to enable elementary and secondary schools to provide compensatory education to educationally disadvantaged children. All versions of the formula for computing these payments have been premised on the very proper assumption that the formula should be based on the number of poor children within each local education agency. Unfortunately, however, the method of determining the number of poor children in an local education agency and the extent to which the payment levels will vary from state to state have raised serious questions with respect to equitable allocation of these funds and have given rise to warranted criticism.

Both the Senate and the House bills are in agreement that the Orshansky Index (the accepted Federal Index of Poverty) should be the prime factor in determining the number of children to be covered by Title I said in any given local education agency.

However, the Senate version of the bill places undue emphasis on the number of children whose families are receiving AFDC payments.

The formula in the Senate bill would

double the count of poor children if their families also receive AFDC payments, thus, making higher payments to wealthy states which can afford and which provide larger welfare programs.

My amendment would reduce the emphasis on the AFDC factor by counting only ⅔ of AFDC children whose families have incomes above the poverty level.

I am disturbed by the base year provision in the Senate bill which would insure that no local education agency will ever receive less funds than it received in Fiscal Year 1974. This base year provision means that during Fiscal Year 1975, 89% of the Title I money would be distributed not under the formula set out in E. 1539, but under the obsolete formula of existing law which states that you are not poor unless your family has an income of less than $2,000.

My amendment contains an 85% hold-harmless clause for local education agencies. This would provide the funding assurance necessary to enable proper year-to-year planning of Title I programs, without freezing in the present inequitable payment rates.

Even of greater concern to me, however, is Part C of Title I. Part C purports to furnish special grants for urban and rural areas with large numbers of children from low income families. Bear in mind that Part C funds are taken from general local education agency funds.

On April 25, 1974 an insert was placed in the Congressional Record (pp. 11848–11850) which listed counties that would receive funds under Part C. A careful examination of this insert in the Record reveals that more than 25% of the funds which are intended to go to concentrations of poor children will actually go to one of our richest states. A county such as Newton County, Arkansas, where 43% of its families have a total income of less than $3,000 per year and where the per capita income is only $1,308 per year, will receive none of these funds whatsoever, notwithstanding that Part C is purportedly aimed at aiding local education agencies containing concentrations of poor children.

However, Westchester County, New York, one of the wealthiest counties in the nation, with only 4.9% of its families having total incomes of less than $3,000 per year and with a per capita income of $5,059 will receive $619,833 under Part C—almost double the total that will go to the entire state of Arkansas. I, therefore, respectfully suggest that each Senator may wish to examine Part C of Title I of the Senate bill and ascertain whether it is fair and equitable to, or if it discriminates against, the children of his state.

S. 1539 will not accomplish what its authors and the Committee Report claim for it. It does not equitably distribute federal aid to all educationally disadvantaged children. Instead, in many instances it will actually favor educationally advantaged children. I cannot agree to nor support such a discriminatory measure.

My amendment seeks to carry out the true purpose of the bill, i.e., to provide federal aid to educate children from poor families.

The Title I formula is extremely complicated, and it is obviously inequitable. It should be revised and I earnestly invite cosponsorship of my amendment.

Should you or your staff have any questions, or desire a briefing, please call Mr. Emon Mahony at extension 7229 or 7297. I intend to introduce the amendment next Monday, and will, of course, add cosponsors at any time prior to floor consideration of the amendment.

With kind regards, I am

Sincerely yours,

JOHN L. MCCLELLAN.

Mr. PELL. Mr. President, I yield myself 1 minute on the bill.

I am struck by the fact that while the statements of the Senator from Mississippi and the Senator from Arkansas are absolutely correct from the viewpoint of their own States' contributions, the State of Mississippi received the largest percentage of revenue for public elementary and secondary schools from the Federal Government of any State—25 percent—and the State of Arkansas received the third largest amount in the United States—16.3 percent.

Nobody begrudges the fact that Mississippi and Arkansas receive the largest amounts of Federal funds for education on a per capita basis. That is not it. They need help, and we are all glad to help them. But the House formula basically moves assistance away from the cities back to the rural areas. The trouble with that formula is that the population is moving in just the opposite direction. It is moving from the rural areas into the urban areas. The reason for part C and the reason why New York needs it, for example, is that that is where there is an intense concentration of poor children. Arkansas is fortunate that it does not have that concentration; they are spread over a wider base and part C does not apply. I think that has to be borne in mind when we consider the question

Mr. JAVITS. Mr. President, I yield myself 2 minutes on the bill, with the permission of the Senator from Pennsylvania (Mr. HUGH SCOTT).

Mr. President, I have a number of amendments which I shall wish to propose to the amendment of the Senator from Arkansas, as have other Senators, and I understand that the voting on rollcalls is deferred until 4 o'clock in respect to all matters, the amendments to the McClellan amendment and the amendment itself. I just wish to announce that so that Senators might have a sighting on the time situation.

Also, Mr. President, I wish to call attention to the fact that the formula in part C of title I grants, which has just been argued by the Senator from Arkansas, applies not only to urban but to rural schools. The only criterion is the highest concentration of children from low-income families.

That goes directly to the argument made, to wit, that where there is a special impact—the definition certainly calls for special impact of children—that community is simply in trouble, and it does not make any difference whether that community is in New York or in Arkansas. It will be equally treated if it meets the criteria.

Finally, there are some very strange results which can result from this switch in formuli.

It is necessary to point to the example of the difference between a county in Arkansas and a county which is called the wealthiest county in the Nation, Westchester County. The fact is that under the McClellan amendment that particular county which is the basis of comparison, Newton County, receives materially less money than it does under the committee amendment.

Mr. President, I ask unanimous consent that an analysis of that may be made a part of the RECORD.

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

NEWTON COUNTY, ARK.

TITLE I

Newton county is one of the poorest per capita income areas in Arkansas. Senator McClellan charges that the S–1539 Title I formula treats Newton county unfavorably since it would receive no money under Part C of S–1539.

In actuality, however, Newton county would receive $28,956, or 26%, more under Part A of S–1539 than it would receive under the McClellan amendment which combines Parts A, B, and C.

In fact, Newton county would lose $19,786, or 15%, of its current receipts (FY '74) under the McClellan formula! This seems most inequitable for a poor county like Newton, especially at a time when the Administration's budget (on which these figures are based) increases funds for Title I.

Mr. JAVITS. Mr. President, I point that out not to score debating points, but to indicate and validate the basic thrust of our argument and to point out what this formula really means. We really have to protect the children in the educational districts when we do this. The McClellan formula adversely affects the key metropolitan areas of the country, and this just does not wash in terms of the fundamental purpose of this bill.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Has all time expired?

The PRESIDING OFFICER. The Senator from Arkansas still has 23 minutes. All time of the opponents has expired.

Who yields time?

Mr. HUGH SCOTT. Mr. President——

Mr. McCLELLAN. Mr. President, does the Senator want 2 or 3 minutes?

Mr. HUGH SCOTT. If the Senator will yield for the purpose of offering an amendment, I shall do so.

I think I had better withhold it now.

Mr. McCLELLAN. The Senator from Colorado has been waiting to offer an amendment.

Mr. HUGH SCOTT. I think the Senator from Colorado had better be heard first. I will withhold mine.

Mr. JAVITS. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Has the time expired?

The PRESIDING OFFICER. The Senator from Arkansas has 23 minutes. The time of the opponents has expired.

Mr. DOMINICK. Mr. President, if the Senator from Arkansas would yield back the remainder of his time, I can come forward with an amendment which I think is agreeable to him.

Mr. McCLELLAN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

Mr. McCLELLAN. I am willing to yield back my time if we are to vote on my amendment at 4 o'clock. I was not consulted about extending the time beyond 4 o'clock.

I have some folks who have been waiting. I am ready to vote. I thought we were to vote at about 3 o'clock—three something. If we had been ready to vote at that time, I would have been ready to vote. If we are not going to have a vote at 4 o'clock, I am perfectly willing to let other amendments come up and be considered.

Mr. HUGH SCOTT. Mr. President, if I understand the parliamentary situation correctly, another amendment may be offered. I think the Senator from Colorado has an amendment, if the Senator is agreeable; and I have an amendment which will not take 5 minutes.

Mr. McCLELLAN. Mr. President, I should like to have my parliamentary inquiry answered. Will the Senate vote at 4 o'clock on the pending amendment?

The PRESIDING OFFICER. No. Under the pending amendment, the Senate will vote not earlier than 4 o'clock, but not necessarily at 4 o'clock.

Mr. HUGH SCOTT. Would the Senator from Arkansas be willing to yield back the remainder of his time?

Mr. McCLELLAN. I could do that, but I had hoped that we would reach some agreement to vote.

Mr. President, I ask unanimous consent that amendments may be offered without my losing my remaining time.

Mr. JAVITS. Mr. President, reserving the right to object, let us understand what this means. I certainly have no objection to the Senator from Arkansas having an extra 21 minutes to play with, or to do whatever he wishes to do about his amendment. But I do object to any implication in the request I made. I make this in the nature of a parliamentary inquiry: When are we to vote on the amendment of the Senator from Arkansas?

Mr. HUGH SCOTT. Not earlier than 4 o'clock.

The PRESIDING OFFICER. Amendments are in order.

Mr. JAVITS. Is there a time limitation?

The PRESIDING OFFICER. There is.

Mr. JAVITS. What is the time limitation?

The PRESIDING OFFICER. Thirty minutes.

Mr. JAVITS. Fifteen minutes to a side?

The PRESIDING OFFICER. That is correct.

Mr. JAVITS. So we shall vote on the McClellan amendment when all amendments thereto have been presented and considered.

The PRESIDING OFFICER. That is correct. After his time has expired.

Mr. HUGH SCOTT. Mr. President, if the Senator from Arkansas will yield me 1 minute, I should like to make the point that the Senator from Colorado is seeking recognition. Much as I love him, I should like to get his amendment out of the way, so that I may offer my amendment.

Mr. McCLELLAN. Mr. President, another parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Arkansas will state it.

Mr. McCLELLAN. Under the order, when the hour of 4 o'clock arrives, may amendments be offered to the McClellan amendment?

The PRESIDING OFFICER. Yes, they would be in order.

Mr. McCLELLAN. And then could be debated?

The PRESIDING OFFICER. Yes; they may be debated for 30 minutes.

Mr. McCLELLAN. Mr. President, I think we might as well start. We can let the time begin to run on amendments. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back on the amendment offered by the Senator from Arkansas.

The Senator from Colorado is recognized.

Mr. DOMINICK. Mr. President, I offer an amendment to the amendment offered by the distinguished Senator from Arkansas.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. DOMINICK. Mr. President, I ask unanimous consent that the further reading of the amendment be dispensed with.

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

The amendment is as follow:

Intended to be proposed by Mr. Dominick to the amendment (No. 1304) proposed by Mr. McClellan (for himself and others) to S. 1539 etc.

On page 1, strike out lines 1 and 2, and insert in lieu thereof the following:

"(2) (A) (i) (I) Such title I is amended by inserting immediately after the heading of part A the following new heading:

'Subpart 1—Grants to Local Educational Agencies'

"(II) Section 103(a) of such title I is amended to read as follows:".

On page 9, strike out lines 19 through 21, and insert in lieu thereof the following:

"(E) Such title I is amended by inserting at the end of part A the following:

"Subpart 2—State Operated Programs'".

On page 17, between lines 2 and 3, insert the following:

"(F) (i) Section 121 of such title I and all references thereto are redesignated as section 126,

"(ii) Section 126(b) of such title I (as redesignated by this subparagraph) is amended—

"(I) by inserting '(1)' after '(b)';

"(II) by striking out '$1' and inserting in lieu thereof '$1.50';

"(III) by striking out 'clauses (2), (5), (6), and (7) of section 103(a)' and inserting in lieu thereof 'section 103 and subpart 2 of part A'; and

"(IV) by inserting at the end thereof the following new paragraph:

"'(2) (A) The aggregate of the amounts to which the States are entitled under this part for any fiscal year shall not exceed $75,000,000. If, for any fiscal year, such amounts, without the limitation in the preceding sentence, exceed $75,000,000, each of the entitlements created under this part shall be reduced ratably until such amounts do not exceed such limitation.

"'(B) For the purpose of making entitlement payments under this part there are authorized to be appropriated not in excess of $75,000,000 for the fiscal year ending June 30, 1974, and for each of the four succeeding fiscal years.'".

On page 17, line 3, strike out "(F)" and insert in lieu thereof "(G)".

On page 18, line 6, strike out "(G)" and insert in lieu thereof "(H)".

Mr. DOMINICK. Mr. President, this is a relatively simple amendment. It is designed to put back into the McClellan amendment, part B, which is now in the formula and has been in it for a number of years. It is what is called an incentive grant amendment.

I may say to the distinguished Senator from Arkansas that I was very much opposed to the ESEA formula as the bill was put into law originally, and I argued with the former Senator from Oregon (Mr. MORSE) at length on this question, both in committee and on the floor of the Senate, because my position at that time was that in the formula as it had been suggested, the rich get richer, the poor get poorer, and the money did not go into the areas where it was needed.

I got nowhere in that argument. I could not win in committee, and I did not win on the floor of the Senate, although the vote was fairly close. So I changed what I was trying to do and created a separate fund, now authorized by law at $75 million. The same authorization is contained in the amendment I am proposing. It would be divided among the States whose support of schools is higher than the national average. I believe the original part B incentive grant program worked out in such a way, to my surprise—I did not know this when I put it in—worked out in such a way that a good number of western and southern States received funding from this formula which they otherwise would not have received because those States were the ones that were putting more of their own local tax money into the schools than were some of the big, so-called rich industrial States.

Consequently, the big, rich industrial States did not get a very big share of this money. They did get some to the extent they were above the national average; but they did not get very much. About half the States in the country, which were expending more of their own property tax and State and city income taxes for the support of their schools at a level above the national average, they were given, in effect, a bonus.

It seems to me that this is a good program. It is not one that necessarily says that we are going to give a large amount of money to the wealthy States. It simply says that those States that are exerting their own efforts, using their own taxes, and their own muscle power to support their schools should be given recognition under the bill; and they will not get recognition unless this amendment is adopted.

I reserve the remainder of my time.

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

Mr. DOMINICK. I am happy to yield.

Mr. McCLELLAN. Do I understand that the $75 million authorized here would be an appropriation in addition to the other funds in the other titles of the bill?

Mr. DOMINICK. That is correct. $75 million of the amount is at present authorized under part B. I am keeping the

same amount, and it would be a separate line item in the appropriation.

Mr. McCLELLAN. It would not come out of the other title I funds?

Mr. DOMINICK. That is correct. I tried that once before, and I found that the local education agencies were losing money under title I to the State education agencies under that method.

Mr. McCLELLAN. Within limits.

Mr. DOMINICK. So we made separate funds.

Mr. McCLELLAN. The authorization of $75 million is a special line item, and it would be up to Congress to determine how much of that we wished to appropriate each year.

Mr. DOMINICK. Mr. President, I am sorry, but I cannot hear because of what is going on. I did not hear the Senator's question.

Mr. McCLELLAN. This does not take any money away from title I.

Mr. DOMINICK. No, sir; not a bit.

Mr. McCLELLAN. Not at all. Therefore, it would be over and above the title I funds?

Mr. DOMINICK. That is correct.

Mr. McCLELLAN. It would be distributed according to a formula?

Mr. DOMINICK. Yes, sir.

Mr. McCLELLAN. Congress could make a separate appropriation as they evaluate it and could appropriate not to exceed $75 million. It could appropriate less.

Mr. DOMINICK. The Senator is correct.

Mr. McCLELLAN. It could appropriate less?

Mr. DOMINICK. The Senator is totally correct.

Mr. McCLELLAN. But it is separate and not involved in title I funds?

Mr. DOMINICK. That is right. And last year, the Appropriations Committee for this program appropriated about $18 million. We have the authorization in my amendment the same as it was in that bill, which is $75 million. I hope we will get an appropriation that high. Even if we do not, we have made some progress toward rewarding those States which are using their own efforts.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. My understanding is that it was not in the House bill.

Mr. DOMINICK. No, part B is not in the House bill, that is correct.

Mr. McCLELLAN. Mr. President, I have no objection to taking it to conference, so that the conferees will have an opportunity, if they want to go over and above the title I funds.

Mr. DOMINICK. I thank the Senator.

Mr. McCLELLAN. I have no objection, unless someone else does.

Mr. PELL. Mr. President, I am not sure I understand the amendment. The proposal would be for a new categorical program setting up funds over and above the $1.8 billion, to reward States for their efforts in looking after the poorer children?

Mr. DOMINICK. That is not entirely correct. It is not a program; it is simply a bonus or incentive for those States who are putting more of their own tax money into supporting their own schools. It is an incentive toward keeping up the local effort.

Mr. PELL. But it would be new money?

Mr. DOMINICK. It is new money. It is not title I money.

Mr. PELL. So it would require another line item in the appropriation bill?

Mr. DOMINICK. That is correct. There is such a provision already in the bill; and it has been in the law for several years. It has had money appropriated for it before, and I hope it will again.

Mr. PELL. Mr. President, I do not have the same resistance to categorical programs that some of my colleagues have. I would be delighted to accept this one more excellent program.

Mr. DOMINICK. I thank the Senator. I do want to state for the RECORD, however, that it is not a categorical program, but it is simply more money to provide a reward to those States which are helping themselves by taxing themselves.

Mr. ALLEN. Mr. President, will the distinguished Senator from Arkansas yield me 2 minutes?

Mr. McCLELLAN. I yield the Senator 2 minutes.

Mr. ALLEN. Mr. President, I would like to ask the distinguished Senator from Colorado—I understood him to say this would provide additional funds for some of the Southern and Western States; is that correct?

Mr. DOMINICK. That is correct, provided they use more of their own per capita income to support their own school systems than the national average.

Mr. ALLEN. Yet I note from the table that I have here that Alabama would receive no portion of this addition, Arkansas would receive no portion of it, Florida would receive no portion of it, and Georgia would receive no portion.

Mr. DOMINICK. Well, then, they may be right at the national average. I remember that when I computed it before, which was some years ago, that Arkansas and Alabama were substantially ahead of the national average in their per capita load for educational purposes.

Mr. ALLEN. North Carolina would receive nothing, South Carolina would receive nothing, Tennessee nothing, Texas nothing, Virginia nothing—I just wondered what Southern States were going to profit by it.

Mr. DOMINICK. It may be that they are now right at the national average. I say to the Senator from Alabama, I do not have up-to-date figures on this, and I am frank to admit that. All I can say is that if you are above the national average as computed by HEW, you get the money. If you are not, you do not.

Mr. ALLEN. Mr. President, I am not going to ask for a rollcall vote, but I would like to ask that the RECORD show that the Senator from Alabama voted "no" on the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. In further answer to the Senator from Alabama, Louisiana would get some money. Florida, if that is considered a Southern State, does not. Georgia apparently does not, and I do not know why, frankly, because I thought they were all above the national average. But it falls wherever it falls.

The PRESIDING OFFICER. Who yields time?

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

Mr. DOMINICK. I yield back the remainder of my time, and I ask that a table, prepared by the Congressional Research Service, be inserted in the RECORD to illustrate which States would receive special incentive grants under my amendment, and the amount of such grants, if the full $75 million which would be authorized is appropriated.

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

Estimates of special incentive grants to States based on Dominick amendment with a total appropriations level of $75 million with no State to receive more than 15% of that and based on H.R. 69 LEA populations and current law sea populations

Alabama	$0
Alaska	2,216,515
Arizona	0
Arkansas	0
California	501,956
Colorado	168,437
Connecticut	963,150
Delaware	208,342
District of Columbia	0
Florida	0
Georgia	0
Guam	----------
Hawaii	0
Idaho	0
Illinois	0
Indiana	564,408
Iowa	3,386,553
Kansas	0
Kentucky	0
Louisiana	7,009,993
Maine	1,743,420
Maryland	1,144,245
Massachusetts	0
Michigan	11,249,996
Minnesota	10,436,377
Mississippi	0
Missouri	0
Montana	1,394,442
Nebraska	0
Nevada	0
New Hampshire	0
New Jersey	3,598,403
New Mexico	1,869,071
New York	11,249,996
North Carolina	0
North Dakota	0
Ohio	0
Oklahoma	0
Oregon	1,147,221
Pennsylvania	2,011,397
Puerto Rico	----------
Rhode Island	0
South Carolina	0
South Dakota	618,281
Tennessee	0
Texas	0
Utah	831,398
Vermont	1,691,075
Virgin Islands	----------
Virginia	0
Washington	3,284,313
West Virginia	370,885
Wisconsin	6,463,879
Wyoming	876,209
Total	75,000,000

The PRESIDING OFFICER (Mr. BARTLETT). All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Colorado.

The amendment was agreed to.

Mr. HUGH SCOTT. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 5, line 21, strike out "two-thirds of".

Beginning on line 7, of page 7, strike out "; and in making such determinations the Secretary" and the remainder of the sentence, and insert in lieu thereof a period.

Mr. McCLELLAN. Mr. President, is the amendment printed?

Mr. HUGH SCOTT. The amendment is not printed.

Mr. President, I demand the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. HUGH SCOTT. Mr. President, my amendment will amend the McClellan amendment No. 1304. The amendment introduced by the Senator from Arkansas counts all children below the so-called Orshansky poverty level. That is very necessary. It also counts children from AFDC—aid to families with dependent children—families above the Orshansky level, but only two-thirds of such children. My amendment counts all of the AFDC children above the Orshansky level.

Mr. President, I am very pleased, on this amendment, to have the cosponsorship of the distinguished Senator from Maine (Mr. HATHAWAY). If two-thirds of the children from AFDC families above the Orshansky index are to be considered poor—and they most assuredly are or their families would not be welfare recipients—then the other third should also be considered. There is no such thing as being two-thirds poor.

I do not argue that my amendment will make AFDC the vital factor it should be in title I. The committee bill, S. 1539, does that. But my amendment, by counting all, not just two-thirds, of the AFDC children above Orshansky and without eroding it in the future, has the virtue of consistency and logic.

An AFDC child should no more be counted as two-thirds of a child than his parent's vote should be counted as two-thirds of a vote.

I urge my colleagues to weigh the implications of the McClellan amendment and then to compare it with the Scott amendment. I think my amendment speaks for itself.

The PRESIDING OFFICER. Who yields time?

Mr. HUGH SCOTT. Mr. President, does the Senator from Arkansas wish to be recognized?

Mr. McCLELLAN. Mr. President, I yield myself 5 minutes.

We have discussed this matter at some length earlier in the day, this provision about the AFDC children and that part of the formula.

I might say to my friend from Pennsylvania that all of these children who are over the poverty level as determined, who are counted here, may be counted twice, because they were counted under the poverty level and may be counted under AFDC also as your payments rise. In past years you count a lot of these children twice in your AFDC total to get your roll. They were counted below it and also above it.

This is to try to offset, to some extent, the double count of those children. I think it is fair. Another thing I would like to point out is that, as I have put in the RECORD, particularly in the State of New York, 17.5 percent of those AFDC families were found to be ineligible, of those that were on the rolls between April and December of 1973, and in the Senator's State of Pennsylvania 16.7 percent were found to be ineligible.

With the double count on a lot of them, and with the ineligibles, I think it is only fair that we make some reduction when we go to count and arrive at a formula to pay out money on the basis of the number of poverty-afflicted children.

Mr. JAVITS. Mr. President, will the Senator yield to me?

Mr. HUGH SCOTT. I am glad to yield the Senator from New York such time as he may require.

Mr. JAVITS. Mr. President, the deficiency in the argument which has just been made about this matter is twofold: First, there is just as big if not a bigger claim of inaccuracy in the Orshansky formula, because the claim is that over 5 million of the poor have not been counted. If you lay that side by side with 16 or even 20 percent of the AFDC children, you get a much lesser figure. There are estimated to be—if my memory serves me correctly—somewhere near 7 million or 8 million AFDC children in the country of all ages.

The other point is that the author of the amendment himself had to crank in the AFDC children. He had no other choice because the Orshansky formula count comes from the census every 10 years and does not show the regional differences in the cost of living. It is not a moving index, which we certainly would have a right to expect over a span of 10 years. This bill is only for 4 years. So we cannot have it both ways. If we want to crank in the AFDC children, because that is the fair thing to do, then crank in all the AFDC children.

As I understand the Scott-Hathaway amendment, it would eliminate the escalating factor. That is critically important especially if we want to equate it with the Orshansky formula. The Orshansky formula does not crawl up. It is shifted every 10 years. Whereas under the way in which the Senator from Arkansas has loaded the AFDC factor, it does crawl up, depending on the increases in the cost of living, reducing constantly the number of AFDC children, and therefore worsens the formula in terms of its rigidity over what it is now under his amendment.

So for all those reasons, I think this amendment is a very fair and proper one, following exactly the principle which had to be accepted. We could not do it any other way. But at least, if we go that way in terms of principle, then let us go the way the principle dictates, but do not suddenly abort it by making it two-thirds instead of 100 percent, which is what the Scott-Hathaway amendment is trying to do, to try to bring the formula back to some kind of relationship to principle.

This amendment should be adopted.

Mr. McCLELLAN. Mr. President, I am advised that this amendment also, in effect, freezes the Orshansky formula regarding the AFDC count, in that the Orshansky level does not move up any further. The only increase would come from the AFDC children that are added hereafter. This strikes out of the amendment this provision:

In making such determination, the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census for a nonfarm family of four, in such from as those criteria have been updated by increases in the Consumer Price Index.

It strikes all that out.

It seems to me that the Orshansky formula has been adopted and is in use throughout the Government now; it is therefore the proper and basic formula for us to recognize and legislate into this education bill, and update it to prevent double counting.

Again I point out that every State can increase—and some do—the AFDC payments. The richer States can increase it, where the Orshansky formula will be frozen. That means that each year they get more and more of this money—the bigger percentage.

Mr. HUGH SCOTT. If there are no further demands for time to speak, I will be glad to yield back time on this amendment and then we can go to the next amendment.

Mr. McCLELLAN. I am ready. I yield back the remainder of my time.

Mr. HUGH SCOTT. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on this amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator from Pennsylvania (Mr. HUGH SCOTT) to the McClellan amendment.

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 Aranksas (Mr. FULBRIGHT), the Senator from Alaska (Mr GRAVEL), the Senator from Alabama (Mr. SPARKMAN), the Senator from Hawaii (Mr. INOUYE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Utah (Mr. MOSS), and the Senator from West Virginia (Mr. RANDOLPH) are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOK), the Senator from Florida (Mr. GURNEY), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Nebraska (Mr. CURTIS), and the Senator from Arizona (Mr. GOLDWATER) are absent on official business.

On this vote, the Senator from Nebras-

ka (Mr. CURTIS) is paired with the Senator from Illinois (Mr. PERCY).

If present and voting, the Senator from Illinois would vote "yea" and the Senator from Nebraska would vote "nay."

I further announce that, if present and voting, the Senator from Florida (Mr. GURNEY) would vote "nay."

The result was announced—yeas 41, nays 47, as follows:

[No. 193 Leg.]

YEAS—41

Abourezk	Hathaway	Pastore
Beall	Hughes	Pearson
Biden	Humphrey	Pell
Brooke	Jackson	Ribicoff
Buckley	Javits	Schweiker
Burdick	Kennedy	Scott, Hugh
Byrd, Robert C.	Magnuson	Stafford
Case	Mathias	Stevens
Clark	McIntyre	Stevenson
Cranston	Metcalf	Taft
Dole	Metzenbaum	Tunney
Griffin	Mondale	Weicker
Hart	Muskie	Williams
Hartke	Packwood	

NAYS—47

Aiken	Dominick	McGee
Allen	Eagleton	McGovern
Baker	Eastland	Montoya
Bartlett	Ervin	Nelson
Bayh	Fannin	Nunn
Bellmon	Fong	Proxmire
Bennett	Hansen	Roth
Bentsen	Haskell	Scott, William L.
Bible	Hatfield	Stennis
Brock	Helms	Symington
Byrd, Harry F., Jr.	Hruska	Talmadge
Cannon	Huddleston	Thurmond
Chiles	Johnston	Tower
Church	Long	Young
Cotton	Mansfield	
Domenici	McClellan	
	McClure	

NOT VOTING—12

Cook	Gravel	Moss
Curtis	Gurney	Percy
Fulbright	Hollings	Randolph
Goldwater	Inouye	Sparkman

So Mr. HUGH SCOTT's amendment to Mr. MCCLELLAN's amendment was rejected.

Mr. MCCLELLAN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. ERVIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRANSTON. Mr. President, I ask unanimous consent that Gary Aldridge, of my staff, be granted the privilege of the floor during the consideration of this measure.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that from here on out for the remainder of this day time on any rollcall vote be limited to 10 minutes, with the warning bells to be sounded after the first 2½ minutes. It is my understanding that this is agreeable to the leadership on the other side of the aisle.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. Mr. President, reserving the right to object, and, of course, I shall not object, I just wanted to acquaint the Senator with the fact that I have a series of amendments to the McClellan amendment, so that we may have an idea as to the limitations of time. I understand also that the Senator from Massachusetts (Mr. BROOKE) has an important amendment. I do not want this to be taken as an indication that we can get through here in the next few minutes. I do not know if we can or not. But I have no objection to the request.

The PRESIDING OFFICER. Is there objection?

Mr. WILLIAM L. SCOTT. Mr. President, reserving the right to object, I would ask the distinguished majority whip if this is to occur only on back-to-back votes.

Mr. ROBERT C. BYRD. No; it would pertain to any and all rollcall votes during the remainder of the afternoon.

Mr. WILLIAM L. SCOTT. Mr. President, any time I am on the floor I am going to object to 10-minute rollcall votes because they do not provide sufficient time to get to the floor.

The PRESIDING OFFICER. Objection is heard.

Mr. JAVITS. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. ROBERT C. BYRD. Mr. President, the clerk cannot be heard. May we have order in the Senate? I think progress will be made and the business will be expedited if order is maintained.

The PRESIDING OFFICER. The Senate will be in order.

Mr. JAVITS. 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 20, line 8, insert the following: "(H) To the end of affording the responsible State, local, and Federal officers adequate notice of available Federal financial assistance under this Act, appropriations for carrying out this Act for any fiscal year shall be included in the appropriation Act for the fiscal year preceding such fiscal year. In order to effect a transition to this method of timing appropriation action, the preceding sentence shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of appropriations for each of two consecutive years."

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

Mr. KENNEDY. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. JAVITS. I yield.

Mr. KENNEDY. Mr. President, I ask unanimous consent that Mark Schneider of my staff be permitted on the floor during the consideration of this matter.

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

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

Mr. JAVITS. I yield.

Mr. HANSEN. Mr. President, I ask unanimous consent that Sunny Nixon may have the privilege of the floor during the consideration of this matter.

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

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, this amendment provides for forward funding in respect of Federal aid to education. I include the amendment here because obviously it should be included wherever we believe it is necessary. Forward funding is required in this way. This would fund, at least seat the fund, because after all we cannot control the appropriations process absolutely, for school districts a year before the school year in which they are going to use the funds.

The President, in his January 24 message, Proposals for Improvement in the Education System, laid particular stress on the importance of forward funding in educational programs to facilitate planning and effective use of funds by State and local authorities.

The schools should know, as the President point out, how much Federal money they would have before the school year begins, not several months after the school year has begun.

He said further:

The Federal funding process has created a situation in which school districts develop future budgets with a minimum degree of competence or accuracy.

The Library of Congress advises me that education appropriations have been late for every year since 1963. The National Education Association this past Friday gave me up-to-date figures on the percentages of Federal funds of the education funds used in the States. The national average is 7.5 percent in Mississippi to a low of 3 percent for New Hampshire. My State is in the lower range of 4.9 percent, ranking 43d among the States.

As we look over this list of estimated percentages of revenue there are 29 States that are above the national average in percentage of Federal aid in their total school expenditure, and 21 States under the line, as it were, below that average.

Mr. President, it is critically important from the point of view of knowing what they will have to do in the school year ahead that there should be this mandatory advanced funding.

I have called up this amendment which replaces the present discretionary or optional advance funding idea, and the amendment makes it mandatory and provides that appropriations to carry out the purposes of this act for any fiscal year shall be included in the Appropriation Act for the fiscal year preceding such school year.

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

Mr. JAVITS. I yield.

Mr. PASTORE. Mr. President, may we have order? This is important legislation.

The PRESIDING OFFICER. The Senate will be in order. The Senator from Rhode Island may proceed.

Mr. PASTORE. Mr. President, members who have dealt with this problem have spent countless hours in figuring

out what formula for what State and under what conditions. The rest of us, of course, realize this is a very complex and complicated exercise and we are at a loss to understand all these amendments that are being advanced.

We are being told one time that a State will get 6.7 percent under one formula or 7.3 percent under another formula.

I woud like to ask the Senator: What precisely does his amendment do for the State of Rhode Island?

Mr. JAVITS. It does for the State of Rhode Island what it will do to the other 49 States. Hopefully it will mean that the State of Rhode Island, in advance of its school year in which funds are going to be used, will have a complete grasp and knowledge of what Federal aid it will receive.

Mr. PASTORE. Then it has nothing to do with the formula?

Mr. JAVITS. It has nothing to do with the formula.

Mr. PASTORE. This is a guarantee that the State will know in advance what it is going to get?

Mr. JAVITS. Well in advance, which has not been the practice until now.

Mr. PASTORE. I thank the Senator.

Mr. JAVITS. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. McCLELLAN. Mr. President, for clarification, under the Senator's amendment what would be the action of the Committee on Appropriations this year? Would we appropriate for 2 years or 1?

Mr. JAVITS. They could appropriate for the I year but that would not meet the requirements of this amendment.

We would really be appropriating for 2 years, if I may say so, the first time. In other words, to get this concept off the ground, Congress would appropriate for 2 years. That does not mean we could not have supplemental appropriation bills, but to get it started, we would appropriate for 2 years. Thereafter it would be for 1 year.

Mr. McCLELLAN. So the only issue in this amendment is whether this year we appropriate for 2 years or for 1 year if this bill passes?

Mr. JAVITS. That is exactly it.

Mr. McCLELLAN. May I ask the Senator one other question?

Mr. JAVITS. Yes.

Mr. McCLELLAN. It has been suggested by both Senators from Rhode Island that a great deal of study has gone into this bill, and it has been a matter of concern for all of us for some years. Would the Senator advise why the committee did not consider this proposal, why it was not submitted to the committee, but was brought to the floor? The committee has been considering this matter for several months. I am just wondering.

Mr. JAVITS. I did not quite hear the question.

Mr. McCLELLAN. The committee has had several months to study the bill and report it to the Senate. I am sure the committee gave the bill a great deal of consideration. Why was this proposal not submitted by the Senator to the committee? I believe he serves on the committee.

Mr. JAVITS. I do.

Mr. McCLELLAN. Why was it not submitted to the committee and worked out there and placed in the bill? Why do we wait until now? I am not being critical except to say that to bring these matters up at the last minute means we do not have time to weigh them. It is not that I have any objection to this amendment, but we do not have time to weigh such proposals and consider them and take into consideration all the facts that might be considered. I am reluctant to vote for it primarily for that reason.

Mr. JAVITS. I may say to the Senator—and again I do not want to sound critical—he should remember that the McCLELLAN amendment was not printed until this morning, and before it was not even paginated——

Mr. McCLELLAN. This amendment has nothing to do with the McClellan amendment.

Mr. JAVITS. I understand, but the Senator asks me why it comes up at the last minute. It is not quite the last minute. We have a week to debate the bill. What I am doing is not something that is never done on major matters.

Mr. McCLELLAN. More than a week ago we mailed a copy of the amendment I proposed to each Senator. I simply withheld it to give an opportunity to have cosponsors. That was the only reason, but I did not withhold the information from the Senator or from the Senate as soon as I determined to offer it.

Mr. JAVITS. I am not niggling about this. The fact is that the amendment could have been changed until it was actually submitted.

Be that as it may, if the chairman of the Appropriations Committee wants an opportunity to look at the amendment, I will not press it. I will withdraw it and put it to another part of the bill.

Mr. McCLELLAN. It would not be an appropriation issue, but it would require authorizing legislation. It would take legislation to do what the Senator wishes to do, in my judgment. I am not necessarily opposing it, but I point out that when unprinted amendments like this come up, we do not have the opportunity to weigh them and give them due and proper consideration. Other members of the Appropriations Committee might want to express themselves.

Mr. JAVITS. Mr. President, I have no desire to press this amendment if, as I say, the chairman of the Appropriations Committee would wish to look at it.

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

Mr. JAVITS. I yield.

Mr. MAGNUSON. I think the Senator is trying to do something that school officials for years have been telling the Appropriations Committee to do, because they cannot plan from July 1 to July 1; but how does the Senator get around the fact that one Congress cannot bind another?

Mr. JAVITS. We have the authority to appropriate for 2 years. It is true that we cannot bind another Congress. Another Congress may undo what we have done, but we have passed laws that last for 50 years, and they remain in effect unless another Congress decides to repeal them.

Mr. MAGNUSON. But we cannot bind them.

Mr. JAVITS. That is right, but a school district has the right to have 90 percent confidence in the expectation that when such money is appropriated, future Congresses will not undo it.

Mr. MAGNUSON. I have seen that happen.

Mr. JAVITS. That is right.

Mr. MAGNUSON. The Senator would have Congress appropriate under this plan, and it would be for 2 years?

Mr. JAVITS. That is right.

Mr. MAGNUSON. The budget for the first year would come up when it was half over. Is that correct? Or would the Senator appropriate the first 2 years next year? Would he appropriate the whole thing?

Mr. JAVITS. The first time. We would have to appropriate it only once. Just the first time would it be a 2-year appropriation.

Mr. MAGNUSON. It would not be binding, because in the following session Congress could undo it.

Mr. JAVITS. It could undo it, that is right.

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

Mr. JAVITS. I yield.

Mr. PASTORE. I hope the Senator would temporarily withdraw his amendment, because it has tremendous merit. From experience, we all know that the chief lament of the school authorities has been that they prepare their budgets, expecting a certain amount of money from the Congress, and the money may be more or, in all probability, much less. For that reason, it throws their whole budget out of balance, because they do not know exactly how much money they are going to have to deal with.

As I understand the Senator's amendment, he would do it the first time for 2 years, so from then on it will be an anticipatory appropriation rather than a protracted bill.

Mr. JAVITS. That is right.

Mr. PASTORE. I hope the Senator would withdraw the amendment so it could be studied.

Mr. JAVITS. I will.

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

Mr. JAVITS. I yield.

Mr. MAGNUSON. Does the Senator start the first year at the beginning of a session?

Mr. JAVITS. For practical purposes, that is what we would be doing, because we would be appropriating for expenditures in each of 2 fiscal years.

Mr. MAGNUSON. The school people are now in the process of making up their budgets for next September.

Mr. JAVITS. Exactly.

Mr. MAGNUSON. And they do not know what we are going to do.

Mr. JAVITS. Exactly. That is true every year.

Mr. MAGNUSON. This would cure it.

Mr. JAVITS. Mr. President, in deference to my colleagues on the Appropriations Committee, as the bill will be open to further amendment, I withdraw the amendment and suggest the absence of a quorum.

The PRESIDING OFFICER. The amendment is withdrawn.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. JAVITS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 2, line 3, strike out "3 per centum" and insert in lieu thereof "1 per centum".

On page 2, lines 9 and 10, strike out "the Commonwealth of Puerto Rico,".

On page 2, line 15, strike out "the Commonwealth of Puerto Rico,".

On page 2, line 22, strike out "the Commonwealth of Puerto Rico,".

On page 5, between lines 4 and 5 insert the following:

"(C) The grant which Puerto Rico shall be eligible to receive under this part for a fiscal year shall be the amount arrived at by multiplying the number of children counted under subsection (c) by 40 per centum of (i) the average per pupil expenditure in Puerto Rico or (ii) in the case were such average per pupil expenditure is more than 120 per centum of the average per pupil expenditure in the United States, 120 per centum of the average per pupil expenditure in the United States.".

On page 5, line 6, strike out "the Commonwealth of Puerto Rico,".

On page 10, line 7, strike out "A State agency" and insert in lieu thereof the following: "an agency (other than the agency for Puerto Rico)".

On page 10, line 73, after the period insert the following: "The grant which Puerto Rico shall be eligible to receive under this section shall be the amount arrived at by multiplying the number of children in Puerto Rico counted as provided in the preceding sentence by 40 per centum of (1) the average per pupil expenditure in Puerto Rico or (2) in the case where such average is more than 120 per centum of the average per pupil expenditure in the United States, the average per pupil expenditure in the United States.".

On page 15, line 2, after the period insert the following: "The total grant which shall be made available for use in Puerto Rico shall be arrived at by multiplying the number of children in Puerto Rico counted as provided in the preceding sentence by 40 per centum of (1) the average per pupil expenditure in Puerto Rico or (2) in the case where such average is more than 120 per centum of the average per pupil expenditure in the United States, 120 per centum of the average per pupil expenditure in the United States.".

On page 16, line 7, after the period insert the following: "The grant which Puerto Rico shall be eligible to receive under this section shall be the amount arrived at by multiplying the number of children in Puerto Rico counted as provided in the preceding sentence by 40 per centum of (1) the average per pupil expenditure in Puerto Rico or (2) in the case where such average per pupil expenditure is more than 120 per centum of the average per pupil expenditure in the United States, 120 per centum of the average per pupil expenditure in the United States.".

Mr. JAVITS. Mr. President, the purpose of the amendment is to deal with a situation in Puerto Rico. It will be noted that the McClellan amendment seeks to conform the Senate formula to the formula adopted by the other body. One of the elements in the formula in the other body is omitted from the McClellan formulation. I shall repeat that, because we want to be perfectly straight about it. The McClellan formula proposes to adopt what was adopted in the House of Representatives. However, it makes the change from the formula adopted in the House in respect to Puerto Rico.

We have offered a Puerto Rico amendment anyhow, even to our own bill. Certainly it is essential to do justice to the particular place concerning which the amendment is being offered.

Under the present law, Puerto Rico shares a 3-percent set-aside of title I funds with Guam, American Samoa, the Virgin Islands, and the Trust Territories of the Pacific. This is identical with the provisions in the McClellan amendment.

My amendment would determine the entitlement of Puerto Rico by multiplying the number of eligible children by 40 percent average pupil expenditures in Puerto Rico or in such case where such average pupil expenditure is more than 120 percent of the average 120-percent expenditure, the theory then being that Puerto Rico would be treated, as I said, in order to effectuate fairness to the other trust territories and possessions. I have reduced the 3-percent set-aside to 1 percent for Guam, American Samoa, the Virginia Islands, and the Trust Territories of the Pacific, since Puerto Rico will be withdrawn by that set-aside which is reduced by two-thirds.

My reason for this is that it is very helpful to the United States, in toto, to help to alleviate the pressing educational needs and school problems of Puerto Rico because of the voluntary free admittance of Puerto Ricans to the United States. This soon becomes a school problem in New York, New Jersey, Illinois, Massachusetts, Florida, and other States, because Puerto Rican families come from the island to the United States as a matter of right. In essence, we are all one Nation, and these, too, are our children. Puerto Ricans serve in our Armed Forces as a right. The effect upon the aggregate McClellan amendment would not be great, because the population of Puerto Rico is about 3 million.

Mr. President, I have been asked whether I feel constrained to go through with this amendment tonight. If it is going to be contested, I would just as soon deal with it tomorrow, but if the Senator from Arkansas wants to accept the amendment, I shall be glad to have him take it.

Mr. ROBERT C. BYRD. Mr. President, would it be agreeable to Senators on both sides of the question and on both sides of the aisle that a vote on the McClellan amendment be taken at 12 o'clock noon tomorrow?

Mr. JAVITS. I have just one caveat to that, and I ask the Senator from West Virginia and the Senator from Arkansas to listen to it. We contemplate offering an amendment—at least, it has been discussed with the Senator from Arkansas —which would take care of part C, which deals with the concentration of urban and rural children. If time were afforded in the morning for that amendment—and I will find out from the Senator if we could have that amendment debated in the morning—then it could be voted on before the McClellan amendment at 12 o'clock.

Similarly with this amendment, if we could have 5 minutes to a side on this one, and if we had a yea-and-nay vote before the McClellan amendment——

Mr. McCLELLAN. Whose amendment is it?

Mr. JAVITS. It is expected that it would be offered by the Senator from Massachusetts (Mr. BROOKE).

Mr. McCLELLAN. I wonder if we could have a copy of the amendment tonight.

Mr. JAVITS. Of course. It is simply a provision in the bill from the Senate committee which deals with part C and provides for separate funding, just as Senator DOMINICK's did with part B.

Mr. McCLELLAN. Will it be an amendment to provide for separate funding?

Mr. JAVITS. Exactly; just as Senator DOMINICK's.

Mr. McCLELLAN. Is that the substance of the amendment?

Mr. JAVITS. That is it exactly.

Mr. McCLELLAN. I suggest that we dispose of the pending amendment tonight. If I could have an opportunity to have a colloquy with the Senator briefly, maybe we could dispose of this amendment this evening. If this is the only amendment to be considered tonight, I suggest that the Senator offer it tonight and let it be the pending business. Then we could start on it at 11 o'clock tomorrow or at whatever time the Senate decides upon.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. ROBERT C. BYRD. The order has already been entered for the Senate to come in tomorrow at 9 o'clock, and after routine morning business, which will not consume more than 15 minutes, the Senate will resume the consideration of the unfinished business, the education bill, at which time an amendment by Mr. GURNEY will be called up. Under the agreement, all amendments tomorrow were to be so-called busing amendments, but I am quite sure it would not interfere too much with the busing amendments tomorrow if we could agree at

this time that, say, at 11:30 a.m. tomorrow we would go back to the McClennan amendment and the amendment to the McClellan amendment, take 30 minutes to be equally divided, and then vote back-to-back on the two.

Mr. McCLELLAN. Immediately after the consideration of that amendment we would vote on the bill?

Mr. JAVITS. Mr. President, I would suggest that it be done at 11, for this reason: The Senator from Maine (Mr. HATHAWAY) feels he may wish to say something further on the McClellan amendment. I would suggest we come in at 11, take up Senator BROOKE's amendment which will be offered at that time that deals with that, at 11:30 for 30 minutes have kind of a wrap-up on the McClellan amendment, and then vote on BROOKE, followed by a vote on McCLELLAN at noon.

Mr. ROBERT C. BYRD. The problem there is that we had agreed that there would be a 6-hour limitation on the Gurney amendment with a final vote on the amendment at 5 p.m. There will be amendments to the Gurney amendment, and whether or not we can take out an hour for debate on the Brooke and McClellan amendments, and 30 minutes for the votes, is something else. That will cut pretty deeply into our time tomorrow.

Mr. JAVITS. Mr. President, I am not going to cavil about that, but I say to the Senator that we may discuss the amendment before 11:30, if we may have time on the amendment. In other words, I would not want the Senator to think there is anything to prevent our discussing the McClellan amendment.

Mr. ROBERT C. BYRD. Except the Pastore rule.

Mr. JAVITS. I do not think the Pastore rule applies to anything but the issue before the Senate.

Mr. ROBERT C. BYRD. The questions before the Senate would be the Gurney amendment.

Mr. GRIFFIN. Under the unanimous-consent agreement.

Mr. JAVITS. That does not mean you can restrict debate on the bill generally.

Mr. ROBERT C. BYRD. I disagree with the Senator and would be very glad to have the Senator put that question to the Chair.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Is an individual Member's debate tomorrow morning, notwithstanding this agreement we are about to enter into, restricted to debating only the Gurney amendment?

The PRESIDING OFFICER (Mr. BARTLETT). At such time as the Gurney amendment is being debated, the debate would be on the Gurney amendment.

Mr. JAVITS. Mr. President, any Member can say anything he wants to on anything under the sun, can he not, when he has the floor?

Mr. ROBERT C. BYRD. Not if there is an objection, during the first 3 hours.

The PRESIDING OFFICER. There is germaneness of debate for the first 3 hours.

Mr. JAVITS. That is my point. Is the germaneness related to the measure before the Senate, to wit, the education bill, or to the Gurney amendment.

The PRESIDING OFFICER. For the first 3 hours, germaneness would require that the debate be on the Gurney amendment.

Mr. JAVITS. On the Gurney amendment? Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. JAVITS. All right. Then I would ask Senator HATHAWAY, in view of the fact that we will undoubtedly finish with this matter in a few minutes, whether he will address the Senate tonight, if that would be just as convenient to him.

Mr. HATHAWAY. Yes. I thank the Senator for his deference to my desires. It is just as convenient, and probably better for me, to address the Senate tonight on the matter I wanted to take up.

Mr. JAVITS. One other point, Mr. President, on the issue of germaneness. When we get on the amendment which Senator BROOKE will offer, is there then any germaneness rule which prevents a Member from discussing the McClellan amendment as well as the Brooke amendment?

The PRESIDING OFFICER. It would depend upon whether or not the 3 hours had expired.

Mr. JAVITS. Then, Mr. President, I will ask, as a condition of my concurrence with the unanimous-consent request which is made to proceed to the Brooke amendment at 11, that it also include the fact that the debate may then also be germane to the McClellan amendment or to the pending bill.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, as the able Senator knows, I do not care what we talk about tomorrow.

Mr. JAVITS. I understand that.

Mr. ROBERT C. BYRD. All I am trying to do is get an agreement which will satisfy both sides and allow us to keep faith with the agreement we have already entered into.

Mr. JAVITS. I thoroughly agree, and I have no desire to discommode us, but I think when we get on the Brooke amendment we ought to also be able to say whatever we please about the McClellan amendment.

The PRESIDING OFFICER. Is the Brooke amendment an amendment to the McClellan amendment?

Mr. JAVITS. That is right.

The PRESIDING OFFICER. In that case, debate may be directed at either the Brooke amendment or the McClellan amendment.

Mr. McCLELLAN. Mr. President, I did not understand. What was the ruling of the Chair?

The PRESIDING OFFICER. With the Brooke amendment being a proposed amendment to the McClellan amendment, the debate can be on either the Brooke amendment or the McClellan amendment.

Mr. JAVITS. It will only be a half hour, anyway. It is not a big deal.

Mr. McCLELLAN. A half-hour on the Brooke amendment?

Mr. JAVITS. That is right.

Mr. McCLELLAN. Would the Senator from Massachusetts advise what the amendment is, or will he have it so I could have a copy overnight?

Mr. BROOKE. The Senator will have it. I will certainly furnish one to the distinguished Senator from Arkansas tonight. But my question is, at what time will I be permitted to lay down the amendment?

Mr. ROBERT C. BYRD. That has not been agreed on yet.

Mr. BROOKE. Is that a part of the unanimous-consent agreement?

Mr. GRIFFIN. 11:30.

Mr. BROOKE. That is when we are going to debate it. As I understand, we will begin the debate on it at 11:30, and vote on it thereafter.

Mr. GRIFFIN. The request is pending, as I understand.

Mr. BROOKE. That is the unanimous-consent request, as I understand it. Is it further stated by the majority whip that we will lay down that amendment tonight? Is that a part of the unanimous-consent request?

Mr. ROBERT C. BYRD. Actually, I have not made any unanimous-consent request as yet.

The PRESIDING OFFICER. There was a unanimous-consent request by the Senator from New York.

Mr. ROBERT C. BYRD. What is that?

Mr. JAVITS. My request is that during the period from 11:30 to 12 o'clock provided for the Brooke amendment, it shall also be available, in the same time slot, to discuss the McClellan amendment.

Mr. WILLIAM L. SCOTT. Mr. President, reserving the right to object, I have a speaking engagement across the river at 11:30. If we could move this 15 minutes, to make it 12:15, I would have time to get back here.

The PRESIDING OFFICER. The Chair might state to the Senator from New York that since the Brooke amendment is an amendment to the McClellan amendment, no unanimous-consent agreement is necessary.

Mr. JAVITS. I thank my colleague. That is what I hoped.

Mr. McCLELLAN. Mr. President, will the Chair restate what the unanimous-consent agreement is? I did not understand it.

The PRESIDING OFFICER. When the Brooke amendment to the McClellan amendment is pending tomorrow morning, there can be debate on either the Brooke amendment or the McClellan amendment, as a Senator desires.

Mr. GRIFFIN. Mr. President, is it not the case that there has been no unanimous-consent agreement entered into with respect to the Brooke amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. Mr. President, may I see, now, if I have understood what the wishes of my colleagues are? I will propound it in the following manner. I ask unanimous consent——

The PRESIDING OFFICER. The time

of the Senator from New York on his amendment has expired.

Mr. McCLELLAN. I have not used any of my time, have I?

The PRESIDING OFFICER. The Senator has 15 minutes.

Mr. McCLELLAN. I yield the Senator from West Virginia any part of my time the Senator may require.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at 11:30 a.m. tomorrow, the distinguished Senator from Massachusetts (Mr. BROOKE) be recognized to call up his amendment to the McClellan amendment, and that debate ensue thereon until the hour of 12:15 p.m., at which time a vote occur on the amendment by Mr. BROOKE, to be immediately followed by a vote on the amendment by Mr. McCLELLAN as amended, if amended.

Mr. McCLELLAN. Mr. President, reserving the right to object, I think that should include that the debate during that 45-minute period may be either on my amendment or on the Brooke amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BIDEN. Was there unanimous consent that the Buckley amendment be brought up upon disposition of the McClellan amendment, and does this mean that the Buckley amendment will not be discussed until sometime tomorrow afternoon?

Mr. ROBERT C. BYRD. I think the understanding was, at the time the agreement was entered into, that the McClellan amendment would be disposed of today, and then the Senate would then proceed to take up the two Buckley amendments. I think, if this order is agreed to, we would take up the two Buckley amendments this afternoon.

Mr. ROTH. Mr. President, reserving the right to object, I should like to inquire of the majority whip, I wonder what the intention is, if there is agreement on this unanimous-consent request——

Mr. ROBERT C. BYRD. The intention would be to proceed with the two amendments of Senator BUCKLEY which were ordered to be considered today. In further explanation, under the agreement, all of tomorrow was to be taken up with debate on the so-called busing amendment by Senator GURNEY, and amendments thereto, and all of Thursday up until 1 p.m. was to be taken up by consideration of busing amendments. Following disposition of the amendments on Thursday, the Senate was to proceed to the consideration of the Curtis-McClure-Buckley substitute, which would consume all of Thursday.

So what I am saying is that tomorrow and Thursday have been pretty much blocked out for the busing or the so-called civil rights amendments and the substitute by Senator CURTIS, et al.

Mr. ROTH. Does the Senator anticipate any votes tonight?

Mr. ROBERT C. BYRD. I would assume there will be votes on the Buckley amendments yet today.

Mr. ROTH. No votes were held until 4 o'clock this afternoon. I asked yesterday that my rights be protected, as I have a speaking engagement tonight. So if there is a further vote tonight, I intend to object.

Mr. ROBERT C. BYRD. The Senator has a right to object. I would hope that he would not hold the entire Senate hostage with regard to progress just on the basis that he has a speaking engagement tonight.

Mr. ROTH. I would point out to the majority whip that no votes were held until 4 o'clock today and that this matter was taken up on yesterday in order to protect my rights.

Mr. ROBERT C. BYRD. My understanding is that this is election day in certain parts of the country. The same request may be made when the Senator from Delaware is involved in an election. The leadership on both sides would try to be accommodating to him in such event.

Mr. GRIFFIN. It is altogether possible, is it not, that if we could discuss the Buckley amendments now, they would not take too long and we could handle, perhaps, at least one vote tonight.

Mr. ROBERT C. BYRD. Exactly. The Senator from New York (Mr. BUCKLEY) is usually very brief in the explanation of his amendments. It is possible that we can dispose of them.

The PRESIDING OFFICER (Mr. TUNNEY). Is there objection to the unanimous-consent request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

Mr. BUCKLEY. Mr. President——

Mr. ROBERT C. BYRD. I thank all Senators.

Mr. JAVITS. Mr. President, may we know——

Mr. ROBERT C. BYRD. Mr. President, will the Chair please maintain order in the Senate and ask Senators to take our seats?

The PRESIDING OFFICER. The Senate will please be in order. The Chair was recognizing the junior Senator from New York (Mr. BUCKLEY).

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

The PRESIDING OFFICER. On whose time?

Mr. JAVITS. I am afraid my time is up. Could we do it on the bill or accommodate the Senator under unanimous consent without it being charged to either side for the quorum?

Mr. BUCKLEY. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time not be charged to either side.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and 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. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent again that time on any rollcall vote today be limited to 10 minutes, with the warning bells to be sounded after the first 2½ minutes. This will help the Senator from Delaware (Mr. ROTH).

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, on the same conditions as were previously stated by the able Senator from New York.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MATHIAS. 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. McCLELLAN. Mr. President, a parliamentary inquiry.

May I ascertain whether I have any time on this amendment? I yielded here for the purpose of trying to get a unanimous-consent agreement. I yielded my time or I yielded time for that.

The PRESIDING OFFICER. The Senator from Arkansas has 4 minutes remaining.

Mr. McCLELLAN. Four minutes. I thank the Chair. I yield 1 minute to the distinguished Senator from Maryland.

Mr. MATHIAS. Mr. President, I ask unanimous consent that Colby King may have permission to be on the floor during the process of this debate.

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

Mr. McCLELLAN. Mr. President, will the Senator from New York yield to me?

Mr. JAVITS. I yield.

The PRESIDING OFFICER. The Senator from New York (Mr. JAVITS) has no time——

Mr. McCLELLAN. Mr. President, I ask unanimous consent to add the name of Senator COOK of Kentucky as a cosponsor of the McClellan amendment.

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

Mr. McCLELLAN. Now I would ask the Senator from New York (Mr. JAVITS), would he tell me briefly what his amendment does? Does it take any money from the States and give it to Puerto Rico?

Mr. JAVITS. If Puerto Rico, under this amendment, would get more than 2 percent of the appropriation—I am told they may get as much as 3 or 4 percent, but if it takes more than 2 percent, then it takes a small sum away, because if we treat Puerto Rico as a State, it may do better than 2 percent which we deduct out of the 3 percent.

Mr. McCLELLAN. Why was this not done in committee? I do not know how to determine this on such short notice, I really do not.

Mr. JAVITS. If the Senator wishes, this matter can be held overnight or, if necessary, we can have a rollcall vote on it. We will have a 10-minute rollcall vote on it immediately before the Buckley amendments.

Mr. McCLELLAN. Give us 5 or 10 minutes on the——

Mr. ROBERT C. BYRD. Mr. President, if we are not careful, we are going to get in one h-e-c-k of a fix tomorrow on the Gurney amendment. The Senator was here when we entered into this agreement. I hope we will not abuse that agreement——

Mr. JAVITS. If the Senator needs a few minutes to consider it, I would ask unanimous consent that I may yield for 10 minutes to the junior Senator from New York (Mr. BUCKLEY) to discuss whatever amendments he brings up, with leave to present this amendment and then to return to the amendment which I have pending.

The PRESIDING OFFICER. Is the Senator for yielding time from the bill?

Mr. JAVITS. I cannot yield time. He has got to do it on his own time. I ask unanimous consent, Mr. President, that I may lay aside the amendment which I have pending for 10 minutes and then return to it.

The PRESIDING OFFICER. Is there objection to the request of the Senator from New York (Mr. JAVITS)? The Chair hears none, and it is so ordered.

Mr. GRIFFIN. Mr. President, reserving the right to object, I did not understand that the Senator from New York had an amendment pending.

Mr. JAVITS. I do.

Mr. GRIFFIN. Is there a time limitation on it?

Mr. JAVITS. Yes; there is a time limit on it of 30 minutes. My time has expired but Senator McCLELLAN's time has not. I could get time from the bill, of course.

Mr. McCLELLAN. I have only 2 more minutes remaining because I yielded my time trying to get the unanimous-consent agreement.

Mr. PELL. Mr. President, I am delighted to yield 10 minutes if it will help us move along on the pending bill.

The PRESIDING OFFICER. Is there objection to the request of the Senator from New York? The Chair hears none, and it is so ordered.

The junior Senator from New York (Mr. BUCKLEY) is now recognized.

AMENDMENT NO. 1289

Mr. BUCKLEY. Mr. President, I call up my amendment No. 1289 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 330, between lines 17 and 18, insert the following new section:

"PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS

"SEC. 437. (a) RIGHT OF ACCESS AND OF A HEARING.—(1) No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school, preschool, or any other educational institution which has a policy of denying, or which effectively prevents the parents of students under eighteen years of age attending any school of such agency, or attending such institution of higher education, community college, school, preschool, or other educational institution, the right to inspect and review any and all official records, files, and data directly related to their children, including all material that is incorporated into each student's cumulative record folder, and intended for school use or to be available to parties outside the school or school system, and specifically including, but not necessarily limited to, identifying data, academic work completed, level of achievement (grades, standardized achievement test scores), attendance data, scores on standardized intelligence, aptitude, and psychological tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns. Where such records or data include information on more than one student, the parents of any student shall be entitled to receive, or be informed of, that part of such record or data as pertains to their child. Each recipient shall establish appropriate procedures for the granting of a request by parents for access to their child's school records within a reasonable period of time, but in no case more than forty-five days after the request has been made.

"(2) Parents shall have an opportunity for a hearing to challenge the content of their child's school records, to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein.

"(b) PARENTAL CONSENT.—(1) No student shall, as a part of an applicable program, be required to undergo medical, psychological, or psychiatric examination, testing, or treatment, or immunization (except to the extent necessary to protect the public from epidemics of contagious diseases), or to reveal information about his or her personal or family life without the prior, informed, written consent of the student's parents.

"(2) No student shall, as a part of any applicable program, be required, without the prior, informed, written consent of the student's parents, to participate in any project program, or course, the primary purpose or principal effect of which is to affect or alter the personal behavior or personal values of a student, or to explore and develop teaching techniques or courses primarily intended to affect such behavior and values.

"(3) Parents shall be informed, reasonably in advance and in writing, of the intended participation of their child in any research or experimentation project which is a part of an applicable program. No child shall participate in such a project if the parents of such child object to such participation.

"(4) As used in this subsection the term 'research or experimentation project' means any project or program which is a part of an applicable program, and which is authorized by an administrative officer of an education agency, a State or local education agency, or any education institution, including preschools, for the purpose of research or experimentation, except that research or experimentation projects shall not include projects in the field of reading or bilingual education, as determined by the Commissioner.

"(c) CONDITIONS FOR THE RELEASE OF PERSONAL DATA.—(1) No funds shall be made available under any applicable program to any State or local education agency, any institution of higher education, any community college, any school, preschool, or any other educational institution which has a policy of permitting the release of records or files (or personal information contained therein) of students without the written consent of their parents to any individual, agency, or organization, other than the following—

"(A) other school officials, including teachers within the educational institution or local educational agency who have legitimate educational interests;

"(B) to officials of other schools or school systems in which the student intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record.

"(2) No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school, preschool, or any other educational institution which has a policy or practice of furnishing, in any form, any information contained in personal school records, to any persons other than those listed in subsection (c)(1) unless—

"(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

"(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpena, upon condition that parents and the students are notified of all such orders or subpenas in advance of the compliance therewith by the education institution or agency.

"(3) In any case in which the Secretary or an administrative head of an education agency is authorized under any applicable program to request or require any State or local educational agency, any institution of higher education, any community college, any school, preschool, or any other educational institution to submit to a third party (or to the Secretary or an administrative head of an education agency, as defined in section 409 of this Act) any data from personal statistics or records of students, such data shall not include the names of students or their parents (in code or otherwise) without the written consent of the student's parents, except—

"(A) in connection with a student's application for financial aid;

"(B) in compliance with any court order, or pursuant to any lawfully issued subpena, if the parents and students are notified of any such order in advance of the compliance therewith by the State or local educational agency, the institution of higher education, the community college, the school, preschool, or other educational institution.

"(4)(A) With respect to subsections (c)(1) and (c)(2) and (c)(3), all persons, agencies, or organizations desiring access to the records of a student shall be required to sign a written form which shall be kept permanently with the file of the student, but only for inspection by the parents or student, indicating specifically the legitimate educational or other interest that each person, agency, or organization has in seeking this information. Such form shall be available to parents and to the school official responsible for record maintenance as a means of auditing the operation of the system.

"(4)(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

"(d) PROTECTION OF PERSONAL DATA.—The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an

education agency (as defined in section 409 of this Act). Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency have responsibilities under an applicable program unless such activities are authorized by the Act establishing such a program.

"(e) For the purposes of this section, whenever a student has attained eighteen years of age, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

"(f) No funds shall be made available under any applicable program unless the recipient of such funds informs the parents of students, or the students, if they are eighteen years of age or older, of the rights accorded them by this section.

"(g) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this Act.

"(h) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section, according to the procedures contained in subsections (c) and (d) of section 421 of this Act.

"(i) With respect to any funds obligated prior to the effective date of this section to any State or local educational agency, any institution of higher education, any community college, any school, preschool, or any other educational institution, continued furnishing of such funds shall cease January 1, 1975, if the recipient has failed to meet the conditions for funding established by this section.

"(j) The provisions of this section shall become effective ninety days after the date of enactment of this Act.

"(k) This section may be cited as the 'Family Educational Rights and Privacy Act of 1974'."

On page 122, in the table of contents, after the item "SEC. 512" insert the following:

"SEC. 513. Protection of the rights and privacy of parents and students.".

Mr. BUCKLEY. Mr. President, I send to the desk two perfecting amendments. Through some oversight the Printing Office failed to include two provisions in the amendment.

The PRESIDING OFFICER. Does the Senator from New York ask unanimous consent that his amendment be so modified?

Mr. BUCKLEY. Mr. President, yes, I so request.

The PRESIDING OFFICER. Without objection, it is so ordered, and the amendment is so modified.

The text of the perfecting amendments is as follows:

On page 1, between lines 2 and 3, insert the following:

PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS

SEC. 513. Part C of the General Education Provisions Act is amended by adding at the end thereof the following new section:

On page 4, line 23, after the word "other" insert the word "local".

Mr. BUCKLEY. Mr. President, as more stories come out in the media about the abuses of personal data by schools and Government agencies, the public and Congress have become increasingly aware of the problems such abuses pose. In addition, the revelations coming out of Watergate investigations have underscored the dangers of Government data gathering and the abuse of personal files, and have generated increased public demand for the control and elimination of such activities and abuses. It is appropriate, therefore, that we take this opportunity to protect the rights of students and their parents and to prevent the abuse of personal files and data in the area of federally assisted educational activities.

Many absurd and sometimes tragic examples of similar abuses exist. Let me recount one of the cases described in the recent article, "How Secret School Records Can Hurt Your Child," in Parade magazine:

The parents of a junior high student are told their daughter won't be able to attend graduation ceremonies because she's a "bad citizen." What has she done that's bad, the parents ask? Well, the principal says, the school had a whole file on her "poor citizenship," but the parents can't know what's in that file. In this Catch-22 case, one of the few to get a legal hearing, the New York State Commissioner of Education, Ewald B. Nyquist, stated flatly that the school's argument that it was acting in the best interest of the student in refusing to reveal the information to the parents—had no merit. The commissioner concluded: "It is readily apparent that no one had a greater right to such information than the parents."

When parents and students are not allowed to inspect school records and make corrections, numerous erroneous and harmful material can creep into the records. Such inaccurate materials can have devastatingly negative effects on the academic future and job prospects of an innocent, unaware student.

Many examples of abuses can be found in recent letters to the National Committee for Citizens in Education which has for a long time carried on the fight for the right of parents to have access to their children's records by alerting and assisting parents across the Nation. I would like to take this opportunity to commend that committee for its dedicated efforts, and to mention that the NCCE will very shortly publish a major study entitled "Children, Parents and School Records." It is must reading for anyone who is concerned with the issue of privacy and the schools.

Violations of the privacy of students and their parents occur daily in schools across the Nation, through courses requiring the student to reveal personal data and feelings, and by means of demands by the Federal Government for personal information on students and parents. The recent refusal of the District of Columbia School Board to refuse to administer a battery of tests, despite a threat by the Federal Office of Education to cut off nearly $6 million in Federal funds to the city's public school system, is a good case in point. The superintendent of the schools, Barbara Sizemore, charged that many items in the tests, which are required in other school districts around the Nation, are a violation of privacy and could cause psychological damage to students.

The New York City School Board refused to comply with a similar demand. Dr. Seymour Lachman, president of the school board, said that the original demand "violated the confidentiality of student records" and that, lacking proper safeguards, the data might be misused or abused. He added that:

These kinds could have been categorized, codified, and stereo-typed for life on the basis of information put on the tape while they were in school.

In addition to being denied access to their children's school records, parents are often unable to readily review the instructional materials in various courses in which their children are enrolled. And often they are not asked to give their consent before their child is given very personal or psychological tests, or participate in experimental programs or attitude-affecting courses.

The secrecy and the denial of parental rights that seem to be a frequent feature of American education is disturbing. Some school administrators and educators seem to have forgotten that parents have the primary legal and moral responsibility for the upbringing of their children and only entrust them to the schools for basic educational purposes.

Some educators seem to feel that they know much more about the welfare and best interests of the child than do the parents, and therefore, once a child comes under their sway, they think they have the right to do what they themselves think is best for the child, without regard for values and beliefs of the parents.

The world-famous child psychiatrist, John Bowlby, noted in an interview concerning the care of young children last year, that:

The criticizing of parents and taking the children out of the home and putting them into the schools as is being commonly suggested these days actually undermines the parental confidence in the parents' own role, and in their potential role. There is entirely too much criticism. The educators are guilty of undermining the home rather than building it up.

There has been an increasing chorus of complaints from parents in the last few years about just such attitudes and actions on the part of some educators. The sense of a loss of control over one's life and destiny, which many social commentators say is growing amongst our citizens, seems to be increasingly felt by parents with respect to the upbringing of their own children.

Such elitist and paternalistic attitudes reflect the widening efforts of some, both in and out of Government, to diminish the rights and responsibilities of parents for the upbringing of their children, and to transfer such rights and functions to the State—to separate, figuratively, and in some cases, literally, the child from his parents, and to turn him over to the care of the State, as represented by schools and other arms of its administration.

My amendment seeks to restore parental rights and to protect privacy. It will:

First, help insure that parents have the right of access to their children's school records;

Second, help prevent the abuse and improper disclosure of such records and personal data on students and their parents;

Third, require parental consent before such records are disclosed to most third parties;

Fourth, require parental consent or notification before their children are made to undergo certain forms of testing or partake in certain experimental or attitude-affecting programs or activities; and

Fifth, make instructional materials used in the classroom available for review by parents upon request.

In addition, my amendment requires the Secretary of HEW to adopt appropriate safeguards to protect the rights and privacy of students and their families in regard to Government authorized surveys and other data gathering activities.

My amendment broadens the protection of civil rights to include the civil rights of parents and students vis-a-vis the schools. As a matter of fact, a recent Federal court decision has made the civil rights aspect of privacy and parental consent more explicit.

The case was Merriken against Cressman, heard in the U.S. District Court of Eastern Pennsylvania last fall. Let me quote from the summary of the case in "The United States Law Week" of October 16, 1973:

> A school district proposed to use a program entitled Critical Period of Intervention (CPI) for the purpose of identifying potential drug abusers among its eighth-grade students. Additionally, the program would "prepare the necessary interventions, identify resources to train and aid the district personnel to remediate the problems and, finally, to evaluate the results." Parental consent is a prerequisite to a student's participation in the program. Such consent is solicited by a letter which is admittedly a "selling device" and "an attempt to convince the parent to allow the child to participate."
>
> Two child psychiatrists testified without contradiction as to several * * * dangerous aspects of the CPI Program, none of which are mentioned * * * in any of the materials to be made available to parents. These dangers include the risk that the CPI Program will operate as a self-fulfilling prophecy in which a child labeled as a potential drug abuser will by virtue of a label decide to be that which people already think he or she is anyway * * * Another danger mentioned is that of scapegoating in which a child might be marked out by his peers for unpleasant treatment either because of refusal to take the CPI test or because of the result of the test." Additionally, there is a "severe loyalty conflict that might result by asking children the types of personal questions about their relationship with parents and siblings which are included in the CPI questionnaire." Finally the qualifications of the school district personnel who will administer the interventions once potential drug abusers have been identified are woefully inadequate.

The court found that the confidentiality of the program broke down when the school superintendent was informed of the potential drug abusers, who were then required to undergo attempted psychological remediation by ill-trained faculty members. But, said the Judge:

> The ultimate use of this information, although possibly gained with a great deal of scientific success, is the most serious problem that faces the Court. How many children would be labeled as potential drug abusers who in actuality are not, and would be subjected to the problem of group therapy sessions conducted by inexperienced individuals?
>
> Strict confidentiality is not maintained after evaluation and there are many opportunities for a child to suffer insurmountable harm from a labeling when the cruelty of other children is at an extreme. The seriousness of this problem is illustrated by the fact that if one child is so harmed and would be temporarily or permanently damaged by the label of "drug abuser," is this Program worth the effort to identify other actual "drug abusers."
>
> When a program talks about labeling someone as a particular type and such a label could remain with him for the remainder of his life, the margin of error must be almost nil.

The court found that the potential for harm of this program outweighed any good that might accrue, and concluded as a matter of law that the CPI program violated the right of each student and his parents to privacy inherent in the penumbra of the Bill of Rights of the U.S. Constitution.

This case is a microcosm of the problems addressed by my amendment—the violation of privacy by personal questionnaires, violation of confidentiality and abuse of personal data—with its harm to the individual—and the dangers of ill-trained persons trying to remediate the alleged personal behavior or values of students. It describes the potential harm that can result from poorly regulated testing, inadequate provisions for the safeguarding of personal information, and ill-devised or administered behavior modification programs.

In fact, it shows that even the requirement of parental consent can be an inadequate safeguard in the face of the slick and deceptive selling techniques of some educators. Yet, at least the requirement of parental consent informs the parents, to some extent, about what is being done with and to their children in schools, and it offers the best available protection against educational abuses that I can think of. Additionally, it will encourage schools to improve these types of programs and to eliminate the potential for abuses beforehand, thereby tending to reduce the future occurrences of irate parents going to court because of shoddy and harmful programs in the schools.

If anyone doubts the seriousness of the problem, I direct their attention to a recent communication from the National Education Association (NEA) in which that organization announced its opposition to my amendment which would require school officials to obtain prior, written, informed consent whenever the school officials would have those parents' children subjected to a project, program or course, the primary purpose or principle of which is to affect or alter the personal behavior or personal values of a student. Mr. President, I would like to point out the implication of the NEA's position. It is their position that as between the parent and the school official, the latter has the more fundamental right to determine whether the child should be subject to programs of behavior alteration and value modification.

Beneath such a position is a very serious threat to the traditional notion long respected by this Nation that it is the parents who are ultimately responsible for the welfare of their children. It borders on shocking that one of the national organizations representing educators would move to have the Senate oppose a reaffirmation of this important and real parental right. Further, the attempt to characterize the amendment as one which intends to curtail freedom of expression between child and teacher is incredible. It is more accurate to conclude that it is the NEA's position that the teacher should come between parents and child on such important matters as school programs, the primary purpose of which is behavior modification and values alteration.

I would respectfully suggest, Mr. President, that the burden to secure consent of the parent is not too great. Surely, most conscientious teachers would have no problem gaining the consent of a parent providing the teacher has demonstrated the worth of his proposal. To suggest otherwise is to insult the parent and underestimate the resources of America's educators.

Some may argue that my amendment will create too much additional work and redtape for schools and the educational bureaucracy. To that argument I must reply that I am not so much concerned about the workload or convenience of the educational bureaucracy but, rather, with the personal rights of America's children and their parents. I believe that their rights should properly take such priority in whatever educational legislation the Senate, in its wisdom, shall enact.

It has been argued that portions of my amendment would throttle innovation and virtually close down title III and other innovative educational efforts sponsored by the Federal Government. This is surely not the intent of my amendment, nor would it be the effect. My amendment simply gives individual parents the right to be informed about out-of-the-ordinary federally funded programs in which their child might participate, and assures the parents the right not to have their particular child participate if they find such a program objectionable. Granted that there will be some inconveniences and logistical problems involved in this. But what sufficient reason is there for anyone to stand up and say that parents must be denied these rights? What do the schools and the Federal agencies have to hide?

As a matter of fact, my amendment need not create undue problems. For example, the Russell Sage Foundation published a very thoughtful study in 1969

entitled, "Guidelines for the Collection, Maintenance, and Dissemination of Pupil Records," which included samples of simple forms that could be mailed to parents to obtain their permission for certain activities with regard to their children. I would also further note that many schools and a number of States already routinely require the prior consent of parents on a number of matters, including both special testing and some special programs or projects, such as drug programs or sex education.

Permit me to add, also, that many elements of my amendment follow the recommendations of the report of the Secretary's Advisory Committee on Automated Personal Data Systems at HEW, entitled "Records, Computers, and the Rights of Citizens."

Equally important as the other effects of my amendment is the likelihood that the obligation to inform parents will begin to close the gap of hostility that too often exists between parents and teachers, each distrusting the other. The increased openness and communication with parents on the part of the schools which would follow from my amendment would enhance parental interest and involvement in their children's education, and in the long run could lead to improved education and more harmonious school-community relations.

Mr. President, it is time for the U.S. Senate to take a stand in favor of, and to act to protect the rights and privacy of parents and students where the Federal Government and Federal funds are involved. Therefore, I urge the Senate to give favorable consideration to my amendment.

I reserve the remainder of my time.

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

The PRESIDING OFFICER. Under the unanimous-consent request, the Senate must return to consideration of the Javits amendment.

Mr. JAVITS. I yield myself 2 minutes on the bill.

After discussion with Senator PELL, I wish to state the following facts: One, Puerto Rico is treated as a State in the House, so the amendment will be in conference. Two, we should figure out exactly what the relationship would be of the poor children who would be covered in Puerto Rico, which we will do, compared to the other States, and see, therefore, whether my estimate of something a little more than 2 percent, but not substantially over that, is justifiable. I want to check that out. Three, I now ask the Chair to make a ruling on this: Notwithstanding the fact that a substantive question may be affected, an amendment may occur at a later part of the bill, notwithstanding the adoption, if it should be adopted, of the McClellan amendment, which may make a substantive change, provided it does not cover the same language which is contained in the McClellan amendment—whether another amendment, under the rules of the Senate, would lie at the end of the bill.

The PRESIDING OFFICER. So long as the amendment is redrafted, so long as it does not affect the text of the amendment, it would be in order.

Mr. JAVITS. Under those circumstances, Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

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

Mr. PELL. Mr. President, we are on the Buckley amendment, with how much time on each side?

The PRESIDING OFFICER. The McClellan amendment is before the Senate at the moment. A unanimous-consent request would be in order to proceed to the Buckley amendment.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of the Buckley amendment, No. 1289.

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

Who yields time?

Mr. MATHIAS. Mr. President, will the Senator from New York yield me 3 minutes?

Mr. JAVITS. Yes, in opposition.

Mr. MATHIAS. I have some questions I would like to ask the distinguished junior Senator from New York, because I salute the thrust and the purpose which I think he seeks to accomplish by this amendment.

But I do want to be perfectly certain that I understand the practical effect of it. Turning to section 437(b)(1), page 3, I am wondering what effect this provision would have in the case of a student who was the victim of an accident in the school, or the victim of an accident on a playground. Would it prevent the school from arranging to have him immediately examined and medical treatment given to him?

Mr. BUCKLEY. No, of course not. Normal medical advice and hospital procedures usually require parental consent, and in those situations where the parents could not be contacted the treatment would be available.

Mr. MATHIAS. Would it not be necessary then, to have an exception because there is an exception in the general immunization, and I think the case of emergency treatment would have to be made in an excepted case or else the school would be under some jeopardy here.

Mr. BUCKLEY. I would be glad to ask unanimous consent to amend my amendment by inserting on line 11, page 3, following the word "immunization" the words "or emergency medical treatment."

The PRESIDING OFFICER. Is there objection to the Senator from New York modifying his amendment to that effect? The Chair hears no objection, and it is so ordered.

Mr. MATHIAS. If there were a course being given which is clearly a course which is causing the student to alter his behavior for the good, let us say in the matter of grooming, as the result of a course in civics, where he has become more interested in the system, and we have a course which is a positive influence on the student's life, would the Senator's amendment require the parents' "prior, informed, written consent" for that type course?

Mr. BUCKLEY. Quite obviously in one sense all education has an effect on attitudes, and so forth. I believe there is a tacit rule of commonsense that applies to the interpretation and application of all legislation and I speak of courses, the primary purpose of which is to modify behavior.

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

Mr. MATHIAS. Will the Senator yield to me for 3 additional minutes?

Mr. PELL. I yield.

Mr. BUCKLEY. So clearly the example of the Senator from Maryland would not be covered.

Mr. MATHIAS. Of course, my concern is that the language of the amendment might cover it. That is what gives me some uncertainty.

Let us pass to section 437(c)(1). Let us assume the unhappy possibility that a student is suspected of having bombed the chemistry laboratory and the FBI or another law enforcement agency comes into the school, let us say, without a judicial order. Would they be unable to examine the records or files of the student without the "prior, informed, written consent" of the student's parents?

Mr. BUCKLEY. I believe they should get a court subpena to have access to the records.

Mr. MATHIAS. The amendment does not even provide for access with a subpena without parental consent.

Mr. BUCKLEY. I refer to page 6, where it is stated:

> In compliance with any court order, or pursuant to any lawfully issued subpena, if the parents and students are notified of any such order in advance of the compliance therewith . . .

Mr. MATHIAS. The Senator is correct but also it would require the warrant or the written consent, even in the case I suggested.

Now, I wish to ask the Senator this question. Does the provision allow the use of any identification device other than the names of students or the names of parents?

Mr. BUCKLEY. No, it does not.

Mr. MATHIAS. So that would be the only possible identification, there could be no other identification of any sort?

Mr. BUCKLEY. No.

Mr. MATHIAS. And the Senator feels that that is a useful provision.

Finally, there are certain programs in which there is some testing, specifically, HEW through the National Institute of Education has made a grant to test and experiment with an educational voucher program. I am sure the Senator is familiar that such programs are now underway in California and Vermont.

Under this provision if the parents of a child object to the child's participation, then that child would not be able to take part. Is that correct?

Mr. BUCKLEY. That is correct.

Mr. MATHIAS. What will happen to a program of that sort?

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

Mr. MATHIAS. Mr. President, will the Senator yield to me for 1 additional minute?

Mr. PELL. I yield 1 additional minute to the Senator from Maryland.

Mr. MATHIAS. What will happen to that child if the entire school is involved? What happens to that child when the whole school is involved, as in the case of California and Vermont? Does the child have to be withdrawn from that school and some alternative education provided?

Mr. BUCKLEY. That child would obviously be handled in the school as if he were not—in other words, his State directly would pay for that tuition.

Mr. MATHIAS. Then, the Senator's concept is that under this provision——

Mr. BUCKLEY. It would not abort the experiment.

Mr. MATHIAS. But the child would have to have some other education provided in some other location or in some other manner.

Mr. BUCKLEY. If a parent did not want to accept the voucher the child would continue to be educated in the school he attended.

Mr. MATHIAS. But if the whole system were committed to the program, there would be no other school for him to attend. That seems to be the nub of the problem.

Mr. BUCKLEY. I disagree. I do not believe it would be interpreted in that way.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, the junior Senator from New York and I have previously discussed this amendment. I ask unanimous consent that a letter from the National School Boards Association be inserted in the RECORD.

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

NATIONAL SCHOOL BOARDS ASSOCIATION,
Evanston, Ill., May 2, 1974.

Hon. CLAIBORNE PELL,
U.S. Senate, Old Senate Office Building, Washington, D.C.

DEAR SENATOR PELL: Pursuant to his "dear colleague" letter dated April 26, 1974, Senator Buckley set forth proposed amendments to S. 1539 relating to "Protection of the Rights and Privacy of Parents and Students" (Sec. 513). In general, the National School Boards Association believes that the intent of the amendment is meritorious, but that operationally its accomplishment will generate unacceptable confusion because of the complicated legislative language and local administrative conditions associated with the approach taken in the amendment. We have been in contact with the Senator and he has some of our specific concerns under advisement. Those concerns are outlined below:

1. The amendment requires that parents have the right of access to their child's school files and that their consent be obtained prior to release of such files to third parties (with certain exceptions). However, if the rights of students are distinguishable from the rights of parents, and if the assertion of those rights should not be solely dependent upon parental willingness, the amendment should give students an independent right of access to, and consent with respect to the divulgence of, their files. At the same time, it may be advisable to impose a minimal age, such as 15 years, at which the child's independent rights would attach.

2. The amendment requires that school authorities provide parents with student files within thirty days after the request is made. In many instances, records may have to be screened in order to delete references to third persons, or the records sought may be stored in a central school district file or at the state level. Accordingly, while administrative footdragging can not be condoned, compliance in many instances will not be possible unless the time limit is extended to 45 days—and preferably 60 days.

3. Subsection (b) of the amendment provides that no student "participating in an applicable program" shall be required to undergo medical, psychological, et cetera, examinations without parental consent. This means that if a state or local agency is operating an examination program of that kind and is not receiving federal aid, consent is not required. But if the education agency is receiving ESEA II library funds, for example, then consent is required. The basis for this distinction is difficult to understand. Since the examination in question would be pursuant solely to a state program authorized and perhaps mandated by state law, federal legislation would be inappropriate in either case as a matter of policy. However, a different situation *may* arise when the education agency includes such an examination as *part* of one of its federal programs. If the latter situation is a proper area for federal involvement, then the overbreadth of subsection (b) (1) can be corrected if, after the words "no student" the words "participating in" are deleted and the words ", as a part of," are substituted in lieu thereof.

4. Subsection (b) of the amendment also prohibits the participation of any student in an applicable program which involves *any* research or experimental project without the consent of the student's parent. Research and experimental project is then defined as "includes but is not limited to, any program or project designed to explore or develop new or unproven teaching methods or techniques, or to explore or develop teaching techniques or courses affecting the social development, personal behavior, or values of the student." Given the broad brush of the above definition, quite conceivably almost any classroom effort would be subject to challenge on the grounds of "new" pedagogical style or personal impact upon particular students. But even at some point short of a literal application, the above definition will grind public education into a stultifying routine rather than the creative experience which it should present for children. And, to the extent any innovation is challenged there is some question whether the Department of Health, Education and Welfare will make nationally or community based judgments as to new techniques or definitions of student values. In either case it is also questionable whether the federal government can or ought to be involved in deciding questions relating to "social development, personal behavior, or values of the student." The requirement of individual parental consent to all programs raises other questions of federal policy. We now have federally mandated state advisory committees, local advisory committees, and even in some programs, school by school parental committees. That amendment adds yet another layer to the existing stream of administrative costs and formalities associated with school board policy implementation. One might begin to ponder the role of the taxpayer voter in our education system after one more review is added on top of the governmental structure which he elects to represent him. Although this restriction only applies to federal programs (which in itself is perplexing, inasmuch that if restrictions on experimentation is the object sought, the source of funds should be irrelevant), that too is overboard. If such a restriction is really advisable, it should only be applied to ESEA Title III programs, which are designed for experimental purposes, and not to programs such as ESEA Title I or NDEA III, which are not intended to expose the child to innovative techniques on other than a random or incidental basis.

5. Subsection (c) requires parental consent for the release of personal data, except in certain instances, including the "order of administrative agencies having the power of subpoena." It would appear that a federal agency, which is so empowered, can by-pass the amendment merely by issuing a general order applicable to all students who, for example, attend a particular school, are involved in particular activities, etc. While investigations by federal officials may be necessary in certain circumstances, if the scope of the above exception is as broad as we suggest, then the basic purpose of the amendment is defeated.

6. Subsection (c) (4) of the amendment requires that a list of all persons or agencies desiring access to a student's records shall be maintained in that student's file. Although parents, students, and *certain* school officials should have access to that list, other persons or agencies should not—lest the student be characterized by the innuendo of previous searchers of his files.

It should be mentioned that the financial costs of producing records, implementing parental consent procedures for innovation and divulgence of information, and maintaining information requests lists are subordinate to the primary objective sought by the amendment—but should be taken into account nevertheless. Unfortunately, we do not have ample time to develop cost figures.

In summation, we urge that you withhold support for the amendment, unless the above described problems are resolved.

Sincerely,

AUGUST W. STEINHILBER,
Assistant Executive Director, Office of Federal Relations.

Mr. PELL. Mr. President, I am not enthusiastic about the amendment, but it does have some merit. Section (b) concerns me.

The amendment disturbs me in that it states that:

> No student shall be required to undergo . . . testing without prior written consent of the student's parents in any project.

The thought I have is that if the Senator would withdraw that section (b), we could decide the fate of his amendment by voice vote, and my voice would be saying "aye" or if he insists on leaving it in, which from my side of the aisle I do not recommend, I would have to ask for a rollcall vote.

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

Mr. PELL. I yield.

Mr. JAVITS. Under these circumstances the amendment could be taken to conference, but the administration has grave problems with other parts of it. Having reviewed the administration's wishes, I believe they would be susceptible to handling it in conference. However, I do not want my colleague to feel we have written letters of love that we are going to preserve all of it. I think the administration's suggestions do not change its fundamental thrust, but takes certain precautions. I hope in conference we can work it out that way.

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

Mr. PELL. I yield.

Mr. STEVENS. Mr. President, I have serious questions about subsection (c) which I think runs contrary to a great many Federal policies and the best interests of the student. I intend to offer an amendment to either delete that section or to modify it substantially in sev-

eral ways. I just want to let my friend from Rhode Island realize that. I hope to have a chance to have an exchange with the Senator from New York concerning that.

As I understand subsection (c), it would prevent a high school from giving to a bank that wants to send out information about its loan program to students, the names and addresses of students without consent of the students' parents. I cannot understand this overprotectionism to the point that it could not offer to those students information about Federal loan funds. One could not get the names and addresses of students in one's State to get them the information of the opportunities available under the Federal student loan program.

Under subsection (c), if I were a probation officer, I could not sit down and talk with the teacher to get personal information from the teacher about the student who was subject to a criminal process. I do not know whether the Senator realizes how many cases go through the juvenile courts these days, but it is a fantastic number.

So I hope the Senator does not think this is going to breeze through without any debate.

Mr. BUCKLEY. Mr. President——

Mr. PELL. Mr. President, I yield to the Senator from New York, on his time.

Mr. BUCKLEY. Mr. President, I believe that argument is a paper tiger. We are talking about invasion of personal, private data. My amendment does not affect matters of public record, which may be names and addresses of people who happen to be students in a school.

Mr. STEVENS. Let me read from subsection (c):

> Permitting the release of records or files (or personal information contained therein) of students without the written consent of their parents to any individual, agency, or organization . . .

Does the Senator interpret that to mean a bank could not say, "Give me the names and addresses of your graduating seniors?" Does the Senator interpret that to mean a probation officer could not get information from teachers or the files that would help a juvenile accused of a crime?

As prosecuting attorney, I can tell the Senator that probation officers need such information to help the students. I think this is a shotgun approach. I applaud the Senator's desire to protect students, but we are overprotecting in this way with regard to many activities in a school. I do not want to hurt any student, but we are not going to be able to help him with this amendment. That is the trouble with it.

Mr. BUCKLEY. I believe the parents have as much interest in protecting their child as does the Senator from Alaska, but the Senator is reading into the amendment the inclusion of the simple listing of names and addresses in a student's records and files.

Mr. STEVENS. I am happy to know that, but how does a probation officer go about getting that information? I saw a lot of probation officers as district attorney. If they were to have to go to busy juvenile court judges and subpena that information, or if they want to talk to teachers, they are not going to get it. I do not see the necessity for subsection (c). What is the necessity for it?

Mr. BUCKLEY. I described it in my statement. The fact that this information gets leaked out all over the place is injurious to the child. It haunts children in their later lives. I think we ought to put a stop to it.

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

The PRESIDING OFFICER. The Senator has 18 minutes remaining.

Mr. BIDEN. Mr. President, will the Senator yield me some time to ask the Senator from New York some questions?

Mr. BUCKLEY. Mr. President, I yield 5 minutes to the Senator from Delaware.

Mr. BIDEN. The Senator from New York, I think, should be complimented on this amendment. I think it is long overdue. I do not share the concerns of the Senator from Alaska. Having been a public defender, I do not think a probation officer should be able to sit down and talk with teachers about these matters. They think they are psychologists and psychiatrists, and they do more harm to the child than they help him. But my objection relates to subsection (b).

I am an early cosponsor of this amendment, but I think subsection (b) should be clarified so we understand what it would do. In that section it says:

> No student shall, as a part of any applicable program, be required, without the prior, informed, written consent of the student's parents, to participate in any project, program, or course, the primary purpose or principal effect of which is to affect or alter the personal behavior or personal values of a student, or to explore and develop teaching techniques or courses primarily intended to affect such behavior and values.

If that were to be misread, it could be a very, very restrictive section.

I would like, for the record, to ask a few questions.

Specifically, in a school for the deaf, will a project designed to test the effectiveness of a new audiology machine be termed "research and experimentation" under this amendment?

Mr. BUCKLEY. Certainly not. This is directed toward developing new, experimental educational techniques. Certainly, new devices for helping—it is really a medical device—the deaf to hear, or new research involving such things as "new math," traditional courses—would not be affected at all by this amendment.

Mr. BIDEN. Would diagnostic tests given to students at the beginning of a course in order to gage the strengths and weaknesses of students in various academic disciplines be considered "research"?

Mr. BUCKLEY. No; this is normal research; it is not experimental. It is not research into new research activities.

Mr. BIDEN. So it is not intended to really alter the traditional academic disciplines? The Senator is not going after that?

Mr. BUCKLEY. That is correct.

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

Mr. BUCKLEY. I yield.

Mr. ERVIN. This would prevent schools from making guinea pigs out of children and delving into their personal attitudes and their attitudes toward their families, as has been done in many schools throughout the United States. Is that correct?

Mr. BUCKLEY. Yes.

Mr. ERVIN. It is designed to prevent disclosure, except to those who are authorized to receive them, of personal data about these children. Is that correct?

Mr. BUCKLEY. The Senator is correct.

Mr. ERVIN. I am personally in favor of the proposal.

Mr. President, I am pleased to cosponsor the amendment concerning right to privacy and school records proposed by Senator BUCKLEY to S. 1539, the Elementary and Secondary Education Amendments of 1974. The issue of rights to privacy of public school pupils and their parents is one which has recently become highly publicized in many different circles, but it is a problem that has long been with us. The time has come to do something about it.

This amendment would accomplish several worthy objectives. It would give parents of public schoolchildren the right of access to their minor children's school records. Importantly, parents would be able to challenge any part of the contents of the records for their authenticity. The only persons having access to those records in addition to the parents would be school officials, the board of education, and officials at a school to which the pupil might be transferring. In order for any other person to have access to the records, the parents must give their written permission and the permission form would then become a part of the student's permanent record. In addition, no student could participate in any medical or psychological testing program without the prior, informed, and written consent of his parents. Parents of the pupils would be able to review any and all instructional materials that are used by their child's teacher.

One of the primary aspects of this new legislation is the provision stating that the schools, through the board of education, the principal, or the teacher, would bear the burden for informing the parents and students of their rights and for keeping them fully posted at all times of anything that would come within the scope of this legislation. The penalties for noncompliance with this act would be a loss of the Federal funds that had been made available to the school.

Much of the controversy concerning these school records centers around the use of classroom questionnaires that are financed by governmental grants, often the Department of Health, Education, and Welfare or a similar agency at the state or local levels of government. These questionnaires are thinly disguised as "research projects," although in actuality they often amount to highly objectionable invasions of the psychological privacy of schoolchildren. Oftentimes, the students are told that the responses they give are classified and will not be

used for any other purpose than to gather and analyze statistical data on the educational situation in the public schools. However, it has been too often demonstrated that these data stand strong possibilities of being incorporated into computerized data banks or in other ways being disseminated to persons not connected with the educational process.

The questionnaires usually cover many aspects of the student's personal life and personality. The categories cover the student's attitudes toward his home and family, his school and teachers, his feelings about himself, and his feelings about his peers and classmates. It is my belief that no governmental agency has any business conducting such inquiries unless the parents of the children are made fully aware of the subject matter of the inquiry and subsequently give their full consent. The situation now is that children are rarely given a free and unprejudiced choice of answering or not answering the questionnaires. In addition, parents would be able to request to review their children's school records and would have the right to challenge any adverse content.

Mr. President, I intend to ask soon for unanimous consent that some of these questionnaires and summaries of questionnaires be reprinted in the RECORD. However, I do wish to read, for purposes of emphasis, some of the more offensive questions although they are all certainly in that category. The examples that I use are from public schools in the States of Maryland and New Jersey, although there exists strong evidence that these unfortunate practices know no geographical boundaries. Practically all of the questions can be answered with a yes or no or multiple choice answer. There is no room for explaining an answer:

HOME AND FAMILY SITUATION

Are you an important person to your family?

Would you like to run away from home?

Are your parents strict or lenient?

Do you often argue with your parents?

What types of appliances, books, furnishings, and leisure facilities do you have in your home?

SELF-EVALUATION

Do you admire students who are bright?

Can you give a good talk in front of people?

Do you wish you were a different child?

Do you feel lonely very often?

Are you one of the last to be chosen for games?

Do you like being just what you are?

SCHOOLS AND TEACHERS

Are some students favored over others by your teachers?

Do most other students want to go to school?

Who are your three best friends (complete names)?

For what reasons have you been scolded in class?

How do you rate your teachers to other teachers at your grade level?

Do you ever miss school or a class simply because you do not wish to go?

Does a diploma from your school mean that you behaved yourself or that you really learned something?

PEERS AND CLASSMATES

Do you have many friends?

Does being with other children bother you?

Is it easy for you to make friends?

Do other children get you into trouble at school?

Would you rather play with friends who are younger than you or older than you?

I certainly believe that this is most important legislation and that the Congress should act wisely and in a forthright manner to recognize the rights to privacy of public schoolchildren and their parents. I am particularly impressed by the strong bipartisan support that this amendment has received from members of Congress and from many public and private sectors of our society. I urge the Senate to adopt this Buckley amendment to the Elementary and Secondary Education Act of 1974.

In my mind school officials should not be allowed to maintain any records outside of the reach of parents, much less records of such a personal nature as those that we have seen. A parent has every right to know exactly what information is being collected concerning his children, and the provisions of this amendment constitute what I feel are minimum considerations in the protection of that right. While the measures provided for are strong, I feel the seriousness of the issue well justifies the approach. The parent must have ultimate responsibility for the well being of his children. This amendment recognizes that responsibility.

Mr. President, I ask unanimous consent that the questionnaire from the Hackensack Public Schools of Hackensack, New Jersey, be submitted for reproduction in the RECORD. In addition, I ask unanimous consent that the transcript of a press conference held on April 19, 1974, by an organization known as Parents Who Care, based in Wheaton, Md., which recounts this problem in greater detail also be printed in the RECORD.

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

HACKENSACK PUBLIC SCHOOLS,
Hackensack, N.J.

LEARNING EXPERIENCE MODULE—FANNY MEYER HILLERS SCHOOL

STUDENT ATTITUDE INVENTORY

Name _____

Boy _____Girl_____LEM_____Grade_____

Date_____

Directions: Listen carefully to each question and decide how you think and feel. If you don't understand a question, ask about it. Answer each question by drawing a circle around either "yes" or "no".

Responses

Attitude Toward Home and Family: yes, 5; no, 3.

Attitude Toward Peers: yes, 5; no, 6.

Attitude Toward Self: yes, 12; no, 9.

Attitude Toward School and Teachers: yes, 13; no, 6.

SCHOOL AND TEACHERS

(Yes or No Answers)

1. Are your teachers interested in things you do at home?
2. Do your teachers give you work that is too hard?
3. Is the LEM a happy place for you to be?
4. Do you like to read at school?
5. When you don't understand something, are you afraid to ask your teacher?
6. Do you like to paint pictures at school?
7. Do you like to write stories at school?
8. Does your teacher help you with your work when you need help?
9. Do you like doing arithmetic problems at school?
10. Do you wish you were in a different class that was not in LEM?
11. Do you like to learn about science?
12. Does the LEM have too many rules?
13. Do you always have to do what the other children want to do?
14. Do you like the other children in the LEM?
15. Do your teachers like some children better than others?
16. Do other people at school really care about you?
17. Are you proud to be in the LEM?
18. Do you often get a chance to make decisions with others in your group?
19. Do you tell people that you like the LEM?

SELF

(Yes or No Answers)

1. Do you often get sick at school?
2. Can you give a good talk in front of people?
3. Do you wish you were younger?
4. Do you wish you were older?
5. Do you often feel happy in school?
6. Are you a good reader?
7. Do you wish you were a different child?
8. Can you wait your turn easily?
9. Are you good in your schoolwork?
10. Are you a good child?
11. Are you one of the last to be chosen for games?
12. Do you feel lonely very often?
13. If you have something to say, do you usually say it?
14. Do you like the teacher to ask you questions in front of the other children?
15. Do the other children in the class think you're a good worker?
16. Do you find it hard to talk to your group?
17. Are most children able to finish their schoolwork more quickly than you?
18. Do you often act silly just so people will pay attention to you?
19. Do you like most of the people you know?
20. Can you be depended on?
21. Do you like being just what you are?

PEERS

(Yes or No Answers)

1. Do other children get you into trouble at school?
2. Do you have to do what the other children want to do?
3. Do you like the other children in the LEM?
4. Do other children in the LEM like you?
5. Do you always let other children have their way?
6. Do you have many friends?
7. Are other children often mean to you?
8. Do your friends usually do as you say?
9. Does being with other children bother you?
10. Is it easy for you to make friends?
11. Would you rather play with friends who are younger than you?

HOME AND FAMILY

(Yes or no answers)

1. Are you an important person to your family?
2. Do you have certain responsibilities at hor ?
3. Do you tell your family when you are mad at them?
4. Would you like to run away from home?
5. Is it pleasant to stay at home on days when there is no school?
6. Do you get upset easily at home?
7. Do brothers and sisters prevent you from being happy?
8. Do your parents think school is important?

STATEMENT BY A COALITION OF CONCERNED PARENTS FROM EIGHT MARYLAND COUNTIES REPRESENTING FIVE CITIZENS ORGANIZATIONS ON INVASION OF PRIVACY BY MARYLAND PUBLIC SCHOOLS

Good Morning: My name is Malcolm Lawrence. I am Director of Public Relations for Parents Who Care, a Montgomery County citizens group founded in October 1971. In addition to the Parents Who Care group, I speak today on behalf of individuals from seven other counties in Maryland representing four other citizens organizations.

I should like to introduce the other members of the group.

Mrs. Jean Carter, from Howard County, representing Citizens Advocating Responsible Education (CARE).

Mrs. Pat Dunlap, from Prince Georges County, representing Citizens for Community Schools (CCS).

Mrs. Margaret Kuhn, from Prince Georges County, representing Guardians for Traditional Education.

The remaining individuals represent the Maryland Committee for Public Disclosure in Education; they are:

Mr. James E. English, from Allegany County.

Mrs. Gloria Donohue, from Anne Arundel County.

Mrs. Betty Fahey, from North Baltimore City.

Mrs. Isabel Fox, from West Baltimore City.

Mrs. Rita Ann Ayd, from Baltimore County.

Mrs. Jo Ann Spriggs, from Carroll County.

Mrs. Barbara M. Morris, from Howard County.

I have a statement to make, following which we shall be happy to entertain questions.

The United States Constitution guarantees to the American citizen a number of fundamental rights that can not be infringed by the federal or state governments without compelling justification. These rights include the right to marry, the right to bear children and to maintain a family, the right to control one's own body, and the right to direct the upbringing of one's children.

The essence of these rights is that they are so basic to personal liberty that they merit a high level of protection from invasions by the state. The rights we have cited are sometimes described as "fundamental" or "natural" rights inherent in American tradition or Western values; sometimes they are based upon the 14th Amendment's guarantee of liberty or the 9th Amendment's reservation of rights to the people; in other cases such rights are based on common law principles. Whatever the basis, it is clear that parents, as part of their right to raise a family, retain basic decision-making authority and responsibility concerning their children's education that cannot be abridged by the states whether by direct exclusion of the parents or by indirect exclusion through the withholding of crucial information about their children.

We have called this press conference today to express publicly our strong objections to materials and practices in the public schools of the State of Maryland which we feel constitute invasions of privacy of both students and parents. It is our view that many teachers are similarly in opposition to these materials and practices, but are unwilling to openly denounce them for fear of reprisal or dismissal from the public school system. We are urging the Governor of Maryland to take immediate steps to safeguard the rights of students, the parents, and the teachers.

Our leading candidate for removal from Maryland public schools is an extensive questionnaire which has just been given to more than 7,000 students in Howard County. The questionnaire was given as part of a research project administered by the Center for the Social Organization of Schools at Johns Hopkins University, funded by a $200,000 grant from the National Institute of Education of the Department of Health, Education and Welfare (Contract No. NE-C-00-3-0114). Last year 7,200 students in grades 4, 5, 6, 8, and 11 were surveyed. This year, between February 1 and March 15, the same students were given a follow-up survey. For each class tested, a team of trained administrators from Johns Hopkins University marched in; the teacher was asked to leave the class; and the students were handed a 17-page questionnaire and told, "This is not a test. There are no right or wrong answers. Your answers will not be given to your teachers or anyone who knows you."

According to a December 1973 report of the Center for Social Organization of Schools, the Johns Hopkins study is designed to "investigate the effects of open environment schools on student reactions to school life, student self-reliance, student ability to make realistic judgments, and student achievement on standard tests of academic performance." A January 14, 1974 memorandum from the Howard County Superintendent of Schools to Directors, Supervisors, and Principals reported that three evaluating teams will operate in Howard County schools this year: the fifth year of a program being conducted by the University of Maryland, the project of Johns Hopkins University, and a study of the entire school system to be undertaken by the Institute of Field Studies of Columbia University. The Columbia study was described as a survey of data produced by the Maryland and Hopkins surveys, with the purpose of synthesizing these and other findings to come up with "recommendations for future development of the school system."

Three weeks ago, representatives from our groups called on the National Institute of Education to obtain more information on the scope of these projects and to learn where else these programs were either being undertaken or envisaged. The spokesman for the NIE did not shed any further light on the Johns Hopkins survey and refused to respond to the question as to whether NIE was also financing the University of Maryland and Columbia University projects.

I should like at this point to give the substance of a number of questions from the Johns Hopkins University survey. We have divided the questions into three general categories: 1) Family Situation, 2) Self-Evaluation, and 3) Feelings and Attitudes toward the School and Teachers.

First, Family Situation:

The student is asked how most decisions about him are made in the family.

How much a part he plays in the decisions.

How far in school his father went.

How far in school his mother went.

Whether his parents are strict or lenient.

If his parents want him to follow their directions even if he disagrees with their reasons.

Whether his parents often worry that he is up to something they won't like.

Whether his parents disapprove when he disagrees with them in the presence of their friends.

The student is asked whether he knows why he is supposed to do what his parents tell him to do.

Whether he has a lot of loud arguments with his parents about their rules and decisions regarding his activities.

And whether his parents treat him more like a little kid than an adult.

The student is asked if his parents have definite rules relating to the following activities:

The time to be in at night on weekends;
The time to be in on school nights;
Time spent watching television;
Going around with certain boys;
Going around with certain girls;
Eating dinner with the family;
Using the telephone;
Clothing;
Hairstyle;
Church attendance;
Household chores;
Returning home from school;
Smoking;
Age for starting to date;
Going steady; and
Frequency of dating.

The student is asked to answer YES or NO as to whether the following items are in his home:

Telephone;
Two telephones;
Vacuum cleaner;
Stereo hi-fi record player;
Air conditioner;
Electric dishwasher;
Your own family washing machine;
Your own family clothes dryer;
Dictionary;
Encyclopedia;
Daily newspaper;
Three or more magazine subscriptions;
Black and white TV;
Color TV;
Car;
Second car;
Two bathrooms;
Tape recorder;
Home movie projector;
Home slide projector;
Typewriter;
Piano; and
Skis or golf clubs.

The organizations represented here today consider these questions on the family situation to be clear invasions of privacy of the student and of the home by the school system. Whatever the purpose of the Johns Hopkins University questionnaire, we strongly protest against this type of probing into the personal affairs of the student and his family life.

Let us turn next to the category of self-evaluation in the Johns Hopkins questionnaire:

Here, the student is asked whether he pretends to be busy in class when he is really just wasting time.

Whether being popular with other people his age is more important than anything else to him.

If someone often has to tell him what to do.

If he admires students who are very bright.

When he doesn't know the answer, if he will try to fake it rather than say he doesn't know.

Whether he will usually give in because he doesn't want to upset his friends.

If he is known as a person who will dare to be different.

If he knew the teacher was not going to collect his homework, whether he would no his best.

Whether he gets blamed for things that are not really his fault.

The student is asked if the best way to get ahead in life is to be nice to all people.

Whether he likes to be by himself because he has a lot of things he likes to do alone.

Whether he feels uncomfortable if he disagrees with what his friends think.

If the student sometimes feels angry when he doesn't get his way.

If it would be hard for him to face the "cold, cruel world."

If he can say "No" when his friends call him to do something with them.

He is asked whether he will put off leaving his home and friends for as long as possible.

If he didn't like the way things were going in a group, whether he would hesitate to tell the leader.

Whether he really cares if some people don't want to be friends with him.

Whether he tries to get out of doing work and hopes no one will find out.

If he prefers to let other people in a group make the decisions.

It is our view that this line of self-evaluation, self-analysis, self-criticism, and confession is pure and simple an invasion of psychological privacy of the child. Students of all ages are asked to direct their thoughts to introspection and unwittingly lay bare their inner-most feelings to the data collector for whatever purpose he may wish to make use of them.

Our third and final category of the Johns Hopkins test deals with feelings and attitudes toward the school and teachers:

The student is asked if he feels lost in school.

If he feels the tension build up in him when he is in school.

If he often does not know what he is supposed to do.

Whether most of his teachers want him to do things their way and not his own way.

Whether his teachers tolerate a lot of questions during a lesson.

If certain students in his classes are favored by the teachers more than the rest.

If the teachers in his school often act as if they are always right and he is wrong.

Whether he is considered weird when he gets involved and excited in his classwork.

If he daydreams a lot in class.

Whether he wants to go to school.

Whether he ever does anything exciting in class.

If he counts the minutes until the class ends.

Whether he sits on the floor in many of his classes.

Whether most other students want to go to school.

If a diploma from his school means more that you behaved yourself than that you really learned something.

He is asked if he and his teachers are: (1) on the same wave length, (2) on the same planet, (3) somewhere in the same solar system, or (4) in two different worlds.

If his classwork is: (1) great stuff, (2) good stuff, (3) OK, or (4) dull stuff.

How he would rate the ability of most of his teachers compared to teachers in other schools at his grade level: (1) far above average, (2) above average, (3) average, (4) below average, or (5) far below average.

If he and the school are: (1) good friends, (2) friends, (3) distant relatives, (4) strangers, or (5) enemies.

The student is asked to provide the full names of his three best friends.

And also the full names of students in the following categories:

Very popular with other students;
Independent;
Hard to fool; and
Fools around in class instead of working.

The student is queried as to whether he was ever scolded in class for:

Fooling around;
Not paying attention;
Fighting in class
Talking back to teachers
Not handing in enough work;
Telling off a teacher; and
Shouting or laughing out loud.

If he ever stayed away from school just because he didn't want to go: (1) never, (2) 1 or 2 days, (3) 3 to 5 days, or (4) more than 5 days.

Whether he has ever cut classes just because he didn't want to go to them: (1) never, (2) 1 or 2 classes, (3) 3 to 5 classes, or (4) more than 5 classes.

A lot of the questions in the Johns Hopkins survey relating to student feelings and attitudes toward school and teachers are simply absurd and a sheer waste of time and resources. Perhaps the most ridiculous question is the one asking students to rate teachers in other schools at the same grade level. Leaving aside the ability of a young student to evaluate his teachers, how could he be expected to compare them with teachers in other schools whom he has neither seen nor heard? A good many of the queries are negative in tone; in our judgment they foment inner frustrations in the students and create student animosity toward the teachers and the particular school attended. As I have indicated, the regular classroom teacher is not involved in this test and is therefore unable to respond or even know about the criticisms by the students. But the most damaging questions in this category are those which extract self-incriminating information from the students themselves on truancy, insolence, and other improper activities in school. Self-confessions by students on such things as fighting in class and telling off the teacher provide an evaluation team with data to be entered into a permanent personality record classifying students as maladaptive, aggressive, antisocial, emotionally disturbed, and predelinquent.

The Johns Hopkins test may have run its course for this year with the students, but the survey continues for teachers and parents. We are asking that this project be withdrawn forthwith and prevented from spreading to other counties in the State of Maryland.

Our second candidate for removal from Maryland public schools is a questionnaire currently being administered to 50 classes in 26 elementary schools in Montgomery County. This survey, which is being financed by the Spencer Foundation, is designed to gain insight into students' motives and goals and likes and dislikes. In addition, assessment of the children's educational growth, with both standard academic measures and some non-academic measures, will be made toward the end of the school year. According to an explanatory letter to parents by a psychologist with the Psychological Services Department of the Montgomery County Public Schools system, "characteristics of the classroom environment will be assessed by observers in a series of several visits during the year." The information gained by this project will be sent out of State and fed into computer data banks for use in diagnosing and prescribing the handling of students.

Some sample questions from the Spencer Foundation survey are:

If your parents tell you you're acting silly and not thinking clearly, it is more likely to be: (a) because of something you did or (b) because they happen to be feeling cranky?

Suppose your parents say you aren't doing well in your school work. Is this likely to happen to you: (a) because your work isn't very good or (b) because they are feeling cranky?

If your parents tell you that you are bright and clever, is it more likely: (a) because they are feeling good or (b) because of something you did?

The students are asked to answer a number of "I think I am" questions, circling the appropriate degree to which they are:

Able to get along with other kids;
Not able to figure things out in school;
Scared to take chances;
A good worker in school;
Happy with myself;
Not as smart as other kids in school;
Trying my best in school;
Not the way I would like to be;
Sure of myself;
Doing poorly in school; and
Angry with myself.

The complaints and concerns of the organizations represented here today are by no means limited to specific surveys, such as those financed by the National Institute of Education and the Spencer Foundation. We are opposed to all abuses by the schools of the right to privacy, the right to be left alone. It so happens that the school administrative personnel and the social researchers in the State of Maryland have found a veritable gold mine in grants, contracts, and techniques that are turning public school children into a collection of guinea pigs who are constantly being battered with questionnaires, personality tests and a variety of other inquisitions which are clearly invasions of privacy of both the student and the home.

To cite one widespread example, the Maryland State Board of Education By-laws call for a compulsory treatment of subject matter known as Interpersonal Relationships. No child in public schools in the State of Maryland may be excused from these discussions and classroom activities, which are interspersed throughout the curriculum from kindergarten through the 12th grade. Under this program, children must be subjected to all types of probes into their psyches and family situations. Here in Montgomery County, for example, elementary school children are forced to participate in the following material and questions:

Discuss family size, pointing out advantages of both large and small families.

Role play the family at dinner.

Role play an increase in conflicts with parents.

Role play other meaningful family situations.

Have children keep records of their activities; note those children who seem to be overburdened with responsibilities.

Have children write paragraph about being afraid; encourage them to verbalize their fears due to dark places, being hurt, dreams or nightmares, personal loss, experience with death, punishment, and the unknown.

Have children observe their family for a week; have them jot down notes on the way love was shown.

Have children write examples of times when they felt angry, afraid, shy.

Have role playing situations based on these experiences.

Here are some sample questions:

What kind of things make you angry?

What do you like to do when you are alone?

Should you expect to be paid for chores done at home?

Whom does your family entertain at your house?

How do you cooperate with your family?

What happens when and if you refuse to cooperate?

Do you think you are being treated fairly?

Do you think you would like to live and work alone?

What do you expect of your father and mother?

Under what circumstances have you felt unloved, unwanted, lonely, shy, or fearful?

As these examples from the K-through-6 curriculum demonstrate, the Interpersonal Relationships approach emphasizes negative attitudes; it dwells on fears, death, sorrows, anxieties, and other personal feelings and the inter-relationship of these factors with parents and the home situation. The student—particularly the younger child—has a weak defense against such techniques and can easily be induced to yield to classroom pressure or forced to work his imagination overtime for the sake of satisfying the teacher's demands.

Such prying by the schools into the home and into parental authority can be a most dangerous business. In Montgomery County, the School Board recently (August 27, 1973) approved an expanded definition of child abuse, under which teachers are asked to make official reports to the police and the social services authorities on children who have been "denied normal experiences that produce feelings of being loved, wanted, and secure." These are labelled as children who have been subjected to so-called "emotional neglect." Moreover, teachers are required to submit a report on any child who is "overworked" by his parents or exposed to "continuous friction in the home." Whatever the

charge, the school system policy stipulates "if there is any doubt or question in reporting such cases, it should be resolved in favor of the child."

It can, of course, readily be appreciated by one and all that the questions in the compulsory Interpersonal Relationships curriculum as well as a good many of the questions in the Johns Hopkins survey could provide data which may well be diagnosed incorrectly or misinterpreted by the social scientists as child abuse or child neglect cases. Moreover, many children could be labelled as what the social engineers like to call "disadvantaged children." We parents are most disturbed over this kind of role being assumed by the public schools. The schools were established in the United States to provide a service to the parents and taxpayers. The schools, therefore, work for us; not the other way around. The teachers, who in our view are thrust into and trapped in the middle of the situation, have an equally valid and justifiable complaint.

Whatever the stated goal of the educators and the social planners, the whole question of labelling children and predicting their behavior on the basis of questionnaires and classroom confessions is being challenged by parents and legal authorities throughout the United States. An important question is: Who has access to the data? Another, how will the data be used? An even more important question might be: What are the values and attitudes of the evaluators? The Congress of the United States is very much concerned with all of these questions. And we here today, who speak for five citizens orgnaizations with representation from eight Maryland counties, feel that the Maryland State public officials should be similarly concerned.

Therefore, by letter of April 19, 1974, we are strongly urging the Governor of Maryland to take steps to remove the Johns Hopkins University survey, the Spencer Foundation survey, and all similar tests and activities from the public schools of Maryland and to charge the Maryland State Board of Education with the task of reviewing all curriculum and practices in the classrooms for the purpose of removing those parts which violate the rights of the students and the parents as guaranteed by the Constitution of the United States of America. We are saying to the Governor "Enough is enough." We are asking him to remove the inquisitions of the master social planners from our public schols and to ensure us that our educators will concentrate, instead, on the basic concepts of education which our tax dollars were intended to finance, and education that will assist and prepare our children to face a mature, real world.

Mr. BIDEN. Mr. President, is the parliamentary situation such that I still have a few minutes of the time yielded to me by the Senator from New York?

The PRESIDING OFFICER. The Senator was yielded 5 minutes. One and a half minutes of that time still remain.

Mr. BUCKLEY. Mr. President, I yield 2½ minutes to the Senator.

Mr. BIDEN. I have one question. In subsection (b)(2), does the Senator have any objection to removing the words "or principal effect" on line 19, page 3, where it reads "the primary purpose or principal effect of which * * *"?

Mr. BUCKLEY. No, I do not. I think that would be very helpful. I thank the Senator from Delaware for suggesting it.

Mr. President, I ask unanimous consent that the three words at the end of line 19 on page 3 be eliminated.

The PRESIDING OFFICER. Is there objection? Without objection, the amendment is so modified.

Mr. BIDEN. I have no further questions of the Senator. He has indicated to me, in private and in the colloquy, that this is intended to go only to those programs which would be considered experimental. I think the single most burning issue before the country is the invasion of privacy at all levels. School records are private. No one should have access to them unless it is with the consent of the parents.

I am glad to be a cosponsor of the amendment.

Mr. HART. Mr. President, would the Senator yield for 1 minute?

The PRESIDING OFFICER. Who yields time to the Senator from Michigan?

Mr. PELL. I yield 1 minute. Which side is he on?

Mr. HART. I guess my honest answer is that I do not know which side I am on. I wish we had had a study or report on it. To say that the programs for research and experimentation are to be prevented unless the parents say OK is something unique and not really in the nature and order of the evolving educational techniques, when, on page 4 it is stated:

As used in this subsection, the term "research or experimentation project" means any project or program which is a part of an applicable program and which is authorized by an administrative officer of an education agency, a State or local education agency, or any education institution, including preschools, except that research or experimentation projects shall not include projects in the field of reading . . .

Maybe that is visual education. I do not know.

It seems to me that the definitions excludes experimentation on anything except speech and language. However, this is but one example of the difficulty I have and that other Senators have in considering and understanding the reach of the bill without hearings. Of course, everyone is for protecting privacy; that is great. However, what do we do with experimentation?

Mr. BUCKLEY. Mr. President, I should like to address myself to the remarks just made. First of all, the amendment explicitly excludes reading and bilingual education. However, some parents might choose to have their child take those subjects. They do not destroy the educational apparatus of this program. They do not destroy the ability to develop a program with cooperative parents. If a program is so alarming to the average parent that no parent will cooperate, then we should examine the program to see whether that program should be in effect. I do not believe that the remarks dealing with such affairs would be justified.

Mr. HART. Mr. President, what about the new math, which I still do not understand, but to which my children have been exposed? Could I say "no" if we were to adopt this amendment?

Mr. BUCKLEY. That is not at all the situation. A normal person would agree to experimentation with new math.

We are not talking about educational disciplines or perhaps new textbooks or new apparatus, or anything else along that line. We are talking about new departures from teaching methodology.

Mr. MATHIAS. Mr. President, if the Senator would yield me a minute to pursue that line of inquiry, as much as I want to share that concept, I share with the Senator from Michigan some lack of comprehension as to whether it will do this. The Senator from Michigan raises a question about new math or any other method of teaching a new subject. What about the question I asked earlier as to whether this amendment would prevent any idenification symbol? If students cannot be identified in a statistical sense, how can we make any kind of longitudinal studies as to whether a new teaching program on any subject is successful? How do we evaluate programs? How do we make any judgments beyond the isolated case of one student at a time?

Mr. BUCKLEY. Mr. President, schools are quite capable of evaluating the experience with students which they have in their own classes. I see no difficulty at all. Again, I think the Senator is emphasizing that the amendment is not destroying the ability of programs or research to go forward in the case of experimental programs.

All the amendment requires is no identification, and then the parent has the right to withdraw the child. He does not need to consent in advance. In general, the premise is that parents are generally responsible adults, having prime responsibility for their children. I have no doubt that they would act responsibly.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, I yield myself 5 minutes.

I think the junior Senator from New York knows of the regard and high respect I hold for him. As much as I would like to see the Senator succeed in his proposal as he explains it, we are concerned here not with what the Senator from New York intends the language he proposes to accomplish. It is what the language would do.

This is what bureaucrats in future years will rely on, what the language in the bill is.

They will not look up the debate on the floor at the time of passage of the bill. However, the language of the bill reads specifically:

Parents should be informed in advance and in writing of the participation of their child in any research program which is part of a school program * * * parents of such child objects to participation.

I believe that this language says that if there is to be a new experimental program of learning new math, or a psychological program, or something of that sort, every parent must be informed in writing. We should consider the postage and redtape involved. It would kill most new programs.

I hope the Senator from New York might be willing to withdraw at least subsection (b). I wonder what the wishes of the Senator might be in that regard.

Mr. BUCKLEY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BUCKLEY. Mr. President, is it not possible to have a division ordered so that we could vote on section (b) alone?

The PRESIDING OFFICER. If it is in the pending provision, the answer is yes.

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

The PRESIDING OFFICER. On whose time?

Mr. DOMINICK. Mr. President, will the Senator withhold that request for just a moment?

Mr. BUCKLEY. Mr. President, I withhold my suggestion of the absence of a quorum.

Mr. DOMINICK. Mr. President, I want to ask the Senator, not about section (b), because I must say that I share my compatriot's concern over that. But on section (c) I have been very active since I became a member of the Education Subcommittee in trying to make the program available for children who are going from high school to college or graduate school.

It looks to me as though what we have done under subsection (c) is to prevent whatever institution might be seeking the records of a youngster concerning his personality to determine whether he is eligible (a) either for a loan, or (b) for a work-study program, or (c) for a well deserved and perhaps not fully qualified minority student, as to his ability to get this background without the consent of the child's parents. He may be trying to get away from the parents, who may be lushes, and he may be trained to get away from them.

Mr. BUCKLEY. I would point out that the amendment states that—

> Whenever a student has attained eighteen years of age, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

Mr. DOMINICK. Mr. President, I understand that. However, I would presume that the Senator from New York or any Senator, as well as the Senator from Colorado, went to college when he was 17. A great number of children go to college when they are 17.

All I can say is that I think this is just a roadblock. It is something which I do not think the Senator from New York wants to do, in which we are trying to promote this subject and are not trying to restrict it.

I think that what the Senator is driving at in section (c) is the relief of a group of people who are trying to make some kind of psychiatric research program, totally devoid of the educational process in order to get their master's thesis or write something for the Brookings Institution, or something of that kind.

I am afraid that the language goes much further than that kind of restriction.

Mr. BUCKLEY. I find it implausible that parents would not cooperate in helping a child qualify for financial help.

Mr. DOMINICK. Well, they would not hesitate if he were going to be bringing the financial help back home, but I know a great number of people who do not give a whoop whether their children go to college, graduate school, or anything else; in fact, they would prefer they did not, and if he is trying to get a loan all of a sudden which they may ultimately be called on to repay, they may say no.

Mr. BUCKLEY. I point out to the Senator from Colorado that on page 6, line 12, we make an exception for financial aid.

Mr. DOMINICK. That is true. I had not seen that. Does that apply to all of subsection (c)?

Mr. BUCKLEY. Yes, it does.

Mr. DOMINICK. That helps materially. I will go back to the drawing board.

Mr. BUCKLEY. I thank the Senator.

Mr. President, in an attempt to make this amendment as acceptable as possible, I would make at this time, in response to some of the concerns expressed by the Senator from Maryland and the Senator from Michigan, the following modification: On page 4, line 13, to add in, as an exception in the definition of experimental programs, after the words "bilingual education", the words "or for the development of new techniques for the teaching of traditional disciplines". I ask unanimous consent that I may so modify my amendment.

The PRESIDING OFFICER. Without objection, the amendment will be so modified.

Mr. PELL. Mr. President, reserving the right to object, I could not hear. What was the modification?

Mr. BUCKLEY. On page 4, line 13, after the word "education," I insert the words "or for the development of new techniques for the teaching of traditional disciplines."

The PRESIDING OFFICER. Without objection, the amendment is so modified.

Mr. PELL. Mr. President, I will not object to the modification, but this will be the fourth modification made on the floor. I really think this matter should be considered in the committee. I shall be compelled to vote against it, but I do not object to the modification.

Mr. BUCKLEY. May I now ask the Presiding Officer whether the Parliamentarian has made a determination as to whether section (b) would stand on its own?

The PRESIDING OFFICER. (Mr. TUNNEY). Section (b) is written in such a way that it is independent and is divisible.

Mr. BUCKLEY. Under those circumstances, Mr. President, and on condition that the sponsor will accept the balance of the sections—Mr. President, if I may have the attention of the distinguished manager of the bill—I am willing to ask for a division, so that we may vote separately on section (b), provided the manager will accept the remainder of the amendment.

Mr. PELL. I would ask for a rollcall vote on subsection (b), and as far as section (c) goes, I would ask my colleague from Alaska whether he has any objection.

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

The PRESIDING OFFICER. On whose time?

Mr. PELL. To be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PELL. 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. PELL. This procedure would be acceptable, and I am perfectly willing to have either a voice or a division vote or sections (a), (c), and (d).

Mr. BUCKLEY. Mr. President, before asking for a division, I ask unanimous consent to have printed in the RECORD a statement prepared by the Senator from Arizona (Mr. GOLDWATER) in support of this amendment.

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

STATEMENT BY SENATOR GOLDWATER

PARENTAL AND STUDENT RIGHTS

Mr. President, it gives me great pleasure to join with my good friend from New York, Senator Buckley, and others of my colleagues, in sponsoring an amendment to protect the right of privacy of school children and their parents. I have a particular interest in the amendment because it would legislate in the education field certain, basic safeguards for the right of personal privacy which I have been trying to get enacted for over a decade.

Subsection (a) of our amendment would provide statutory confirmation of the right of parents to see the contents of their own children's school records. Parents would also be guaranteed a right to challenge information in their child's school records and to correct any inaccurate or misleading data. This is identical to the safeguards standards which are included in S. 2810, a bill which I have introduced regarding the privacy and accuracy of personal data systems of all types.

Subsection (b) of our amendment would create a system of parental consent which would give parents a right of control over "personality" tests given to their children in the public schools. This provision is identical to legislation which I first introduced thirteen years ago, in 1961. In the early '60's, I was concerned that the new Federal authorities for direct funding of educational programs, which were just getting underway, would allow Federal monies to be spent for testing programs in which school children could be used as involuntary "guinea pigs" in experimental programs unrelated to the true purposes of education.

Needless to say, Mr. President, I was shocked to learn of the existence of surveys being conducted in our public schools which probed the most intimate personal aspects of the lives of school children and their relationships with their parents and families. I was especially surprised to discover one survey, financed with Federal funds, which consisted of some two hundred questions being asked of Junior High School students ranging in age from 11 to 14 years.

These quetsions inquired of the student:

"Is your father fairer about punishment than your mother?

Did you "steal more than $2 from your parents?"

Did you "fight physically and bodily with an adult relative?"

The student was also asked to reveal to the school whether he or she had "gone further

than petting with a person of the opposite sex."

In addition, the student was asked to rate his or her own family. The student was required to give a yes or no answer, for example, to these questions:

"I wish my family had nearly as much money as the families of many of my classmates."

"Are the children in your family punished more severely than in other families?"

"I wish my father and mother were better educated, like the parents of many of my classmates."

Mr. President, these questions were just a few of the two hundred questions that were actually being asked of American school children in a questionnaire financed in part by Federal funds granted by the Department of HEW.

Yet, I was told it wasn't done. I was told it couldn't be done. On the one hand, I was informed that such questions were not permitted under the administrative interpretations of the Department. On the other, I was advised that leading "experts" believed that my amendment "would greatly inhibit much-needed educational research. . . ."

So there you have it, Mr. President. The agency told me that my amendment was not needed because it would duplicate their own policy interpretations; but that if it was put into law, it would impair research that the bureaucrats wanted to allow to go on. I never could make sense out of this, but the Department's view prevailed and the Senate rejected my amendment.

Mr. President, perhaps the climate of this country has caught up with the wishes of ordinary parents and ordinary school children. Perhaps the concept of the personal freedom of the average citizen and his family has grown to the point where Congress is willing to be the guardian of his privacy against prying and inquisitive minions of the bureaucracy.

Mr. President, our public schools have no compelling need for psychological and personality tests which pry into the private lives of a captive audience of school children. Even if the child is not specifically told that he is required to answer these tests, it would be a rare and unusual child who would dare to defy the authority of a school by refusing on his or her own initiative.

Questions of this kind are an intolerable invasion of the right of privacy. They exemplify the ever-watchful eye of "Big Brother" spying into the most personal thoughts and habits of American families, and doing it, by abusing the trust of innocent school children.

Moreover, Mr. President, these types of questions are calculated to raise doubts, suspicions, and hostility in the minds of our children toward their own parents and a skepticism about the basic moral principles of our society. In this sense, these tests could be used by governmental planners for purposes of influencing or conditioning the social and political thinking of our youth, and through them, American society.

Mr. President, the time to preserve what is left of our personal privacy is now. Sufficient thought and action must be given to the problem while there is still some measure of personal liberty left to cherish. It is for us today to determine just how much freedom shall remain for the individual in the future. I implore my colleagues to vote for the Parental and Student Rights Amendment.

Mr. President, I include the junior high school student survey which was conducted in the early 1960's, in part with Federal grants:

JUNIOR HIGH SCHOOL SURVEY SUPPORTED BY GRANTS FROM THE U.S. PUBLIC HEALTH SERVICE AND THE UNIVERSITY OF KANSAS (1961)

FACTS ABOUT YOURSELF

Please answer all questions completely.

5. How old are you? (Check only one answer.)
(1)—11 years or younger.
(2)—12 years old.
(3)—13 years old.
(4)—14 years old.
(5)—15 years old.
(6)—16 years old or older.

6. Sex:
(1)—Boy.
(2)—Girl.

7. What grade in school are you now in?
(7)—Seventh grade.
(8)—Eighth grade.
(9)—Ninth grade.

8. Are you (check only one answer)—
(1)—An only child?
(2)—The youngest child in your family?
(3)—The oldest child in your family?
(4)—Neither the youngest nor the oldest child?

9. How many living brothers and sisters do you have?
(0)—None.
(1)—One.
(2)—Two.
(3)—Three.
(4)—Four.
(5)—Five or more.

10. What was the highest grade your father finished in school?
(1) — Eighth grade or less.
(2) — Some high school.
(3) — Finished high school.

PART I. RULES WE ALL BREAK

The questions in part I are about more personal things concerning you and your friends. Do you put your name or address on this questionnaire. We want to assure *you* that your answers will be kept completely *secret* and *confidential*. No one will ever know how you answered any of the following questions. We encourage you to be completely honest with your answers.

For the purpose of this study, we are interested in the things you have done during the *last 2 years only*.

11. Damage or disfigure furniture in schools, such as chairs, tables, and desks:
(1) — No.
(2) — Yes.

12. Steal goods from warehouses or storagehouses:
(1) — No.
(2) — Yes.

13. Damage cemetery property:
(2) — Yes.
(1) — No.

14. Damage or destroy public signs or road markers:
(1) — No.
(2) — Yes.

15. Steal automobile parts such as hubcaps, mirrors, ornaments, etc.
(1) — No.
(2) — Yes.

16. Kicked, bit or scratched a student of about your own age:
(3) — Three or more times.
(2) — Twice.
(1) — Once.
(0) — Never.

17. Get out of going to school by writing a fake excuse for yourself:
(2) — Yes.
(1) — No.

18. Steal or siphon gasoline from cars, trucks, or other kinds of vehicle equipment:
(2) — Yes.
(1) — No.

19. Damage or destroy mailboxes:
(1) — No.
(2) — Yes.

20. Steal more than $2 (money) from your parents:
(2) — Yes.
(1) — No.

21. Puncture or cut automobile tires, bike tires:
(1) — No.
(2) — Yes.

22. Steal materials or equipment from buildings that are being constructed:
(2) — Yes.
(1) — No.

23. Kicked, scratched or bit an adult relative (mother, father, guardian, or uncle, for example):
(0) — Never.
(1) — Once.
(2) — Twice.
(3) — Three or more times.

24. Damage or destroy toys or games that belonged to persons your own age:
(1)—No.
(2)—Yes.

25. Steal from buildings that are being torn down:
(1)—No.
(2)—Yes.

26. Tied a person up with rope, string, or wire to a tree or similar object and then left them that way:
(0)—Never.
(1)—Alone.
(2)—With one or more others.
(3)—Both alone and with others.

27. Steal things from your parents that were worth more than $2:
(2)—Yes.
(1)—No.

28. Teased severely, hurt or killed a cat or dog:
(1)—Alone.
(2)—With one or more others.
(0)—Never.
(3)—Both alone and with others.

29. Scratch the paint on someone's car on purpose:
(1)—No.
(2)—Yes.

30. Steal more than $2 (money) from your brothers or sisters:
(2)—Yes.
(1)—No.

31. Skip school with one or more friends or classmates:
(2)—Yes.
(1)—No.

32. Steal articles of clothing worth more than $5 from clothing or department stores:
(1)—No.
(2)—Yes.

33. Become so mad or angry that you threw things at or hit a teacher or principal or other school official:
(3)—Both alone and with others.
(0)—Never.
(1)—Alone.
(2)—With one or more others.

34. Steal a bicycle from anyplace other than a place that sells bicycles (like from neighborhoods, school grounds, or public places where bikes may be parked):
(2)—Yes.
(1)—No.

35. Remove spark plugs or wires from cars:
(1)—No.
(2)—Yes.

36. Steal a car for joyride without the owner's knowledge or permission:
(2)—Yes.
(1)—No.

37. Break or crack windows in automobiles:
(1)—No.
(2)—Yes.

38. Skip school with three or more friends or classmates:
(2)—Yes.
(1)—No.

39. Steal articles of clothing worth less than $5 from clothing store or department store:

(1)—No.
(2)—Yes.
40. Damage flowerbeds or gardens on purpose:
(2)—Yes.
(1)—No.
41. Steal gasoline from gas stations, farms, or other private places:
(1)—No.
(2)—Yes.
42. Taken part in fights where knives or switchblades were used:
(1)—No.
(2)—Yes
43. Steal a bicycle from a store that sells or repairs bikes:
(2) — Yes.
(1) — No.
44. Skip out of certain class periods, but not the whole day, without permission (like gym class or student assemblies):
(2) — Yes.
(1) — No.
45. Fought physically and bodily with an adult relative such as mother, father, or aunt (that is, fought in anger or fear, not in sheer fun):
(0) — Never.
(1) — Alone.
(3) — Both alone and with others.
(2) — With one or more others.
46. Steal things (not money) from your brothers or sisters that were worth more than $2:
(2) — Yes.
(1) — No.
47. Get out of school early by pretending to your teacher that you were sick or not feeling well:
(2) — Yes.
(1) — No.
48. Steal anything because an adult asked you to steal it:
(1) — No.
(2) — Yes.
49. Beat up a person much older than yourself in a fight:
(0) — Never.
(2) — With one or more others.
(1) — Alone.
(3) — Both alone and with others.
50. Steal more than $2 (money) from your friends or classmates:
(2) — Yes.
(1) — No.
51. Damage parking meters on purpose (break glass, jam slot):
(1) — No.
(2) — Yes.
52 Steal jewelry worth more than $2 from jewelry, department, dime or drug stores:
(2) — Yes.
(1) — No.
53. Skipped school or stayed out of school without a genuine excuse for more than 1 day:
(1) — No.
(2) — Yes.
54. Damage or break coin machines of any kind on purpose:
(1) — No.
(2) — Yes.
55. Damage or ruin personal clothing of classmates or other schoolchildren:
(1) — No.
(2) — Yes.
56. Get out of going to school by pretending to your parents that you were sick:
(2) — Yes.
(1) — No.
57. Steal more than $2 (money) from candy, coke, or cigarette machines:
(2) — Yes.
(1) — No.
58. Leave home with intention of going to school, but just never making it to school (without a good reason):
(1) — No.
(2) — Yes.
59. Injured or hurt someone not in your family, but arranged matters so that someone else got the blame:
(1) — Alone.
(2) — With one or more others.
(3) — Both alone and with others.
(0) — Never.
60. Steal more than $2 from school:
(2) — Yes.
(1) — No.
61. Leave school early without permission:
(2) — Yes.
(1) — No.
62. Try to "get by" without paying the bill in restaurants, cafes, soda fountains:
(1) — No.
(2) — Yes.
63. Skip school by yourself without good excuse from parents:
(2) — Yes.
(1) — No.
64. Taken part in a gang fight against another gang or against one or two other persons:
(1) — Once.
(2) — Twice.
(3) — Three or more times.
(0) — Never.
65. Steal things from inside of parked cars:
(1) — No.
(2) — Yes.
66. Break windows on purpose in vacant homes, garages, or other buildings:
(1) — No.
(2) — Yes.
67. Damage or destroy anything because someone "dared" you to do it:
(1) — No.
(2) — Yes.
68. Steal things worth more than $2 from foodstores:
(2)—Yes.
(1)—No.
69. Damage school property other than chairs, tables, and desks:
(1)—No.
(2)—Yes.
70. Curse or use obscene language in speaking to a teacher or other school official:
(2)—Yes.
(1)—No.
71. Steal anything and then sell it to an older teenager or adult:
(1)—No.
(2)—Yes.
72. Damage or destroy anything that belonged to another person, in order to "get even" with that person:
(1)—No.
(2)—Yes.
73. Steal money from public telephones or parking meters:
(1)—No.
(2)—Yes.
74. Hit or strike a teacher, coach, or other school official:
(2)—Yes.
(1)—No.
75. Take part in fights where BB guns, airpellet guns, or slingshots were used:
(1)—No.
(2)—Yes.
76. Tease or embarrass someone by stripping or taking his or her clothes off?
(2)—Yes.
(1)—No.
77. Damage or destroy anything "just for the heck of it":
(1)—No.
(2)—Yes.
78. Steal less than $2 (money) from candy, coke, or cigarette machines:
(2)—Yes.
(1)—No.

PART II. ALONE OR WITH OTHERS

Instructions.—We are interested in how certain rules are broken. Some people break rules only when they are with others, some break rules only when they are alone, and other persons. For each item, *check the box that applies to you.* If it does not apply to to you, leave that item blank.

In the last 2 years, did you:

	Only when alone (1)	Only when with other persons (2)	Both alone and with other persons (3)
11. Steal hubcaps, mirrors, etc. from cars			
12. Puncture or cut tires, convertible tops, scratch the paint on cars			
13. Tie a person up with rope or string and left them that way			
14. Tease, hurt, kill harmless animals			
15. Steal clothing worth less than $5			
16. Steal a car for a joyride			
17. Beat up a person much older than you			
18. Damage or break coin machines			
19. "Get by" without paying the bill in cafes, soda shops, movies, other events			
20. Damage school property on purpose			
21. Steal things in order to sell them			
22. Damage or destroy road markers, signs, mailboxes, street lights			
23. Steal anything worth more than $5 but less than $50			
24. Beat up an adult for his money			
25. Steal anything worth $50 or more			
26. Break into and enter a locked store, gas station, or other buildings			

PART III. YOUR SOCIAL ACTIVITIES

Instructions.—In this section are statements about what some boys and girls do most of the time in their time after school and on weekends. Read each statement and decide whether it fits you or does not fit you as you are right now or during this year. If the statement is true of you, that is, if you would say *"Yes"* to the statement, put a No. 1 next to it. If the statement is not true of you, that is, if you would say *"No"* to the statement, put a No. 2 next to it.

Be sure to read and to answer each statement with a 1 or a 2. If it fits you fairly well but not exactly, put a 1.

Answers.—Put 1 for a *"Yes."* Put 2 for a *"No."*

27. I spend a lot of time with one special friend who is not a member of my family.—
28. I stick pretty much to myself.—
29. I never disobey my parents.—
30. I spend a lot of time with one friend at a time, although I have several close friends.—
31. I spend a lot of time with two or three friends. The group of us play together.—
32. I do some talking about or listening to talk about sexual matters when I am with my friends.—
33. I play with a large group of four or more children in or near my home neighborhood.—
34. I mostly play alone or with my brothers or sisters.—
35. I belong to a group that is often chased after by some adults such as storekeepers, police, or homeowners.—
36. I never catch cold in the winter or spring.—
37. I play with friends my parents do not like.—
38. I never tell lies.
39. I often share secrets and ideas or hopes with my friends.—
40. I have taken part in kissing and necking while on a date or while alone with a person of the opposite sex.—
41. Most of my friends are my own age or between 11 and 14.—
42. I have never spent a night in a detention home or jail.—

43. Most of my friends are 2 or 3 years older than I am.—

44. I have petted with a person of the opposite sex while on dates or when we were alone.—

45. Most other boys and girls like me.

46. I try to get other boys and girls to like me.—

47. I have gone further than petting with a person of the opposite sex.—

48. I care a great deal about what other boys (or girls) think of me.—

49. I want to be different somehow from others in my own age group.

50. I have answered ads in comic books or other magazines which advertised pictures, photographs, or stories about sexual matters.—

51. I like most of all to spend my free time alone.—

52. Some of my friends do not like the way I act.—

PART IV. LEISURE ACTIVITY AND FAMILY LIFE

Instructions.—The statements in this section are like those in the section you just completed. But these have to do with *how* you spend your spare time and how you are treated by your parents.

Read each statement. If it applies to you as you are right now or have been during this year, mark the statement with a 1 for a "*Yes*." If it does not apply to you, mark it with a 2 for a "*No*."

The statements.—Write 1 for a *Yes*, and 2 for a *No*.

53. Do you spend more of your free time with your friends than with your family?—

54. Do you go to dances more than once a month?—

55. Do you go out with your mother or father more than once a month? (Movies, dining, social events, etc.) —

56. Is your father fairer about punishment than your mother?—

57. Do you study schoolwork at home less than five times a week?—

58. Is your mother fairer about punishment than your father?—

59. Do you work at a part-time job once or more a week?—

60. When you do something extra, do your parents reward you with praise or special privileges or with money?—

61. Do you help around the house doing chores almost every day?—

62. When you have done something wrong or "bad" do your parents try to reason with you?—

63. Do you usually attend at least one movie a week?—

64. Are some children in your family punished more severely than others?—

65. Do you spend time after supper at a local hangout (drugstore, soda shop, bowling alley, etc.) at least two times a month?—

66. Do your parents get all the facts before they punish you?—

67. Do you usually have one or two dates a month or more?—

68. Are the children in your family punished more severely than in other families?—

69. Do you think that your friends have better ideas than your parents do about what a young person should do in his spare time?—

70. Do you usually spend three or more evenings a week away from home?—

71. Are the children in your family ever punished when they do not need it?—

72. Does your father punish you when your mother does not think you should be punished?—

73. Would you like to spend more of your free time with your friends than your parents now allow?—

74. Does your mother punish you when your father does not think you should be punished?—

75. Do you feel your mother punishes you fairly?—

76. Do you feel your father punishes you fairly?—

77. Below is a line that stands for your *grades* or *marks* in school this year, thinking of them lumped together. Make only one check (√) where you best fit.

"A" or best possible, 100.

"B" or high, 90.

"C" or average, 80.

"D" or below average, 70.

"F" or failing, 60.

PART V. GUESSING CAUSES

Instructions.—Reprinted below is a news story that appeared not long ago in the Kansas City Star. After you read the story carefully, pretend that you are talking the story over with some school friends. None of you knew the boy in the story directly or indirectly, but you are all *guessing* about why he did what the police claim he did. Then the questions that follow the story, indicating what your guesses would probably be. (Names and places in the story have been added or changed.)

The story

The Kansas City Police last night arrested Walter Stevens, age 13, who was caught by Police Sergeant Daniels. Daniels charged the boy with stealing coins from the coin machine and washing machines in the Whirlaway Laundromat. The policeman said he saw Stevens pry open the coin slots on the machines and remove quarters and dimes. He had $15 in coins in his pocket when arrested.

The boy's mother, Mrs. William Stevens, said she thought her son was at work at his part-time job in the nearby Roll Em Bowling Alley. He had worked there 2 nights a week for 2 months, she said, and had been earning about 60 cents an hour. The boy's father, William Stevens, 48, is a clerk in the central post office. He works the night shift and was away at the time of the arrest.

Walter Stevens is a seventh grade student at Wiltmore Junior High School. The Wiltmore principal, Mr. John Savage, reported that young Stevens had been doing very poorly in school for several months, and said that he had been expelled once for breaking school property and had often skipped school.

When interviewed, young Stevens told this reporter that his father had to work such long hours that he was very seldom home and that his mother was often ill and had to remain in bed. He claimed, "Nobody at school understands me or tries to help me."

Instructions.—Now check the statements below that you think provide the best possible explanations for why Walter Stevens did what he did. Remember that these are guesses and that all of them may be true or all may be false.

Put a 1 if you agree, and a 2 if you disagree.

11. Walter wanted to get more money than he could earn at his job in order to help his poor parents.—

12. Walter was lonely and unhappy at school, where no one understood him.

13. Walter was raised by bad standards and had not been taught properly what was right and wrong.

14. Walter had everything against him. He was bound to get into trouble when everything at school and at home went wrong.

15. Walter was fired from his job at the bowling alley but didn't want to worry his mother, who needed the money he had been giving her.—

16. A gang of young boys managed by a professional thief had organized stealing from laundromats and other service stores, and Walter had fallen in with this gang through his acquaintances at the bowling alley.—

17. Walter liked to steal and had probably been stealing one thing and another for several years before he was caught.—

18. Walter was sick, mentally or physically, but no one at school or at home understood this and helped him.—

19. Other children at school had been selfish and unkind in the past and had kept Walter from building any friendships. His loneliness led him to steal.—

20. Older boys in a gang really broke the coin machines and did the stealing, but they left Walter, who thought they were his friends, when they heard the police car and dumped the coins into his pocket.—

21. Walter's parents had never taken him to Sunday School, where he could have learned what is right and wrong.—

22. Walter wanted to find a way to get decent clothes and money for an allowance. His parents could not give him these things, but he needed them to try to make friends at school.—

PART VI. WISHES

Below are listed some wishes that have been expressed by boys and girls in other junior high schools. Read each wish carefully. Then check the wish with an X if you feel it is a wish that you have made or thought about any time during this year. If the wish does not fit you, leave it blank.

Check (X) here

23. I wish I could buy my lunch in the cafeteria more often.—

24. I wish I could afford to go to the movies as often as many of the others in my school.—

25. I wish my family could take me on vacation trips like those that many of the persons in my school have enjoyed.—

26. I wish I were able to dress as well as most or many of the persons in my school.—

27. Many of the students in my class will get to go to college some day, but I probably won't get the chance.—

28. I wish I were physically better built or more attractive.—

29. I wish I were as attractive to the opposite sex as many of my schoolmates.—

30. I wish I could join the Boy or Girl Scouts like many of my classmates.—

31. I wish my parents were more understanding, like the mothers and fathers of many of my classmates.—

32. I wish my family had nearly as much money as the families of many of my classmates.—

33. I might like to be an engineer or a scientist when I grow up, but I probably will not get the chance.—

34. I won't have as good opportunities when I grow up as many of my classmates.—

35. I wish my parents were not so strict with me, and more like the parents of many of my classmates in this way.—

36. I wish my parents were a little more strict with me, like the parents of many of my classmates.—

37. I wish my father and mother were better educated, like the parents of many of my classmates.—

38. I wish my father had as good a job as many of my classmate's fathers.—

39. I wish I could go on dates the way many of my classmates do.—

Now write down one wish that you have felt strongly about this past year.

PART VII. SOCIAL VALUES AND FEELINGS

Please answer each question by making a check in the space next to agree or disagree. There are no right or wrong answers. Just report your opinion.

40. Watching television programs such as "Sugarfoot" and the "Donna Reed Show" and "Dobie Gillis" is boring or dull and a waste of time:

(0)—Agree.

(1)—Disagree.

41. Having a coke in a drugstore with other boys and girls after school or on a week end is dull and a waste of time:

(0)—Agree.
(1)—Disagree.
42. Watching school athletic contests is boring and a waste of time:
(0)—Agree.
(1)—Disagree.
43. Watching school basketball or football games is fun:
(1)—Agree.
(0)—Disagree.
44. Television programs such as "Cheyenne" and "National Velvet" and "Lassie" are fun to watch:
(1)—Agree.
(2)—Disagree.
45. The people who get the best jobs when they grow up are usually the people who have friends who do favors for them, rather than the people who are best trained or educated:
(0)—Agree.
(1)—Disagree.
46. Teachers give their praise and recognition to the students who find a way to become their special favorites, whether these students are good workers in school or not:
(0)—Agree.
(1)—Disagree.
47. Most teachers do not really like to help students:
(0)—Agree.
(1)—Disagree.
48. Teachers give their praise and recognition to the students who work the hardest and learn the most:
(1)—Agree.
(0)—Disagree.
49. The popular children in any school are the ones who have earned the respect and admiration of other students:
(1)—Agree.
(0)—Disagree.
50. Teachers have such different ideas about what you are supposed to learn in school that it is impossible to get a clear idea of what is best:
(0)—Agree.
(1)—Disagree.
51. People have such different ideas about what is right and wrong that you can't ever get clear ideas on this question:
(0)—Agree.
(1)—Disagree.
52. Once some teachers decide that a certain boy or girl is "bad" or a "troublemaker," there is nothing you can do to change their minds:
(0)—Agree.
(1)—Disagree.
53. Teachers can usually tell quite well who is learning a lesson and who is not:
(1)—Agree.
(0)—Disagree.
54. Most parents have very clear ideas about how their children should act on dates and about matters like kissing:
(1)—Agree.
(0)—Disagree.
55. People in any town have a lot to say about how their town government is run:
(1)—Agree.
(0)—Disagree.
56. The children and adults in any town can help the police do a good job of enforcing the law:
(1)—Agree.
(0)—Disagree.
57. Students in junior high schools never have any say or influence in what they are taught in their classes.
(0)—Agree.
(1)—Disagree.
58. So many other people voted in the national election last fall that it didn't matter to me whether my parents voted or not.
(0)—Agree.
(1)—Disagree.
59. If a group of children decide they do not like you, there is nothing much you can do to change their minds:
(0)—Agree.
(1)—Disagree.

PART VIII. WAYS OF DISCIPLINING YOUNG PEOPLE

Below are various ways by which many parents discipline children and young people. *Please answer each question by checking the choice which best tells how your parents have disciplined you during the last 2 years.* Answer each question for your mother and your father separately.

Do your parents take away your allowance?
61. Father:
(0)—Never.
(1)—Very seldom.
(2)—Sometimes.
(3)—Frequently.
62. Mother:
(0)—Never.
(1)—Very seldom.
(2)—Sometimes.
(3)—Frequently.
Do your parents refuse to speak to you?
63. Mother:
(1)—Very seldom.
(2)—Sometimes.
(3)—Frequently.
(0)—Never.
64. Father:
(2)—Sometimes.
(0)—Never.
(3)—Frequently.
(1)—Very seldom.
Have your parents slapped you or given you spankings?
65. Mother:
(3)—Frequently.
(2)—Sometimes.
(0)—Never.
(1)—Very seldom.
66. Father:
(2)—Sometimes.
(3)—Frequently.
(1)—Very seldom.
(0)—Never.
Do your parents forbid you to do something that you were especially planning on doing?
67. Father:
(3)—Frequently.
(2)—Sometimes.
(0)—Never.
(1)—Very seldom.
68. Mother:
(3)—Frequently.
(2)—Sometimes.
(0)—Never.
(1)—Very seldom.
Do your parents tell you to leave home, or to find a new home if you can't be better?
69. Mother:
(1)—Very seldom.
(2)—Sometimes.
(0)—Never.
(3)—Frequently.
70. Father:
(2)—Sometimes.
(0)—Never.
(3)—Frequently.
(1)—Very seldom.
Do your parents spank you with a stick, belt, hairbrush, or things other than their hands?
71. Mother:
(1)—Very seldom.
(0)—Never.
(3)—Frequently.
(2)—Sometimes.
72. Father:
(0)—Never.
(3)—Frequently.
(2)—Sometimes.
(1)—Very seldom.
Do your parents take away some special privileges?
73. Mother:
(2)—Sometimes.
(3)—Frequently.
(0)—Never.
(1)—Very seldom.
74. Father:
(2)—Sometimes.
(3)—Frequently.
(0)—Never.
(1)—Very seldom.
Do your parents say they don't love you or warn you that they will stop loving you?
75. Father:
(3)—Frequently.
(2)—Sometimes.
(0)—Never.
(1)—Very seldom.
76. Mother:
(2)—Sometimes.
(3)—Frequently.
(1)—Very seldom.
(0)—Never.
Have your parents beat you up (using their fists, etc.)?
77. Father:
(2)—Sometimes.
(0)—Never.
(3)—Frequently.
(1)—Very seldom.
78. Mother:
(3)—Frequently.
(2)—Sometimes.
(1)—Very seldom.
(0)—Never.

Mr. PELL. Mr. President, I ask for the yeas and nays on section (b).

The yeas and nays were ordered.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. STEVENS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENS. Is this amendment still open to amendment?

The PRESIDING OFFICER. Is the amendment open to amendment?

Mr. STEVENS. Yes.

The PRESIDING OFFICER. The Senator from New York has requested the division of his amendment, and section (b) will be voted on separately. All the rest will be voted on by voice vote first.

Mr. STEVENS. Is it in order to submit an amendment to delete subsection (c) at this time.

The PRESIDING OFFICER. That would be in order now.

Mr. STEVENS. I send such an amendment to the desk.

The PRESIDING OFFICER. Have the Senator from New York and the Senator from Rhode Island yielded back their time?

Mr. PELL. My recollection is not acute on that. What does the RECORD show?

The PRESIDING OFFICER. Does the Senator yield back his time?

Mr. PELL. I yield it back.

Mr. BUCKLEY. I yield back the remainder of my time.

The PRESIDING OFFICER. The clerk will state the amendment of the Senator from Alaska.

The assistant legislative clerk read as follows:

On page 4, line 14, delete subsection (c).

Mr. STEVENS. Mr. President, I again applaud what the Senator from New York is trying to do, but I think any proposal that has to have so many amendments on the floor to try to perfect the original intent is a measure that should not be passed.

Subsection (a) is a good subsection. Subsection (d), as I read it, on protection of personal data, gives the Secretary and the schools the right to protect personal data under any regulations that are nec-

essary to control the use, dissemination, or protection of such data.

Subsection (c) is not necessary, and what is more, again I point out that it would harm the students. It would prevent those with legitimate interests from going to a school and getting the information that is necessary. It would prevent the Senator from New York from deciding to recommend a student for some national award without going and telling him, if he was over 18. One would have to have his consent to get any information from his record.

It would prevent a probation officer—notwithstanding the argument of my good friend from Delaware, I still have faith in the probation system, and I think the probation officer ought to be able to go in and get the information necessary not only when a student is subject to a juvenile proceeding, but in order to continue the work that he has to do during the period before a juvenile is sentenced. Many times they have to keep up with what they are doing. It is a probation officer's duty to find out what he is doing in school, or whether he is attending school. This would even prevent a probation officer from getting attendance data. I cannot understand us putting such a cloak of secrecy around a student.

On the other hand, subsection (c), as I understand it, gives the school authorities complete authority to adopt appropriate regulations. That would be subject to the Administrative Procedures Act. Everyone concerned would be involved in a hearing.

This has not been the subject of hearings by committee, and I do not think it is the kind of thing that ought to be passed on the floor of the Senate without further consideration. Therefore, to save time, I ask the deletion of that section.

I yield back the remainder of my time.

Mr. PELL. Mr. President, I think there is merit in what the Senator from Alaska says, and I would vote the same way. I yield back the remainder of my time.

Mr. BUCKLEY. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. Does the Senator from Rhode Island yield back his time?

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

The PRESIDING OFFICER (Mr. NUNN). All time has now been yielded back——

Mr. ERVIN. Mr. President, a parliamentary inquiry. What are we voting on?

The PRESIDING OFFICER. On the amendment of the Senator from Alaska (Mr. STEVENS) to strike section (c).

Mr. BUCKLEY. Mr. President, I do not believe I yielded back my time yet.

The PRESIDING OFFICER. On the Stevens amendment, the Senator from New York does not have any time.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senator from New York (Mr. BUCKLEY) may have 5 minutes to respond. I think that is only fair.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Alaska? The Chair hears none, and it is so ordered.

Mr. BUCKLEY. Mr. President, if the distinguished Senator from North Carolina (Mr. ERVIN) wants to address himself to that point, I yield to him to do so.

Mr. President, I would merely say that the area addressed by the Senator from Alaska (Mr. STEVENS) is but one area. Probation reports have also been leaked to the FBI, and other files as well. This is an area of extreme sensitivity. I do not believe that, absent appropriate court orders, this information should be made available.

Mr. ERVIN. Mr. President, section (d), as I understand it, provides that—

> The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary . . .

I do not see any objection to protecting the privacy of children. I do not see that they should be made guinea pigs by social scientists. That is why I support the bill.

Mr. STEVENS. Mr. President, with all due respect to the distinguished Senator from North Carolina, my amendment is to delete section (c), not (d).

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

The PRESIDING OFFICER. All time on this amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator from Alaska (Mr. STEVENS) to strike section (c).

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 Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Utah (Mr. MOSS), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Alabama (Mr. SPARKMAN), the Senator from Texas (Mr. BENTSEN), and the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), the Senator from Kentucky (Mr. COOK), the Senator from Florida (Mr. GURNEY), the Senator from New York (Mr. JAVITS), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Nebraska (Mr. CURTIS), and the Senator from Arizona (Mr. GOLDWATER) are absent on official business.

I further announce that, if present and voting, the Senator from Nebraska (Mr. CURTIS) would vote "nay."

The result was announced—yeas 35, nays 49, as follows:

[No. 194 Leg.]

YEAS—35

Aiken	Haskell	Nunn
Bayh	Hathaway	Packwood
Bible	Huddleston	Pell
Byrd, Robert C.	Jackson	Proxmire
Cannon	Kennedy	Ribicoff
Clark	Magnuson	Stennis
Cotton	McGee	Stevens
Dominick	McGovern	Stevenson
Eagleton	McIntyre	Taft
Griffin	Metcalf	Talmadge
Hart	Metzenbaum	Williams
Hartke	Nelson	

NAYS—49

Abourezk	Dole	McClure
Allen	Domenici	Mondale
Baker	Eastland	Montoya
Bartlett	Ervin	Muskie
Beall	Fannin	Pastore
Bellmon	Fong	Pearson
Biden	Hansen	Roth
Brock	Hatfield	Schweiker
Brooke	Helms	Scott, Hugh
Buckley	Hruska	Scott, William L.
Burdick	Hughes	Stafford
Byrd, Harry F., Jr.	Humphrey	Thurmond
Case	Johnston	Tower
Chiles	Long	Tunney
Church	Mansfield	Weicker
Cranston	Mathias	Young
	McClellan	

NOT VOTING—16

Bennett	Gravel	Percy
Bentsen	Gurney	Randolph
Cook	Hollings	Sparkman
Curtis	Inouye	Symington
Fulbright	Javits	
Goldwater	Moss	

So Mr. STEVENS' amendment was rejected.

Mr. CRANSTON. Mr. President, the Senator from New York (Mr. BUCKLEY) has proposed an amendment regarding the confidentiality of student records and requiring parental consent for certain school activities that causes me some concern.

The first portion of the amendment seeks to guarantee the right of access and review of a students school records, by parents and by students—if 18 years of age or over—and prevent the disclosure of such records to most third parties without parental or student consent.

I would wholeheartedly support this portion of the Senator's amendment. It seems to me that it seeks to preserve a right to confidentiality of records of student academic and personal performance that should be guaranteed. I would point out, however, that in my State of California, this right of access and review is presently guaranteed under the California Public Records Act.

The section of the amendment that deals with "parental consent," however, causes me serious concern.

First, I question the advisability of the Congress enacting legislation that, in effect, would thwart a State's compulsory attendance laws. Under this amendment, a parent may refuse to have his child attend a class if, after notification, the parent finds the content of the course or activity to be objectionable. While I do not object to "parental consent," I do question Federal interference in what I believe to be a question that should be decided by locally elected school officials, rather than the Federal Government.

Second, subsection (b)(2) of the amendment would require parental consent for students—and I quote:

To participate in any project, program, or course, the primary purpose or principal effect of which is to affect or alter the personal behavior or personal values of a student, or to explore and develop teaching techniques or courses primarily intended to affect such behavior and values.

Mr. President, this language is breathtaking in its sweeping generalities. How do you determine in advance, and provide notification to the parent, of classroom activities that might bear on the values of a student? A course in American history, for example, that discusses contemporary American ethics in the light of Watergate could be construed as tending to "affect the personal values" of a student. Or, how do you go about discouraging violent or overly aggressive behavior without tending to "alter the personal behavior" of a student?

These are serious questions, Mr. President, that we cannot take lightly. Because the penalty for even accidental transgression of these Federal directives is the total loss of Federal funding to any educational institution—public or private, preschool through postsecondary—that is found "out of compliance.

Finally, Mr. President, the amendment directs the Secretary of Health, Education, and Welfare with the responsibility for—and again, I quote:

Investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints.

Frankly, I question the wisdom of charging a Federal agency with the power to probe the questions that would have to be probed in order to investigate complaints of alleged violations of the act. Such questions could include:

Was the purpose of the course to affect the values of the child, or were they affected accidentally, or at all?

Even if the purpose of the course was not to alter the values of the child, did it have the effect or altering the values of the child?

What were the values of the child before they were "altered"?

Mr. President, I believe my point is obvious: This section of the Senator's amendment brings the Federal Government and its agencies dangerously close to deciding issues of academic and personal freedom that should be in the hands of local and State school officials, and the people who elected them, not the Federal Government.

I do not believe the Senate of the United States should take any action that could be legitimately construed as having the primary effect of circumventing local control of curriculum and school practices, discouraging innovation, or stifling educational reform.

For these reasons, and because I support the major premise of the Senator's amendment, I would hope he would consider deleting the section of the amendment to which I have referred.

The PRESIDING OFFICER. The question now occurs on the first part of the amendment of the Senator from New York.

Mr. PELL. The vote is now on section (b), is it not? What is the parliamentary situation?

The PRESIDING OFFICER. The question now occurs on all of the amendment except section (b).

The amendment was agreed to.

The PRESIDING OFFICER. The question now occurs on section (b) of the amendment. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

Mr. MANSFIELD. Mr. President, what are we voting on?

The PRESIDING OFFICER. On section (b) of the Buckley amendment.

The second assistant legislative clerk proceeded to call the roll.

Mr. ERVIN. Mr. President, precisely what is this?

The PRESIDING OFFICER. The roll-call is now in progress.

Mr. HUMPHREY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The question is on the adoption of section (b) of the Buckley amendment.

Mr. HUMPHREY. Up and down on section (b)?

The PRESIDING OFFICER. That is correct.

The question is on the adoption of section (b) of the Buckley amendment.

The clerk will call the roll.

The second assistant legislative clerk resumed and concluded the call of the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Utah (Mr. MOSS), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), the Senator from Kentucky (Mr. COOK), the Senator from Florida (Mr. GURNEY), the Senator from New York (Mr. JAVITS), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Nebraska (Mr. CURTIS) and the Senator from Arizona (Mr. GOLDWATER) are absent on official business.

I further announce that, if present and voting, the Senator from Nebraska (Mr. CURTIS) would vote "yea."

The result was announced—yeas 40, nays 43, as follows:

[No. 195 Leg.]

YEAS—40

Baker	Ervin	Nelson
Bartlett	Fannin	Pastore
Beall	Fong	Pearson
Bellmon	Griffin	Proxmire
Brock	Hansen	Roth
Buckley	Helms	Scott, Hugh
Byrd, Harry F., Jr.	Hruska	Scott, William L.
Byrd, Robert C.	Huddleston	Stennis
Chiles	Johnston	Taft
Church	Mansfield	Thurmond
Dole	McClellan	Tower
Domenici	McClure	Weicker
Eastland	Metcalf	Young
	Montoya	

NAYS—43

Abourezk	Hart	Metzenbaum
Aiken	Hartke	Mondale
Allen	Haskell	Muskie
Bayh	Hatfield	Nunn
Bible	Hathaway	Pell
Biden	Hughes	Ribicoff
Brooke	Humphrey	Schweiker
Burdick	Jackson	Stafford
Cannon	Kennedy	Stevens
Case	Long	Stevenson
Clark	Magnuson	Talmadge
Cotton	Mathias	Tunney
Cranston	McGee	Williams
Dominick	McGovern	
Eagleton	McIntyre	

NOT VOTING—17

Bennett	Gravel	Packwood
Bentsen	Gurney	Percy
Cook	Hollings	Randolph
Curtis	Inouye	Sparkman
Fulbright	Javits	Symington
Goldwater	Moss	

So section (b) of Mr. BUCKLEY's amendment (No. 1289) was rejected.

Mr. PELL. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. EAGLETON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. DOMINICK. I yield to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. DOMINICK. Mr. President, I yield to the Senator from Missouri.

Mr. EAGLETON. Mr. President, I ask unanimous consent that James Murphy and Marsha McCord be accorded the privileges of the floor during consideration of the education bill.

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

THE 200TH ANNIVERSARY OF THE FIRST CONTINENTAL CONGRESS

Mr. HUGH SCOTT. Mr. President, I ask unanimous consent that action on Senate Concurrent Resolution 85 taken this morning be reconsidered, and that it be amended in three respects.

I send the amendments to the desk and ask the clerk to read the concurrent resolution as it would be so modified.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will read the concurrent resolution, as modified.

The assistant legislative clerk read the concurrent resolution, as modified, together with its preamble, as follows:

S. CON. RES. 85

Whereas the meeting at Carpenters' Hall in the City of Philadelphia in the Colony of Pennsylvania from September 5 to October 26, 1774, which has become known as the First Continental Congress, will have observed during 1974 its two hundredth anniversary; and

Whereas the actions of that Congress in uniting, for the first time, the thirteen disparate American Colonies to seek redress of their many grievances against the Parliament and King of England, set in motion a series of events leading to the meeting of the Second Continental Congress which produced the Declaration of Independence and guided the new Nation through the American War for Independence; and

Whereas the precedents set by the meeting of the first Congress in 1774 form the foundation upon which rests the principles and practices of the existing Congress of the United States of America; and

Whereas October 14, 1774, was the date on which the delegates to the first Congress adopted the Declaration and Resolves, expressing to the King of England their rights as Englishmen and their determination to achieve those rights, and is therefore, in itself, an historic date; and

Whereas on October 14, 1974, special ceremonies, sponsored by the City of Philadelphia, the National Park Service of the Department of the Interior and the American Revolution Bicentennial Administration, will be held at Carpenters' Hall in Philadelphia, Pennsylvania, to properly and appropriately observe for the Nation the two hundredth anniversary of the First Continental Congress; and

Whereas the two hundredth anniversary of the First Continental Congress marks one of *the first* historic commemorative events of the American Revolution Bicentennial celebration: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that October 14, 1974, be proclaimed a Day of National Observance for the 200th Anniversary of the First Continental Congress and calls upon the people of our Nation to fittingly observe and honor this important date in our country's history.

SEC. 2. That the President pro tempore of the Senate and the Speaker of the House be authorized to select, upon the recommendation of the respective majority and minority leaders, four Members of each House to represent the Congress of the United States of America at ceremonies in Carpenters' Hall, Philadelphia, on October 14, 1974, and to present at said ceremonies to a representative of the City of Philadelphia a copy of this resolution.

SEC. 3. That the Expenses of the Members are authorized to be paid from the contingency funds of the Senate and House of Representatives as approved, respectively, by the Committee on Rules and Administration and the Committee on House Administration.

The Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. Without objection, the three amendments are agreed to.

Without objection, the resolution as amended is agreed to.

Without objection, the preamble is agreed to.

EDUCATION AMENDMENTS OF 1974

The Senate continued with the consideration of the bill (S. 1539) to amend and extend certain acts, relating to elementary and secondary education programs, and for other purposes.

Mr. DOMINICK. Mr. President, I had an amendment to the McClellan amendment earlier today to part (b), which I added, and which was adopted, and I ask unanimous consent that the Secretary may make a technical correction in it which will extend it for as long as the bill presently extends, instead of cutting it off shorter.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BUCKLEY. Mr. President, I call up my amendments No. 1306.

The PRESIDING OFFICER. The clerk will read the amendments.

The assistant legislative clerk proceeded to read the amendments.

Amendments No. 1306 are as follows:

On page 330, between lines 17 and 18, insert the following new section:

"LIMITATION ON WITHHOLDING OF FEDERAL FUNDS

"SEC. 513. Part C of the General Education Provisions Act is amended by adding at the end thereof the following new section:

" 'LIMITATION ON WITHHOLDING OF FEDERAL FUNDS

" 'SEC. 437. The refusal of a State or local education agency and institution of higher education, community college, a school, preschool, or any other educational institution, to administer a test or project or to provide personally identifiable data on students or their families, as a part of an applicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students, their parents, or is an unacceptable research or experimentation project, or is for the purpose of altering the personal behavior or values of a student, or is potentially psychologically or otherwise harmful to students or their families, shall not constitute sufficient grounds for the suspension or termination of Federal assistance. Further, such a refusal shall not constitute sufficient grounds for a denial of, a refusal to consider, or a delay in the consideration of funding in succeeding fiscal years for such a recipient.' "

On page 122, in the Table of Contents after item "Sec. 512." insert the following:

"Sec. 513. Limitation on withholding of Federal funds.".

Mr. BUCKLEY. Mr. President, for the benefit of Senators present, I understand the managers of the bill will accept the amendment.

I think I can best illustrate its purpose by quoting one article that appeared in the New York Times on November 21, 1973, relating to a questionnaire that HEW was demanding the New York City Board of Education circulate among its students:

The "New York" city's Board of Education accused the United States Department of Health, Education and Welfare yesterday of directing a number of schools here to administer pupil questionnaires.

Mr. President, has the other amendment been voted on?

The PRESIDING OFFICER. The amendment was in two parts, and has been disposed of.

Mr. BUCKLEY. I thank the Chair.

Mr. CRANSTON. Mr. President, I want to state my firm support for the amendment offered by the distinguished Senator from New York (Mr. BUCKLEY) which would protect schools from the loss of Federal funds if they choose not to administer tests prescribed by the Federal Government.

Sadly, we seem to live in an age of sophisticated snoops, both electronic and human. It seems to me that Senator BUCKLEY's amendment protects the right of schools to reject testing instruments that these local officials find to be objectionable.

Mr. ERVIN. Mr. President, a point of order.

The PRESIDING OFFICER. Does the Senator from New York yield for a preliminary inquiry?

Mr. BUCKLEY. I yield.

Mr. ERVIN. Mr. President, a point of order. The Senate had a vote on the motion of the Senator from Alaska to delete section (c). Then we had a separate vote on section (b), did we not?

The PRESIDING OFFICER. By voice vote, the Senate agreed to all parts of the amendment with the exception of section (b).

Mr. ERVIN. I beg the Chair's pardon. I never heard it.

The PRESIDING OFFICER. The voice vote was taken on all parts of the amendment with the exception of section (b), which was a rollcall vote. The voice vote was on all other parts.

Mr. BROCK. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BROCK. Was not the voice vote taken prior to the vote on the amendment of the Senator from Alaska on section (c)?

The PRESIDING OFFICER. The Senator from Alaska's motion to strike was first of all voted on, and then there was a voice vote, and then there was a vote on section (b).

Mr. BUCKLEY. Mr. President, I was reading from an article in the New York Times in which the following was stated:

The (New York) city's Board of Education accused the United States Department of Health, Education and Welfare yesterday of directing a number of schools here to administer pupil questionnaires that the board said were "racist," "highly inflammatory," and "polarizing."

Dr. Seymour P. Lachman, the president of the board, said the Federal department had "once more shown its callous insensitivity to the needs of children and good intergroup relation."

A statement by Dr. Lachman noted that the preface to the 23-item Federal questionnaire said: "To the student: These questions are to find out how you feel about students who are different from you. If you are Black, we want to know how you feel about students who are not Black. If you are White, we want to know how you feel about students who are not White. If you are Brown, we want to know how you feel about students who are not Brown. Whatever you are, we want to know how you feel about students who are different from you."

Dr. Lachman said that the form then asked such questions as the following:

"How do you think your parents feel about Black and White (or Brown and White or Black and Brown) students going to the same school together.

"Do you think that Black (or White or Brown) students in this school cause more trouble than other kinds of students?" "How do you think your principle feels about all different kinds of students going to the same school together?"

Dr. Lachman said that it was inconceivable to him how such a questionnaire "could be administered in good faith to fourth- and fifth-grade students."

I would now like to quote two brief paragraphs of an article that appeared in the Washington Post on May 7 of this year. The headline was "Schools Balking at Pupil Quiz":

District of Columbia school officials announced yesterday they will risk cancellation of $3.4 million in federal funds for educationally disadvantaged children rather than ask students and teachers 24 questions they consider "sociologically or psychologically damaging."

The questions, part of a battery of tests one-and-a-half inch thick to be administered to 720 students and teachers, concern the students' home lives and expectations in school.

My amendment simply limits the ability of HEW to withhold funds from school districts that refuse to circulate questionnaires of this kind or which believe them to be harmful or potentially pose psychological harm to their students.

I understand the managers of the bill are willing to accept the amendment.

Mr. PELL. Mr. President, the Senator is correct. We look favorably at this amendment, especially on the majority side. There seems to be no great objection to it. I would recommend to my colleagues that we adopt it.

Mr. DOMINICK. Mr. President, if the Senator will yield, I agree. It is a good amendment, except it should have been done a long time ago.

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

Mr. PELL. I am glad to yield.

Mr. HART. I, of course, do not wish to ask for a rollcall. I rise to express concern again that the Senate, at 20 minutes to 7 tonight, is adopting language at least some of which is unclear to anybody, particularly to reserve to a school board the right to continue to receive Federal money even though it rejects a project if the project is for the purpose of altering the personal behavior or values of a student.

Again, I suggest that that really is the meat and potatoes of education, and I just continue to think we would have been much better off if the committee had been able to evaluate exactly what would happen under this. I am sure that concern will be voiced with respect to it.

Mr. BUCKLEY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BUCKLEY. Mr. President, has all time been yielded back?

The PRESIDING OFFICER. Has all time been yielded back?

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. 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, I ask unanimous consent that Rick Bayard and Reid Feldman be granted the privilege of the floor during the debate on the education bill.

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

CHANGE OF VOTE ON VOTE NO. 194

Mr. HUMPHREY. Mr. President, I ask unanimous consent that on the Stevens amendment, on which I voted "yea," I be recorded as voting "nay."

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

Mr. MUSKIE. 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 role.

Mr. PELL. 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. PELL. Mr. President, what is the pending question?

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York. All time has been yielded back.

The amendment was agreed to.

Mr. McCLURE. Mr. President, I move that the Senate reconsider the vote by which the amendment was agreed to.

Mr. BUCKLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATHAWAY. Mr. President, there is one point with regard to the McClellan amendment which should be made about the overall effect of the McClellan amendment. That is the substantial shifts in title I funds which will take place within States, even States which gain, under the amendment. For example, although the State of Virginia would gain overall, the city of Richmond would lose, along with 20 Virginia counties. Omaha is another major example. In all, more than 600 counties nationwide will lose—and many of these counties are in States which show an overall gain under the McClellan amendment.

These are not speculative losses. These are actual dollar losses which will affect these school districts this fall. I hope that Senators from those States which appear to gain under this amendment will consider the problems they are still going to have when the county-level effect of the amendment manifests itself in their States.

Mr. President. I ask unanimous consent that a table showing the number of counties which will lose under this amendment—broken down by States—be printed at this point in the RECORD. I would also call the attention of Senators to Senator PELL's information contained in the May 13 RECORD at pages 14334–37.

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

Number of counties per State receiving a decreased allocation under the McClellan amendment

Alabama	17
Alaska	7
Arizona	0
Arkansas	12
California	2
Colorado	5
Connecticut	0
Delaware	0
Florida	1
Georgia	48
Hawaii	0
Idaho	6
Illinois	12
Indiana	4
Iowa	41
Kansas	21
Kentucky	42
Louisiana	2
Maine	2
Maryland	0
Massachusetts	2
Michigan	2
Minnesota	10
Mississippi	27
Missouri	27
Montana	5
Nebraska	18
Nevada	1
New Hampshire	0
New Jersey	10
New Mexico	1
New York	19
North Carolina	54
North Dakota	15
Ohio	3
Oklahoma	14
Oregon	1
Pennsylvania	1
Rhode Island	0
South Carolina	19
South Dakota	27
Tennessee	35
Texas	32
Utah	7
Vermont	0
Virginia	20
Washington	0
West Virginia	24
Wisconsin	2
Wyoming	1
District of Columbia	1
Total	600

BUSING TO DESEGREGATE SCHOOLS: THE PERSPECTIVE FROM CONGRESS

Mr. PEARSON. Mr. President, in view of the legislation pending before the Senate, and in view of the ongoing debate on the issue of busing, I am inserting a timely article written by our distinguished minority leader, the Senator from Pennsylvania. Entitled "Busing To Desegregate Schools: The Perspective From Congress." This University of Richmond Law Review article offers a calm perspective in the face of growing controversy on busing. I ask unanimous consent that this article be printed at this point in the RECORD.

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

BUSING TO DESEGREGATE SCHOOLS: THE PERSPECTIVE FROM CONGRESS

(By HUGH SCOTT) *

In the end, I expect that the courts will solve the problem—not Congress.[1]

This controversy over transporting pupils to desegregate schools or "busing" as the issue popularly is known, is the narrowest and perhaps most limited aspect of school desegregation. Yet, it threatens to undo school desegregation completely unless the issue is resolved in a way which will permit continued desegregation of schools accompanied by the understanding and support of the majority of people of all races.

A year ago it seemed virtually assured that Congress would pass a major anti-busing law. That event was averted in the Senate when the anti-busing forces were unable to force cloture of the debate on the "Equal Educational Opportunities Act of 1972"[2] and failed to defeat a subsequent motion to proceed to other business.[3]

This turn of events resulted from several factors. First, Congress earlier in the year had enacted important guidelines on the use of pupil transportation as a means of school desegregation.[4] Second, many members of Congress had confidence in the discretion of the

Footnotes at end of article.

Supreme Court to limit excessive busing on a case by case basis, while at the same time formulating well-reasoned and appropriate guidelines for the lower courts to follow in asserting decrees. Third, the legislative proposals to limit busing went far beyond what was reasonable or necessary. Instead, the proposed "Equal Educational Opportunity Act," as passed by the House of Representatives, virtually repealed substantial portions of the Civil Rights Acts and guaranteed that desegregation would never occur in some metropolitan areas.[5] The bill actually made possible re-segregation in those cities and towns found to have racially segregated neighborhoods. Fourth, many of the members of Congress were convinced that anti-busing legislation was not only unwise but unconstitutional as well.

In this article it is suggested that we now have established principles, through legislation by Congress and decisions of the courts, within which we can resolve the complexities of limiting pupil transportation in a fair and practical manner without resegregating schools.

The greatest single reason for the impasse between opposing groups in the debate over school desegregation has been the adamant and mutual refusal of both sides to recognize and respect what has been accomplished in school desegregation and the nature of the problems yet unresolved. Those who oppose pupil transportation to desegregate schools often give the impression that they have conveniently forgotten the recent history of schemes to evade Constitutional mandates. On the other hand, the proponents of busing often appear blind to the fact that desegregation is accepted today by an overwhelming majority of people, including many who once vehemently opposed it.[6]

The point has been reached where the issue of good faith should no longer be a major element of any debate about a remedy. Congress, the courts and the executive have demonstrated repeatedly that they find another era of segregation constitutionally unacceptable. Happily, there are indications that the country may be able to reason its way through some of the knotty and complex problems of desegregation without becoming embroiled in accusations of bad faith and the accompanying recriminations.

In devising remedies which will be fair and which will be supported by the majority of people, it must be kept in mind that we are no longer dealing with modest rural school districts, but with major school systems such as those in the metropolitan areas of Richmond, Atlanta, Denver and Detroit.[7] National policy must continue to be committed to integration, but the implementation of that policy must be fair and flexible and must have the broad based support of the people. The potential for devising a fair and flexible means of implementing desegregation is available, but building understanding and support among people generally appears to be the greatest challenge. This can be accomplished, however, if, as a first step, confrontations are avoided, and reasoned debate is employed in order to achieve the national goal of a desegregated society.

Twenty years ago this May 17 the Supreme Court announced its historic decision in *Brown* v. *Board of Education*.[8] It is a mark of the passage of time that only one justice who was a member of that Court, Justice William O. Douglas, is still a member of the Supreme Court; it is a mark of what we have accomplished that the man who argued the cause of the black plaintiffs in *Brown* sits today as the first black justice of the Court. That Justice is Justice Thurgood Marshall, who was appointed by a Southern President.

Shortly after the decision in *Brown*, the Commonwealth of Virginia vowed "massive resistance." Today, Virginia's schools for the most part are desegregated. A distinguished Virginian, Lewis F. Powell, Jr., is an Associate Justice of the Supreme Court, and has contributed valuable insights and great intellect to solving the problems of desegregation since his recent appointment to the Court.

The progress of the past twenty years has not been easy. Prior to *Brown*, racial segregation under law was the accepted way of life in the southern states. All schools and public facilities were segregated by race. Public transportation was segregated, and the law required the private businessman to operate segregated places of accommodation. The masses of black citizens were denied the right to vote. Where the law did not require segregation, racial discrimination and custom imposed an equal effect. Discrimination against blacks in employment and housing was the rule everywhere.

The legacy and effect of de jure segregation spilled over into the north where racial discrimination was practiced openly and often in definance of state laws prohibiting discriminatory practices. In the year 1954, the black man, ninety years after Emancipation, was confronted with social policies that were in many respects as degrading as involuntary servitude. *Brown v. Board of Education* overruled this epitaph. Since that decision, this nation has been headed steadily on a course toward full equality of opportunity for every citizen and toward the elimination of the vestiges of segregation from every aspect of our lives. I doubt if there are many today who would vote to overturn *Brown* and return to a "separate but equal" society.

Ten years after *Brown* little progress had been made to desegregate schools except in the border states and the District of Columbia.[9] The spectacle of United States Army troops surrounding Central High School in Little Rock, Arkansas forced this country to realize that desegregation on a case by case basis would be a long term and tumultuous proposition. It was clear that unless voluntary compliance with the letter and spirit of *Brown* was forthcoming, and that did not appear to be likely, little was going to happen until Congress acted.

Effective congressional action did not come easy. From Reconstruction until 1957 no general action had been taken by the Congress to require implementation of the fourteenth amendment. The first steps by Congress toward enacting guarantees of full and equal citizenship were taken during the Eisenhower-Nixon Administration in 1956 and 1957. The initial actions taken by Congress seemed timid to critics, but in reality they were precedent-shattering moves which cleared away several time-encrusted procedural obstacles to the passage of civil rights legislation. The first procedural move was the decision by Senate Majority Leader Lyndon B. Johnson to use a relatively weak civil rights bill as the vehicle for breaking the traditional southern filibuster against civil rights legislation. At that time, many did not realize the true proportions of this procedural victory, but without it, the great civil rights acts of the 1960's would have been virtually impossible to enact.

The 1957 Civil Rights Act,[10] modest in dimensions and ambitions, has proven to be the base on which a large part of the federal civil rights effort has been founded. The Act created the United States Commission on Civil Rights to study civil rights problems and to report to the nation, the Congress and the President. The Commission is still serving the nation and will continue to so serve through its current extension until 1978.

Title II of the Act of 1957 also created the Civil Rights Division of the Department of Justice. This is perhaps the most substantial achievement of the Act. Title IV authorized the Attorney General to go into court to enforce the right of all citizens to vote under the fifteenth amendment. This brought the federal government into court on the side of civil rights plaintiffs. No longer would the government be a powerless or neutral observer on the sidelines. It now was actively committed to securing the civil rights of all citizens.

Obviously, this development did not go unchallenged by those states and localities which felt threatened by the use of federal power to protect and secure the rights of citizens under the fourteenth and fifteenth amendments. "Massive resistance" in Virginia and elsewhere was the most organized challenge to federal authority. Violence and confrontation, often incited by demagoguery, occurred throughout the south while the north looked on, all too complacently, from the sidelines. During this period a growing awareness, sharpened by the reports of the United States Commission on Civil Rights, developed that desegregation of schools was only one part of a struggle for equal opportunity which was taking place on several fronts simultaneously. The first report of the Civil Rights Commission in 1959 dealt with voting, education and housing. The report made it clear that progress in each area was dependent upon progress being made in the other areas as well. To attempt to find a priority target was to search for the beginning of a circle. It was against such a background that Congress moved to consider the major civil rights acts of the 1960's.

Overall, the Civil Rights Act of 1960[11] was a disappointment.[12] The strong recommendations of the Civil Rights Commission, which had provided the impetus for the legislation, were systematically weakened and replaced until few of substance remained. The Act was generally viewed as a failure.

Despite increased national focus on the civil rights movement, the first two years of the Kennedy Administration passed without any civil rights action by Congress. Litigation became the chosen weapon of the Administration for achieving civil rights. Since the only source of effective civil authority possessed by the Attorney General was in the field of voting, the belief was that school desegregation and other gains would come about through an expansion of the political process resulting from greater enfranchisement of Negroes.

Despite heroic and dedicated efforts by outstanding lawyers in the Civil Rights Division, the Department of Justice was not successful in vindicating civil rights for Negro citizens through the judicial process. At the end of 1962, the additional number of black citizens who could vote as a result of cases brought by the Department was small.[13] Equally small was the amount of school desegregation achieved through private litigation.[14]

At the start of the 88th Congress, the Kennedy Administration had virtually no civil rights legislative program. The Administration's civil rights bill in early 1963 consisted of a modest proposal to extend the life of the Commission on Civil Rights and to expand the Commission's jurisdiction to provide clearinghouse services.[15] Liberal Republicans in the House and the Senate joined with Democrats in seizing the initiative with strong civil rights proposals pointing the way for major civil rights enactments. Elsewhere in the nation the civil rights movement increased in momentum.

Events in Birmingham, Alabama in April, 1963 suddenly ignited the conscience of the nation. Police Commissioner Eugene "Bull" Connor, his dogs and fire hoses, and the bombings, riotings and rage of the inner city shocked the people of America. On June 12, 1963 Medgar Evers was ambushed and killed in front of his home in Jackson, Mississippi.

Footnotes at end of article.

On June 19, the Kennedy Administration finally sent a major new civil rights bill to Congress. During a summer-long consideration of the bill, the great march on Washington took place. There, Dr. Martin Luther King intoned his greatest speech, "I Have a Dream," but Congress did not act.

In the autumn of 1963, the President was assassinated in Dallas. The death of President Kennedy may not have been responsible for the Civil Rights Act of 1964, but it did cause many people to realize that the time for making the ideal of social justice a reality was long overdue. Against a somber, more responsible background, Congress duly considered and enacted that monumental charter of civil rights, the Civil Rights Act of 1964.[16]

The Act carried forward the concept of making basic gains in equal opportunity simultaneously on several fronts, notably in public accommodations, education, employment and nondiscrimination in federal programs. The work of the 1964 Act subsequently was completed by passage of the Voting Rights Act of 1965 [17] and the Fair Housing Act of 1968.[18]

The 1964 Civil Rights Act also provided for double-barreled implementation of desegregation of schools and of federal programs in the states. One implementation was administrative sanctions imposed by the secretaries and heads of agencies charged with enforcing the nondiscriminatory requirements of Title VI.[19] The other implementation was the power of the Attorney General to bring suit to desegregate schools.[20] With the enactment of substantial assistance programs for education, school administrators and officials were faced with hard choices: to forego federal financial assistance only to face the Department of Justice in Court in the end, or to give assurances of nondiscrimination, follow desegregation guidelines and take the money. The majority of school boards decided to take steps toward compliance.

Education was not the only sector of society required to accept desegregation. The 1964 Act achieved quick desegregation of places of public accommodation, and other sectors of society also began to desegregate. Additionally, employers were required to eliminate discriminatory business practices. The pervasive impact of the Voting Rights Act of 1965 also made itself felt as black voters joined with white moderates to oust from office those public officials who had counseled and led resistance to desegregation.[21]

What had been accomplished through legislation was a complete reversal of the legalized segregation which had prevailed only ten years earlier. Yet, even at the height of the civil rights tide, when Congress was debating the Civil Rights Act of 1964, issues were arising which would turn congresssional efforts away from implementing school desegregation toward directly opposing it.

In large part the development of these issues stemmed from the growing realization that school desegregation would be determined by the answers to definitional problems. What is school desegregation? For example, if the racially segregated schools that existed in the south had to be dismantled and replaced by "unitary" systems, what, in fact, constitutes a "unitary" system? Practical and mechanical problems also were involved: are we going to transport children to integrate schools if they live in racially segregated neighborhoods? Finally, while the Supreme Court in *Brown* was concerned with racially segregated school systems resulting from the enactment of laws requiring or expressly sanctioning them (de jure segregation) what of school segregation resulting from factors other than state or local laws?

What if school segregation results from administrative decisions of school officials such as the location of school attendance lines, selection sites for new schools and the size of particular schools, made with the purpose and effect of maintaining racial separation, but in the absence of any law requiring it?

What if school segregation results not from administrative decisions of school officials, but from residential segregation for which other state or local governmental bodies, such as local public housing authorities, urban renewal agencies, zoning boards and city councils are responsible?

And what of school segregation that results from fortuitous factors, such as population shifts and other changes, in which government officials have played no part? Does this form of de facto segregation violate the Constitution?

These questions were present in some minds during the 1964 debates, but with only 2.25 percent of the Negro children in the deep South attending integrated schools (i.e., any school with less than 100 percent black enrollment), the focus of concern was on eliminating the blatant defiance of the Supreme Court which was evident in the continuation of dual and racially-separate school systems. This concern prepared the way for amendments to Title IV of the Civil Rights Act of 1964 which closed off federal efforts to deal with de facto and other forms of segregation brought about by means other than de jure (as narrowly defined).

The strategy of those opposed in fact to desegregation but who recognized the futility of a direct attack on the principles of *Brown v. Board of Education* has been built around the thesis that *Brown* merely commands racial neutrality in school admissions policies, no more and no less. Once the pupil by pupil, case by case approach fell, the opponents of desegregation recognized that the next line of defense was to prevent the courts from examining whether or not desegregation policies of school boards had in fact achieved any desegregation at all. Their principal hope was pinned on the "freedom of choice" plans for desegregating schools. Under such plans children were free to attend the school of their choice. Of course, no whites freely chose to go to black schools which were publicly acknowledged to be inferior. In many areas, only a handful of black families were willing to risk the very real dangers of retaliations involving loss of life, limb and employment of the breadwinner,to send a child to white schools.[22]

A strong buttress of this strategy was the firmly held belief by its champions in Congress that if northern school districts could be forced to deal with their de facto segregated school districts, the south would have a generous supply of allies who would assist in defeating efforts to implement school desegregation and eventually enact a rollback of desegregation altogether. The first fruit of this alliance was the famous racial balance language found in the definition of "desegregation" [23] and in the limitations on the power of the Attorney General to bring suit to desegregate schools in Title IV.[24] This joinder of northern and southern concerns is explicit in the explanation of the amendment given by its sponsor in the House, Representative Cramer (R-Fla.):

"The purpose is to prevent any semblance of congressional acceptance or approval of the concept of "defacto" [*sic*] segregation or to include in the definition of "desegregation" any balancing of school attendance by moving students across school district lines to level off percentages where one race outweighs another." [25]

A series of incisive opinions by the courts have deprived the amendment's southern supporters of their home that it would effectively bar desegregation of schools by plans other than freedom of choice plans and similar token efforts.[26] It is my view that these decisions were necessary in order to uphold the constitutionality of the racial balance language of Title IV. Had the language of Title IV been applied as Congressman Cramer had hoped it would, the Civil Rights Act of 1964 would have been rendered a nullity as far as school desegregation is concerned. Such a decision would have been a complete misreading of the hope and intent of Congress that the schools of the land be desegregated through the Act.

For a number of years, efforts were made in Congress to restate the limitations contained in Title IV in a way that would stop desegregation.[27] The legal effect of these efforts, and to a large extent their practical results, had little or no impact on school desegregation, other than to encourage the north to continue to do nothing about segregation of schools caused by state action in its own precincts. The political effect, however, has been considerable.

The racial balance language of Title IV, the decisions limiting its application, futile efforts in Congress to undo what has been accomplished have nourished an unfortunate myth in certain regions of the country that judges sitting in federal courthouses have cheated the people out of their legislative victories. This has kept alive sparks of resistance to desegregation in many pockets throughout the south, and, as unconstitutional aspects of school segregation in the north became increasingly apparent, it has fed flames of violent resistance in such communities as Pontiac and Denver. Far worse, it has prevented the possibility of rational discussion of how to achieve desegregation fairly, without unduly interrupting the education of young children. Instead, we seem to be wasting our time by debating whether we will have desegregation at all. Out of this ferment came the antibusing campaign of 1972.

Swann v. Charlotte-Mecklenberg Board of Education [28] is credited with feeding the emotional storm that swept many sections of the country concerning busing.[29] Yet, *Swann* also contained the formulation for the practical and common sense limitation of busing, even though few would, or could, listen to what the Court actually was saying.[30]

The formulation of Chief Justice Burger [31] became the basic building block in the pupil transportation amendments to the General Education Amendments of 1972 offered by myself and Senator Mansfield. Basically, the amendment states that Congress believes the objections to busing stated in *Swann* do have validity, indeed, that busing funds may not be awarded where effectiveness of the educational process would be impeded by the time or distance of travel.

In my view, Title VIII of the Education Amendments of 1972 [32] sets the limits on how far Congress can responsibly go in placing restrictions on pupil transportation to desegregate schools. The simple scheme of the amendment ensures that federal officials cannot circumvent the reasonable standards for busing established by the Supreme Court in *Swann*. It is aimed at preventing the sort of extreme busing that critics fear can occur; it is not directed at limiting the powers of the Court. It leaves open the "flexibility" and "balance" necessary to implement desegregation in an equitable manner.

The defeat of the anti-busing legislation in the Senate in 1972 and the virtually complete disestablishment of the separate school systems of the south marks the entrance of the country into a new era in school desegregation which has been most clearly signalled by the Court's decisions in *Bradley* v. *School Board of City of Richmond* [33] and *Keyes* v. *School District No. 1. Denver, Colo.*[34] The era we are in is the era of large city desegregation and of remedying segregation of schools brought about by unconstitutional state action.

Footnotes at end of article.

The constitutional problems of finding state action in northern school de facto segregation are not difficult in my opinion, but devising a remedy is. In fact, it is the difficulty of developing an acceptable and effective remedy that may be staying the Court's hand more than the conceptual difficulties in defining the wrong.

Justice Powell's concurring opinion in *Keyes*[35] is interesting and hopeful, not because I necessarily agree with all of it, but because it demonstrates fresh and major innovative thinking on the Court about the problems of desegregation. Although the suspicious may find many pitfalls in Justice Powell's opinion, its significance is in the desegregation guidelines it establishes.

First, Justice Powell would obliterate the distinction between de jure and de facto segregation on the grounds that state action always is present in the operation of a segregated school system. In this view he has the distinguished company of Justice Douglas[36] and the United States Commission on Civil Rights.[37]

Second, Justice Powell defines the concept of "integrated school system" in a way which allows continuance of all-black and all-white schools under certain conditions. Presumably, we must look to previous opinions of the Court to determine under what conditions an all-white or an all-black school is constitutionally permissible.[38] But Justice Powell leaves no doubt that in his view the Constitution does not require the elimination of individual schools which have all-white or all-black or all-Chicano enrollments. An "integregated school system" is one in which the following conditions are present:

(1) faculties and administrative staff are integrated;

(2) equality of facilities and of education program exists;

(3) school attendance zones have been drawn to promote integration;

(4) new schools are located, old ones closed, and regrouped by size and grade categories to promote integration;

(5) if a district transports pupils, transportation must be carried out with integration in mind.[39]

If a school district is found to be operating a segregated school system, then it has an affirmative duty to achieve the above with busing a possible remedy. In devising remedies courts would be guided by equitable principles. As Justice Powell stated:

"This would result . . . in no prohibition on court-ordered student transportation in furtherance of desegregation. But it would also require that the legitimate community interests in neighborhood school systems be accorded far greater respect."[40]

In developing remedies, courts would be asked to balance various competing consideration. Justice Powell pleads that courts should give greater weight to the values of the neighborhood, to the parental interest in education of their children, to the rights of children and to the economic and social consequences of extensive pupil transportation plans.[41]

Justice Powell's suggestion that age per se should be a factor in limiting busing warrants careful review. Ironically, integrated education is more successful among the young, i.e., those under 12 years of age, than among children of high school age.[42] Experienced educators report that somewhere after the ninth grade, adolescents not only segregate themselves by race, but by class and social background as well, these latter factors perhaps being more determinative than race or color.

Special consideration is warranted where neighborhoods are already racially integrated. A priority exemption should be given to such neighborhoods from any plan of desegregation which required pupil transportation. Although neighborhoods are an integral part of our urban life, we should keep in mind that the neighborhood easily can be transmuted into "territory" or "turf" to be protected at all costs, some of them too horrible to contemplate. Not all of the best of our national character is expressed in the concept of "neighborhood." One example is the tragic burning of a young woman in Roxbury, Massachusetts, simply because she happened to be of the wrong color at the wrong place at the wrong time. However, Justice Powell's concurrence in *Keyes* strengthens my confidence that we can look to the courts to develop intelligent, fair and effective remedies for desegregating schools. Justice Powell sets forth our duty under the fourteenth amendment in positive terms—to operate integrated school systems.

It should be remembered that school desegregation has not yet reached the large numbers of minority group persons living in cities, North, West and South.[43] A new minority group, Mexican Americans, is also involved as *Keyes* indicates. Its problems cannot be equated automatically with those of the black-white desegregation context of the south.[44] An enormous task is involved which, if it is not approached in a spirit of humility, will be overwhelming. Justice Powell suggest some manageable guidelines by which lasting desegregation standards may be evolved.

We have breached the "massive resistance" of the Old South. During the first Nixon Administration we completed the job of disestablishing the former dual and segregated school systems of the past. What we now face is the challenge of operating integrated school systems and of remedying school segregation wherever it exists.

While I may not agree with every particular in Justice Powell's opinion, I believe that it offers a path which will enable us to achieve desegregation without extreme social upheaval. If the movement toward integration begun twenty years ago is not to be lost or set back by reactionary backlash movements, then Justice Powell's counsel should be heeded:

"It is time to return to a more balanced evaluation of the recognized interests of our society in achieving desegregation with other educational and societal interests a community may legitimately assert. This will help assure that integrated school systems will be established and maintained by rational action, will be better understood and supported by parents and children of both races, and will promote the enduring qualities of an integrated society so essential to its genuine success."[45]

The progress that has been made toward the goal of a just and free society has been substantial. The tools for further advances in achieving social justice can be formulated to produce rational and flexible remedies to the complex problems that remain.

FOOTNOTES

*United States Senator from Pennsylvania; Member of the Senate Judiciary Committee; LL.B. University of Virginia, 1922.

[1] Birmingham News, Feb. 21, 1972, at 8, col. 8.

[2] H.R. 13915, 92d Cong., 2d Sess., introduced on March 20, 1972; reported from the General Subcommittee on Education of the Committee on Education and Labor, July 25, 1972; reported from Committee on August 14, 1972, H.R. Rep. No. 92–1335; considered and passed the House of Representatives with amendment, August 17 and 18, 1972.

H.R. 13915 and the accompanying measure, the Student Transportation Moratorium Act of 1972, H.R. 13916, were the subjects of extensive hearings in both the House Committee on the Judiciary and the Committee on Education and Labor.

[3] CONGRESSIONAL RECORD, vol. 118, pt. 26, pp. 33996, 34262, 34410, 34488, 34856, and pt. 27, p. 35231.

[4] Pub. L. No. 92–318, 86 Stat. 372.

Title VIII of the General Education Amendments of 1972 provides essentially:

Section 810 states that no provision of the Act "shall be construed to require the assignment or transportation of students or teachers on order to overcome racial imbalance."

Section 802(a) prohibits the use of federal funds—

To transport students or to buy buses in order to overcome racial imbalance;

For busing to carry out a plan of desegregation "except on the express written voluntary request of appropriate local school officials;"

To provide for transportation if the time or distance is so great as to threaten the health or impinge on the educational process of children;

To provide transportation, if such transportation would result in children being assigned to a school substantially inferior to the one they would be assigned to under a non-discriminatory geographic zone assignment plan.

Section 802(b) prohibits Federal officials from requiring the use of non-federal funds for busing to correct racial imbalance or achieve desegregation or to condition a grant of Federal funds on student transportation plans "unless constitutionally required."

Section 803 postpones the effectiveness of any district court order "which requires the transfer or transportation of any student or students . . . for the purpose of achieving a balance among students with respect to race, sex, religion, or socioeconomic status" until all appeals have been exhausted or until January 1, 1974.

Section 804 gives parents the right to intervene in desegregation suits if busing standards violate Swann v. Charlotte-Mecklenberg Bd. of Educ., 402 U.S. 1 (1971).

Section 805 requires rules of evidence in desegregation cases to be uniform throughout the United States.

Section 806 expresses the intent that Section 407(a) of the Civil Rights Act of 1964 shall be applied uniformly.

[5] H.R. 13915, as passed by the House of Representatives, August 18, 1972, Senate Calendar No. 1042.

[6] An opinion poll analysed by the U.S. Commission on Civil Rights shows that sixty-seven percent of the public support integration as a national objective. U.S. COMMISSION ON CIVIL RIGHTS, PUBLIC KNOWLEDGE AND BUSING OPPOSITION: AN INTERPRETATION OF A NEW NATIONAL SURVEY (1973).

[7] The analysis of the poll prepared by the Commission, *supra* note 6, indicates that among those who support integration as a national goal only twenty-seven percent support busing to achieve integration.

[8] 347 U.S. 483 (1954).

[9] The U.S. Commission on Civil Rights in its 1961 Report, Vol. 2, Education, reported that in May 1961, 775 out of 2,837 biracial school districts in 17 states and the District of Columbia had reported some desegregation. The overall increase since the Commission's 1959 report was said to be only 1.5 percent. 1961 U.S. Commission on Civil Rights Report, Education Book 2, at 39, app. IV.

In 1964, only 2.25 percent of the Negro children in the 11 states of the old Confederacy and 10.9 percent in the entire region encompassing the southern and border states attended school with white children. Over 3 million Negro children in 1964 were attending segregated schools in the south. U.S. Commission on Civil Rights, Survey of School Desegregation in the Southern and Border States 1965–1966, at 1 (1966).

[10] Act of September 9, 1957, Pub. L. No. 85–315, 71 Stat. 634.

[11] Act of May 6, 1960, Pub. L. No. 86–449, 74 Stat. 86.

[12] For an excellent account of the legislative history of the 1960 Civil Rights Bill, see Berman, How A Bill Became Law (1962).

[13] U.S. Commission on Civil Rights, Political Participation 10 (1968).

[14] U.S. Commission on Civil Rights, Southern School Desegregation 1966–67, at 5 (1967).

[15] Civil Rights Message of the President, Feb. 28, 1963.

[16] Act of July 2, 1964, Pub. L. No. 88–352, 78 Stat. 241.

[17] Act of August 6, 1965, Pub. L. No. 89–110, 79 Stat. 437.

[18] Act of April 11, 1968, Pub. L. No. 90–284, 82 Stat. 73.

[19] 42 U.S.C. § 2000d (1970).

[20] 42 U.S.C. § 2000c-6 (1970)

[21] POLITICAL PARTICIPATION, *supra* note 13.

[22] For an excellent account of the experience under freedom of choice plans, see U.S. COMMISSION ON CIVIL RIGHTS, SOUTHERN SCHOOL DESEGREGATION 1966–67, at 45–70 (1967).

[23] U.S.C. § 2000c (b) (1970):

"Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

[24] 42 U.S.C. § 2000c–6(a) (1970):

Provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards.

[25] CONG. REC. 2280 (1964).

[26] The key decision was United States v. Jefferson County Bd. of Educ., 372 F. 2d 836 (5th Cir. 1966), *aff'd on rehearing*, 380 F. 2d 385 (5th Cir. 1967), *cert. denied*, Caddo Parrish School Bd. v. United States, 389 U.S. 840 (1967).

[27] These efforts were the so-called "Whitten Amendments" attached to appropriations bills in the House of Representatives and which forbade the use of federal funds to require assignment or transportation of pupils. These proposals inevitably would be amended in the Senate so that the limitations only prohibited officials from carrying out unconstitutional directives.

[28] 402 U.S. 1 (1971).

[29] "Busing" meant only one thing, school desegregation, even though 20 million children were bused to school daily in 1971 and buses traveled 2.2 billion miles, virtually all of it totally unrelated to desegregation purposes. See U.S. Commission on Civil Rights, Your Child and Busing (1972).

[30] Eventually, the real meaning of *Swann* began to become apparent, and I believe helped to defeat the anti-busing bill in the 92d Congress.

[31] The by-now classic statement reads:

An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of children or significantly impinge on the educational process.

Swann v. Charlotte-Mecklenberg Bd. of Educ., 402 U.S. 1, 30–31 (1971).

[32] Pub. L. No. 92–313, 86 Stat. 372.

[33] 93 S. Ct. 2773 (1973).

[34] 93 S. Ct. 2686 (1973).

[35] *Id.* at 2701–20.

[36] *Id.* at 2700.

[37] U.S. COMMISSION ON CIVIL RIGHTS, RACIAL ISOLATION IN THE PUBLIC SCHOOLS (1967).

[38] Keyes v. School Dist. No. 1, Denver, Colo. 93 S. Ct. 2686, 2706–07 (1973).

[39] *Id.* at 2706.

[40] *Id.* at 2718.

[41] Keyes v. School Dist. No. 1, Denver, Colo. 93 S. Ct. 2686, 2711–19 (1973).

[42] DENMARK, GUTTENTAG & RILEY, COMMUNICATION PATTERNS AND INTEGRATED CLASSROOMS AND PRE-INTEGRATION SUBJECT VARIABLES AS THEY AFFECT THE ACADEMIC ACHIEVEMENT AND SELF-CONCEPT OF PREVIOUSLY SEGREGATED CHILDREN (1967); U.S. COMMISSION ON CIVIL RIGHTS, THE DIMINISHING BARRIER, A STUDY OF SCHOOL DESEGREGATION IN TEN CITIES (1972).

[43] The U.S. Bureau of the Census reports that nearly half the nation's population of blacks is concentrated in 50 cities and at least one third of the total is in 15 cities. The top 15 cities are New York City, Chicago, Detroit, Philadelphia, Washington, Los Angeles, Baltimore, Cleveland, New Orleans, Atlanta, St. Louis, Memphis, Dallas, Newark and Indianapolis.

[44] On the subject of Mexican-American education see the five volume series of reports, U.S. COMMISSION ON CIVIL RIGHTS, MEXICAN AMERICAN EDUCATION (1972).

[45] Keyes v. School Dist. No. 1, Denver, Colo., 93 S. Ct. 2686, 2719–20 (1973).

ANTIBUSING AMENDMENTS

Mr. JAVITS. Mr. President, tomorrow, the Senate will consider a number of amendments to this bill concerned with busing. Foremost among these is the amendment to be offered by the Senator from Florida (Mr. GURNEY) which is identical to the House-passed Esch amendment.

So that my colleagues may have everything bearing on the legal and constitutional implications of this proposal I ask unanimous consent that a memorandum of law on the constitutionality of the Esch-Gurney amendment be printed at this point in the RECORD. I also ask unanimous consent for the printing of two additional documents: the views of the U.S. Civil Rights Commission, prepared at my request, and signed personally by every member of the Commission; and a statement issued today by the black caucus of the House of Representatives.

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

MEMORANDUM OF LAW—THE CONSTITUTIONALITY OF ESCH-GURNEY AMENDMENT TO THE ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS OF 1974

The regressive, anti-desegregation legislation now before the Congress was offered in the House of Representatives as Title II "Equal Educational Opportunities" of H.R. 69—The Elementary and Secondary Education Act of 1974. It is very similar to H.R. 13915 (92nd Congress), the so-called Equal Educational Opportunities Act of 1972 which was offered by the President for consideration in 1972. The amendment was sponsored by Representative Marvin Esch in the House and Senator Edward Gurney, in the Senate. It seeks to limit the authority of federal courts transportation of students beyond the closest or next closest school.

But the proposal is even more than prospective legislation. One section permits the reopening of court ordered desegregation plans, and plans under Title VI of the Civil Rights Act of 1964, to conform them with the provisions of the bill, even though many of those cases do not involve busing. As the Committees on Federal Legislation and Civil Rights of the New York City Bar Association concluded after its analysis of this proposal:

"While this is arguably permissible under the usual doctrine that equity decrees are always subject to review because of change of circumstances, this is in fact an invitation to reverse the school desegregation of the past eighteen years, particularly in the school district where desegregation has long been achieved. Presumably in such districts, the alleged disadvantages of pupil transportation have long since been overcome. It is cynical in the extreme, therefore, to permit new rounds of litigation where successful adjustment to constitutional order exists."*

This section raises then important questions of policy. Principally, however, this Memorandum questions the constitutionality of the direct and arbitrary prohibition of busing as a judicial remedy. The reasons are as follows:

I. The Esch/Gurney amendments will prevent the Federal courts and school authorities from implementing the constitutional requirements established by *Brown v. Board of Education* and subsequent cases.

Eighteen years ago, Brown v. Board of Education, 347 U.S. 483 (1954) established that State-imposed segregation by race in public schools denies equal protection of the laws under the Fourteenth Amendment. To correct such violations, the Fourteenth Amendment commands that the discriminating authority take whatever steps are necessary to convert to a racially, nondiscriminatory school system. *Brown v. Board of Education*, 349 U.S. 294, 301 (1955) (Brown II); *Green v. County School Board of New Kent County*, 391 U.S. 430 437–38 (1968). If school authorities fail in fulfilling their affirmative constitutional obligations, "judicial authority may be invoked." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, at 15 (1971). The court's power in fashioning an appropriate and truly effective remedy is broad, for "breadth and flexibility are inherent in equitable remedies." *Swann* at 15. *Brown II*.

Busing is only one of many techniques available for use in desegregating dual school systems. But sometimes busing is found to be the *only* effective remedy for the speedy desegregation plans mandated by the Court in *Green v. County School Board of New Kent County, supra*. Thus, the Supreme Court has recognized busing as an *"integral part* of the public education system for years," and as a "normal and accepted tool of educational policy." *Swann* at 29 (emphasis added). In *Swann*, the Court found "no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation." It added, "Desegregation plans cannot be limited to the walk-in school." *Swann, supra* 402 U.S. at p. 30.

If these amendments are adopted the legislation will overrule the principles of *Swann, supra, North Carolina State Board of Education v. Swann*, 402 U.S. 43 (1971) and *Brown v. Board of Education* (II), supra. It will prohibit the use of busing in any meaningful manner, by school authorities and federal district courts, as a remedial tool for school desegregation. It will prohibit busing in every case, for every child of school age, regardless of time and distance or number of children involved.

II. Congress, as well as the States, may not enact legislation which obstructs the Federal courts from fulfilling the mandate of the fourteenth amendment's equal protection clause.

The Supreme Court has declared that no State enactment may frustrate the constitutional mandate of the Fourteenth Amendment. *North Carolina State Board of Education v. Swann*, 402 U.S. 43 (1971). "An absolute prohibition against transportation of students," the Supreme Court said, "will . . . hamper the ability of local authorities to ef-

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* (See *Congressional Record*, vol. 118, pt. 21, pp. 27463–65 at p. 27464.)

fectively remedy constitutional violations," *Id.* at 46. Thus, the Court declared North Carolina's antibusing law to be unconstitutional are held:

"If a State-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees." *Id.* at 45.

See also Goss v. Board of Education of City of Knoxville, Tennessee, 444 F. 2d 632, 637 (6th Cir. 1971); *Clark v. Board of Directors of Little Rock School District*, 328 F. Supp. 1205, 1212 (E.D. Ark, 1971); and *Taylor v. Coahoma County School District*, 330 F. Supp. 174 176, 183 (N.D. Miss. 1970) *aff'd* 444 F. 2d 221 (5th Cir. 1971).

Congress has a no less stringent constitutional duty in this regard than any state agency. Yet, if Congress were to enact the Esch/Gurney Amendment it would be implicating itself in exactly the kind of segregatory activity prohibited for school boards, state legislatures and governors. Congressional action would be the direct cause of continuing denial of equal protection, where a constitutional violation has already been found and where busing has been decreed a necessary part of the effective remedy. In short, by staying implementation of an effective remedy, Congress would be acting in aid of racial discrimination, and therefore in violation of the due process clause of the Fifth Amendment. *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Gautreaux v. Romney*, 448 F. 2d 731 (7th Cir. 1971). See *Green v. Kennedy*, 309 F. Supp. 1127, 1136 (D.C. 1970), *dismissed for want of juris., sub nom., Coit v. Green*, 400 U.S. 986 (1971). *Cf. Battaglia v. General Motors Corporation*, 169 F. 2d 254, 257 (2d Cir.), *cert. denied*, 335 U.S. 887 (1948). And as *Kelley v. Metropolitan County Board of Education of Nashville and Davidson County*, — F. 2d — (No. 71-1178-79) (6th Cir. May 30, 1972) emphatically suggests: ". . . no one may forbid a school board (or a federal court) from employing any of the tools of modern life in carrying out a constitutional mandate. *Davis v. Board of Commissioners of Mobile County*, 402 U.S. 33, 37-38 (1971)" [emphasis added].

III. Neither Congress' authority to regulate the jurisdiction of federal courts nor its authority to enforce the fourteenth amendment authorizes legislation which would prevent Federal courts from effectuating a constitutional mandate.

Although Article III of the Constitution authorizes Congress to regulate the jurisdiction of Federal courts, the principle of separation of powers precludes Congress from limiting the authority of the courts in interpreting the Constitution and effectuating Constitutional rights. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat) 304 (1816). Congress, in the guise of a jurisdictional statute, cannot deprive a party either of a right created by the Constitution or of any remedy the courts deem essential of enforce that right.

Nor can Congress enact legislation which prescribes a particular result in a case. In United States v. Klein, 80 U.S. (13 Wall.) 128 (1972) the Court held that the statutory limitation of the Federal courts' jurisdiction—offered by a Congress anxious to correct what it thought was an erroneous line of cases—was unconstitutional:

"We are directed"—said the Supreme Court—"to dismiss the appeal, if we find that the judgment must be affirmed. . . . Can we do so without allowing one party to the controversy [the Congress] to decide it in its own favor? Can we do so without allowing that the legislature may prescribe rules of decision to the Judicial Department of government in cases pending before it? "We think not. . . . We must think that Congress has inadvertently passed the limit which separated the legislative from the judicial power." *Id.* at 146-47

The Klein case was decided after *Ex parte McCardle*, 74 U.S. (7 Wall) 506 (1868), which upheld a post-Civil War Act of Congress that deprived the Supreme Court of appellate jurisdiction over lower federal court decisions in habeas corpus cases. But it is clear from this case that the Court was not sanctioning unrestricted Congressional power to deprive it of jurisdiction to consider Constitutional claims. Despite the act of Congress which it sustained, the Court still had original habeas corpus jurisdiction as well as power to review lower court habeas corpus decisions by writ of certiorari. *Ex parte Yerger*, 75 U.S. (8 Wall) 85 (1868). Professor Alexander Bickel, moreover, has described the *McCardle* case as "aberrational" and has noted that, in common with Professor Henry M. Hart, Jr., he reads it "as a fairly narrow holding." (See Bickel, "What's Wrong with Nixon's Busing Bills?"

Nor do Congressional restrictions on the jurisdiction of courts found in the Emergency Price Control Act of 1942 and the Norris-LaGuardia Act justify the busing limitations contained in Esch/Gurney. The structure under the former statute preserved a full remedy in federal courts (See *Yakus v. United States*, 321 U.S. 414 (1944) and *Lockerty v. Phillips*, 319 U.S. 182 (1943) and the latter statute did not restrict constitutional rights because a businessman does not have a constitutional right to have a federal court enjoin a strike growing out of a labor dispute. In fact the Norris-LaGuardia statute served to implement the First Amendment right to peaceful, non-coercive picketing. See *Thornhill* v. *Alabama*, 310 U.S. 88 (1940).

Finally, Section 5 of the Fourteenth Amendment, which authorizes Congress to enforce that Amendment "by appropriate legislation," provides no basis for sustaining the legislation in question.

Section 5 does not authorize Congress to contract the scope of protection guaranteed by the Fourteenth Amendment. The Equal Protection Clause of the Fourteenth Amendment was designed to expand and to extend constitutional protection to those who had previously been denied such rights. Congress may not thwart this purpose.

The Court spoke specifically to this point in *Katzenbach v. Morgan*, 384 U.S. 641, 651 n. 10 (1966) when it stated: "§ 5 does not grant Congress power to exercise discretion in the other direction and to enact 'statutes so as in effect to dilute equal protection and due process decisions of this Court.' We emphasize the Congress' power under § 5 is limited to adopting measures to enforce the guarantees of the Amendment; § 5 grants Congress no power to restrict, abrogate, or dilute these guarantees."

Section 5, moreover, cannot be used as a basis for regulating the jurisdiction of the Federal courts. That Section concerns only questions of federalism—the Federal Government's relations with the states—not issues of checks and balances between Congress and the Federal Judiciary. The history of Section 5 plainly demonstrates that its purpose was simply to enable "Congress, in case the States shall enact laws in conflict with the principles of the Amendment, to correct that legislation by a formal Congressional enactment." Remarks of Senator Howard, who reported the Fourteenth Amendment to the Senate from the Joint Committee on Reconstruction, *Cong. Globe*, 39th Cong., 1st Sess., 2766, 2768 (1866). Section 5 was not intended to give Congress greater power than the Federal Courts to define Constitutional rights.

The legal impact of this proposal will be to eliminate busing as a viable tool for school desegregation. Though the bill's language states "except to the closest or next closest school," busing restricted to these conditions will prove ineffectual in countervailing the impact of residential segregation upon school attendance patterns of children. Where busing is an indispensable and effective method of desegregation, federal courts will find themselves constrained to render less than effective remedies.

For these reasons, this bill contracts the scope of constitutional guarantees afforded by the Fourteenth Amendment. It cannot be sustained upon a reading of Section 5.

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., May 6, 1974.

Hon. JACOB K. JAVITS,
U.S. Senate, Washington, D.C.

DEAR SENATOR JAVITS: We have received your request for our findings and recommendations relative to the Gurney, Ervin, and Scott-Mansfield Amendments to the Elementary and Secondary Education Act of 1974. We are pleased to comply.

The most extensive of these Amendments is the Gurney Amendment. The major thrust of the Gurney Amendment is to prohibit student transportation to promote school desegregation. In its place, the Amendment would require the acceptance of the neighborhood school as the appropriate basis for determining public school assignments. The Amendment makes several findings: (1) Large amounts of funds have been spent by local educational agencies on student transportation for desegregation; (2) Such transportation has created "serious risks" to the health and safety of students and has been excessive; and (3) Court guidelines have not been "clear, rational and uniform" on the question of reassigning and transporting students to effect desegregation.

The Amendment defines as unlawful various practices if taken on account of race, color, sex, or national origin—for example, "deliberate segregation" and faculty or staff employment discrimination. It would also prohibit the assignment of students to schools other than the one closest to their residence if such assignment resulted in a greater degree of segregation. The Amendment would permit a court in its discretion to award costs and attorneys' fees to the prevailing party. In addition, the Amendment prohibits the busing of students as a desegregation remedy unless the busing is to the school closest or next closest to the student's place of residence. Another of its provisions would permit school authorities to "reopen" all court orders and Title IV desegregation plans now in effect.

The United States Commission on Civil Rights has appeared before Congressional Committees on five occasions during the 92nd and 93rd Congresses to testify on the so-called "busing" issue. On all five occasions we have opposed efforts which would prevent a court, department or agency of the United States from utilizing transportation in order to achieve the objective of desegregating the schools of our Nation. We have consistently opposed all legislation which would weaken the constitutional prohibition against governmentally-sanctioned segregation of public schools.

Our opposition to these proposals has been based on three principles:

First, that public education next to the family is the Nation's most important social institution. In the words of the Supreme Court, it is "the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment."

Second, that governmentaly-segregated public schools are "inherently unequal" and are therefore violative of the 14th Amendment right to equal protection of the laws.

Third, that participation in the educational programs of desegregated schools is

the best way to prepare students to live under and to help implement the principles embodied in the Constitution.

In addition, our opposition to these proposals has been based on evidence, growing out of studies conducted by the Commission, which point conclusively to the fact that there are situations where pupil transportation is the only method that will effectively prevent students from being forced to attend segregated schools.

We are fully aware of the complex problems that have confronted and do confront communities in the nation that are providing transportation so as to prevent students from being forced to attend segregated schools. We have found that many of these problems have been resolved in a constructive manner.

Nevertheless we understand that persons living in communities that confront the necessity of inaugurating pupil transportation programs in order to prevent students from being forced to attend segregated schools ask in good faith whether the price that we must pay should be paid. Our response must be that constitutional rights designed to open doors of opportunity for all of our people must be treated as absolutes. We cannot afford to turn our back on them because of difficulty of implementation. Any other course of action undermines our constitutional form of government.

It is in the light of these principles and considerations, Commission research, and our analysis of the legislation that we are now presenting the following findings and recommendation relative to the Gurney, Ervin, Scott-Mansfield Amendments. In most instances we are stating our findings and only briefly summarizing the evidence on which each finding is based. In all instances, however, we are prepared to support our findings with evidence based on studies and legal analyses conducted by the Commission and by others working in this field.

THE GURNEY AMENDMENT

1. The Gurney Amendment would deny to Federal Courts or administrative agencies the right to prevent students from being forced to attend segregated schools where pupil transportation is the method necessary to achieve actual desegregation.

Congress by adopting such an Amendment would be attempting to overrule the Supreme Court's decision in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971) that transportation is one of a number of viable techniques by which schools can be desegregated. In some school districts, transportation either alone or in conjunction with other desegregation techniques is a "must" if the constitutional mandate eliminating state-imposed segregation is to be carried out.

It is recognized that any attempt by Congress to legislate a dual school system would be unconstitutional. The Supreme Court has found in *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 45 (1971) that legislation which attempts to reach the same result through indirect means is just as unconstitutional.

The Gurney Amendment would lead to such a result by denying the courts one of their most potent weapons namely, pupil transportation. In essence, while the Amendment recognizes and endorses the rights of children to be free from governmentally established segregated schools, it would take away the means to assure that right.

2. The provision in the Gurney Amendment which would permit the reopening in the courts of desegregation plans now in effect because of their alleged conflict with the transportation provisions of the Gurney Amendment would re-open old wounds in many communities, bring to a halt the steps that are being taken to achieve genuine desegregation, and would undermine efforts of conscientious officials who under extremely difficult circumstances have obeyed the Constitution.

In addition to unitary school districts already existing, there are roughly 1,500 school districts which are and have been desegregating their school systems since 1954 pursuant to court orders or plans accepted by the Department of Health, Education, and Welfare. Students in these schools are in the process of having their constitutional guarantee of equal protection of the laws fulfilled.

The Gurney Amendment, however, seeks to stop this process while the courts are asked to determine whether some of the students in these formerly *de jure* districts should be returned to segregated schools. This backward step would be an indefensible expenditure of time, energy and money.

3. The provisions of the Gurney Amendment establishing the so-called "neighborhood school" as the appropriate basis for student assignment would in fact cause many students to attend *de jure* segregated schools.

There is nothing about a neighborhood school that compensates for the denial of a constitutional right. We, therefore, see no point in entering into a discussion of the pros and cons of neighborhood schools. In passing, however, it should be pointed out that the argument for neighborhood schools has been advanced vigorously only since the advent of desegregation. In connection with our responsibilities under the Civil Rights Act of 1957, as amended, it is sufficient for us to point out that the Gurney Amendment is in direct conflict with the declaration of the Supreme Court of the United States in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 30 (1971) that "desegregation plans cannot be limited to the walk-in schools."

4. The provision in the Amendment that no unitary school system shall be required to formulate or implement a desegregation plan because of "residential shifts in population . . . which result in school population changes in any school within such a desegregated school system . . ." is misleading and unnecessary.

Since the *Brown* decision, the courts have distinguished between *de facto* school segregation caused by residential change or population movement and *de jure* school segregation resulting from the official actions of educational authorities. Every school desegregation order that has ever been supported by the Supreme Court has been based upon a factual finding of *de jure* segregation. This provision is therefore misleading in that it creates the impression that action is required in an area in which it is not required.

5. The provision of the Amendment that failure to "attain a balance, on the basis of race, color, sex, or national origin, of students" within a school district "shall not constitute a denial of equal educational opportunity, or equal protection of the laws" is misleading and unnecessary.

The federal courts have never required such a balance of students. As the Supreme Court stated in Swann, "the constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole . . . ." (at 24)

6. The provision of the Gurney Amendment that could result in the parents of children being compelled to pay the legal expenses of the defendant educational agency, as well as their own, places an indefensible obstacle in the path of parents who attempt to vindicate their constitutional rights in this area.

This finding speaks for itself.

7. The flexibility which the Supreme Court has demonstrated in the development of guidelines for desegregation by the courts, departments and agencies of the United States has encouraged the development of desegregation plans which are responsive to varied local situations.

The Gurney Amendment adopts the opposite point of view. In so doing the authors and sponsors reflect a lack of confidence in a process which gives full recognition to local conditions and yet, at the same time, achieves the objective of implementing constitutional rights.

In the *Swann* case, for example, the Supreme Court stated that "no rigid guidelines as to student transportation can be given for application to the infinite variety of problems presented in thousands of situations." (at 29)

The flexibility which the Supreme Court has encouraged permits local school districts to design their own plans, in close consultation with the local district court or other federal agencies if necessary, and to choose from a wide range of tools those best suited to deal with the situation as it exists in their own districts. In this way local desegregation plans may be fashioned in the most practical and reasonable manner and yet still meet current constitutional and statutory standards.

8. The provision of the Amendment which would make it an "unlawful practice" to "assign a student to a school other than the one closest to his or her place of residence . . . if such an assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin . . ." would be an administrative nightmare for school officials and governmental authorities.

Local school officials who conscientiously wished not to violate the law would be thrust upon the horns of a virtually impossible dilemma by this section of the Amendment. One way that a school district could be sure that it was not engaging in the "unlawful practice" would be to assign all children to the school closest to their homes. This would compel school officials to compute the precise distance between the homes of all children and the surrounding schools, and based on these computations, to engage in the wholesale transfer of thousands of children who presently do not attend the closest school. Moreover, school authorities would have to update the school-home distance computations to account for the construction of new schools, new residences, and the closing of obsolete facilities, and transfer countless additional children annually.

The other means by which local school officials could insure their full compliance with the law created by the Amendment is even more administratively complex and mind-boggling. So that school officials could continue the often-necessary administrative practice of assigning children to schools other than the one closest to their residence, they would be compelled to compute annually the precise student ratios for all schools in the district "on the basis of race, color, sex, and national origin." Then school officials would have to determine that the assignment of a child to a school other than the closest one would not contribute to an increased level of segregation.

It is ironic that a constitutionally defective Amendment is, in addition, administratively onerous. Needless to say, should the Amendment be made administratively feasible, its unconstitutionality should preclude legislative enactment.

9. The portion of the Gurney Amendment which provides for the elimination of excessive transportation of students when necessitated by desegregation which allegedly "creates risks to their health and safety" and "disrupts the educational process" is unnecessary and misleading.

The Supreme Court in *Swann* forbade the use of transportation in school desegregation plans "when the time or distance of travel is so great as to risk either the health of the child or significantly impinge on the educational process." (at 30–31)

Statistics of the U.S. Department of Transportation show that approximately one percent of the increase in public school transportation from the period 1954 to 1972 can be attributed to school desegregation.

THE ASHBROOK AMENDMENT

In the event the Ashbrook Amendment, which was adopted by the House of Representatives, is offered during the Senate debate, we are providing our comments on it.

The Ashbrook Amendment would prohibit the use of Federal education funds for transportation costs involved in school desegregation plans.

10. The Ashbrook Amendment seeks to erect a roadblock to the granting of equal educational opportunity by denying the use of Federal funds for any plan, voluntary or otherwise, which seeks to implement those rights by spending money on pupil transportation.

Like the Gurney Amendment it seeks to accomplish indirectly what the authors and sponsors know cannot be accomplished directly; namely, the denial of rights of students to attend schools which are not segregated.

THE ERVIN AMENDMENT

The Ervin Amendment would prohibit federal officials from using federal funds for the purpose of inducing school boards operating dual schools to convert to unitary systems. It would permit such school systems to implement "freedom of choice" plans regardless of the resulting racial composition of the system's schools.

11. The Ervin Amendment if adopted would effectively repeal Title VI of the Civil *Rights Act* of 1964 as it applies to education and seeks to overrule the decision of the Supreme Court in Green v. County School Board of New Kent County, 391 U.S. 430 (1968) which ruled that if freedom of choice plans are to be found constitutional they must be effective in that they achieve actual desegregation. In Green the court found that the plan before it was ineffective.

In support of the Commission's position on this Amendment we enclose a copy of our testimony presented before the Senate Subcommittee on Constitutional Rights on February 21, 1974.

THE SCOTT/MANSFIELD AMENDMENT

The Scott/Mansfield Amendment would prohibit the use of appropriated funds for the transportation of students in connection with court ordered desegregation, make illegal the assignment of pupils to overcome "racial imbalance," and postpone the implementation of district court orders which require the transportation of pupils until all appeals are exhausted.

12. The provisions of this amendment would slow down the process of implementing the constitutional rights set forth in Brown.

These provisions were included as Sections 801 and 802 of the General Education Amendments of 1972 (P.L. 92-318) and incorporate certain decisions by the United States Supreme Court related to transportation distances and the provisions in Section 407(a) of the 1964 Civil Rights Act related to so-called busing for racial balance.

RECOMMENDATION

On the basis of these findings there is just one recommendation that we can make; namely, that the Senate reject the Gurney, Ervin, Scott-Mansfield and Ashbrook Amendments.

CONCLUSION

On May 17 this nation will commemorate the 20th anniversary of the unanimous decision of the Supreme Court of the United States to strike down the major legal barrier to racial equality—the "separate but equal" doctrine. This event was second only to the Emancipation Proclamation from the point of view of its potential contribution to the long struggle, both inside and outside the minority communities, to implement the civil rights guaranteed by the Constitution.

The passage of any legislation which would deny to the Federal Courts or administrative agencies the right to prevent students from being forced to attend segregated schools where pupil transportation is the method necessary to achieve actual desegregation would turn the celebrations planned for the 20th anniversary of the *Brown* v. *Board of Education* Supreme Court decision into a dirge. Such an action would convey the following message to the parents of all children—

"If you live in a location where your children can walk to a desegregated school, your children can benefit from the constitutional prohibition against governmentally segregated schools and participate in the educational opportunities provided by a desegregated school.

"If, on the other hand, you live in a location where your children need transportation to a desegregated school, your children will be denied the benefits of the constitutional prohibition against state sanctioned segregated schools and will be unable to participate in the educational opportunities provided by desegregated schools."

Once again hope will be replaced by despair.

We believe the *Report of the National Advisory Commission on Civil Disorders* was right when in 1968 it pointed to the danger of our Nation moving toward two societies, one black, one white—separate and unequal. The enactment of the proposed amendments on which we have commented in this letter would contribute to such a tragic development. We hope that instead of moving in this direction the Congress will hold fast to the sure promise of a more united and peaceful Nation under desegregated institutions.

Respectfully yours,

ARTHUR S. FLEMMING, *Chairman*; STEPHEN HORN, *Vice Chairman*; FRANKIE M. FREEMAN, ROBERT S. RANKIN, MANUEL RUIZ, JR., JOHN A. BUGGS, *Staff Director*.

CONGRESSIONAL BLACK CAUCUS INC.,
Washington, D.C., May 14, 1974.

Senator PHILIP A. HART,
Washington, D.C.

DEAR SENATORS HART, JAVITS, KENNEDY, MONDALE: The Congressional Black Caucus is extremely concerned over the anti-busing amendments which will be offered when the Senate considers S. 1539, a bill to extend the Elementary and Secondary Education Act for three more years. The sixteen black members of the House voted against the anti-busing amendments to H.R. 69, which was passed in the House.

Of major concern to the members of the Caucus is the fact that the Esch amendment represents an assault against the independence and the integrity of the judicial system. The Esch amendment which is clearly unconstitutional, also presents the grave danger of the legislative body trying to usurp the powers of the judicial branch of the government.

The addition of anti-busing amendments to S. 1539 will be an enormous setback to the school desegregation and civil rights gains achieved over the last 20 years. The Congressional Black Caucus is urging members of the Senate to defeat all anti-busing amendments to S. 1539.

Sincerely,

Yvonne Braithwaite Burke, Shirley Chisholm, William Clay, Cardiss Collins, John Conyers, Jr., Ronald V. Dellums, Charles C. Diggs, Jr., Walter E. Fauntroy, Augustus F. Hawkins, Barbara Jordan, Ralph H. Metcalfe, Parren J. Mitchell, Robert N. C. Nix, Charles B. Rangel, Louis Stokes, Andrew Young.

EDUCATION PROGRAMS FOR HANDICAPPED CHILDREN

Mr. MATHIAS. Mr. President, in my introductory remarks on amendment No. 1305 for aid to the handicapped, I referred to the recent court decree in the State of Maryland to highlight the critical need to expand and improve education programs for handicapped children. In the context of this urgent need, I have received several communications in support of my amendment from various Maryland school superintendents. I ask unanimous consent that the text of these communications be included in the RECORD.

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

BOARD OF EDUCATION
OF SAINT MARYS COUNTY,
Leonardtown, Md.

Hon. CHARLES MATHIAS, Jr.,
Capitol Hill,
Washington, D.C.

Please support the proposed amendment to S. 1539 for Federal aid for handicapped. Saint Marys County would benefit by about 180,000 dollars for use with handicapped children. This aid would contribute greatly to our expanding handicapped program.

ROBERT E. KING, Jr.,
Superintendent of Schools.

PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS,
Upper Marlboro, Md., April 30, 1974.

Hon. CHARLES McC. MATHIAS, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MATHIAS: It has come to my attention that you plan to introduce legislation, on or about May 2, 1974, which promotes the national commitment to improving programs for handicapped children. This encouraging prospect prompted my desire to express support for your efforts.

In the recent decade, the State of Maryland has been in the forefront of educational programs for its handicapped children. Recent legislation passed in the '73 Legislature (106-D of Article 77, Public Schools Laws of Maryland) provides that all children 0-20 shall have the advantage of programs of education regardless of the nature and severity of their handicap. Programs that will address themselves to preschool children will come into being throughout the state and be fully implemented by 1980. Current costs of educating children continue to soar.

Presently, programs in special education receive funding from both educational agencies and the State Department of Education. The situation in Prince George's County is about a 50-50 proposition. With increased pressures to decrease property taxes and, indeed, state taxes, it is going to be more and more difficult for counties and states to sufficiently fund programs for their handicapped children and youth. A special subsidy provided by the federal government would ease the burden of local governments and, at least, make the federal government a partial partner in the responsibility of educating the handicapped in order that they may become fully participating and contributing members of society in the future.

We, in Prince George's County, are most grateful for your continuing efforts to improve the quality of public education in the state and nation.

Very truly yours,

CARL W. HASSEL,
Superintendent of Schools.

[TELEGRAM]

CHESTERTOWN, MD.

Senator CHARLES MAC. MATHIAS,
Senate Office Building,
Washington, D.C.

Urge you support amendment to SB1539 which will provide $15.00 per pupil for improved programs for the handicapped.

RICHARD L. HOLLE,
Superintendent of Schools.

BOARD OF EDUCATION OF GARRETT COUNTY,
Oakland, Md., May 1, 1974.

Hon. CHARLES MCC. MATHIAS, Jr.,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MATHIAS: Let me begin by thanking you for the interest shown to education in the State of Maryland. The superintendents of the State, and I am sure, the public, respect the leadership that you are exerting in federal aid legislation for education.

Please lend your support to Senate Bill 1539—Federal Aid for the Handicapped. We in Garrett Country are trying to double our services to these students over the next three years and this legislation will be a small step in helping to move us in that direction. Many thanks for your support in this matter.

Sincerely yours,

WILLIAM H. BUSER,
Superintendent of Schools.

ROCKVILLE, MD., *April 30, 1974.*

Hon. CHARLES MCC. MATHIAS, Jr.,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR MATHIAS: We want you to know of our strong support for your intention to offer an amendment to the extension of the Elementary and Secondary Education Act (S. 1539), which would provide $15 per enrolled child to be designated for programs and services for handicapped students.

The school system's responsibility for the education of all children, regardless of need, has been given a high priority by our Board of Education. The Maryland General Assembly has mandated a comprehensive educational program for handicapped pupils, and a recent Maryland Circuit Court decision has affirmed the right of handicapped pupils to equal educational opportunities. This undertaking, however, will be extraordinarily expensive; and Federal aid, such as you propose, will be essential to speedy implementation of these programs.

We have aggressively pursued all available state and federal support to supplement local funds on behalf of our handicapped students. However, in spite of these efforts, additional support is necessary to provide appropriate educational programs offered by staff and specialists adequately trained to offer the very specialized services required by our seriously handicapped school-age population.

While we believe that S. 6 and H.R. 70 provide the proper long-range approach, it appears that these bills will not be passed in the near future. Since we feel that our need is immediate, we appreciate your efforts in assisting us to meet our responsibility for the education of handicapped pupils.

Sincerely,

DONALD MIEDEMA,
Deputy Superintendent of Schools.
HOMER O. ELSEROAD,
Superintendent of Schools.

BOARD OF EDUCATION OF SOMERSET COUNTY,
Princess Anne, Md., May 1, 1974.

Hon. CHARLES MCC. MATHIAS, Jr.,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR MATHIAS: Senate Bill 1539, Federal Aid for the Handicapped, upon enactment would greatly assist this County and the State.

Please be aware of this County's strong support of this piece of legislation. Your efforts regarding its Senate passage would be greatly appreciated.

Kindest personal regards,

Sincerely yours,

JACK B. KUSSMAUL,
Superintendent of Schools.

[Telegram]

MONTGOMERY COUNTY PUBLIC SCHOOLS,
Rockville, Md.

Hon. CHARLES MCC. MATHIAS, Jr.,
Washington, D.C.

We strongly support the legislation you plan to introduce on behalf of handicapped children. The Maryland General Assembly has mandated a comprehensive educational program for handicapped pupils, and a recent Maryland circuit court decision has affirmed the right of handicapped pupils to equal educational opportunities.

Provision of appropriate services to all of our seriously handicapped school age population will be extraordinarily expensive. Federal aid, such as you propose, is urgently needed to supplement State and local resources for speedy implementation of these programs.

HOMER O. ELSEROAD,
Superintendent of Schools.

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

The PRESIDING OFFICER. On whose time?

Mr. PELL. Mr. President, I ask unanimous consent that the time for the quorum call be charged to neither side.

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

REMOVAL OF INJUNCTION OF SECRECY FROM THE INTERNATIONAL WHEAT AGREEMENT, 1971 (EX. C, 93D CONG., 2D SESS.)

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the Protocols for the Extension of the Wheat Trade Convention and the Food Aid Convention constituting the International Wheat Agreement, 1971, open for signature in Washington from April 2 through April 22, 1974—Executive C, 93d Congress, 2d session—transmitted to the Senate today by the President of the United States, and that the protocols with accompanying papers be referred to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

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

The message is as follows:

To the Senate of the United States:

For the advice and consent of the Senate to ratification, I transmit herewith the Protocols for the Extension of the Wheat Trade Convention and the Food Aid Convention constituting the International Wheat Agreement, 1971, open for signature in Washington from April 2 through April 22, 1974. The Protocols were formulated by a Conference of Governments which met in London on February 22, 1974.

I transmit also, for the information of the Senate, the report of the Department of State with respect to the Protocols.

The Protocol for the Extension of the Wheat Trade Convention, 1971, extends the Convention until June 30, 1975, and maintains the framework for international cooperation in wheat trade matters. It also continues the existence of the International Wheat Council.

The Protocol for the Extension of the Food Aid Convention, 1971, also extends until June 30, 1975, commitments of parties to provide certain minimum annual quantities of food aid to developing countries. The United States intends not to deposit ratification of this Protocol unless the European Economic Community remains a party. This intention was formally recorded by the United States in a written declaration made at the time the Protocols were signed.

Both Protocols provide that instruments of ratification shall be deposited no later than June 18, 1974. The Wheat Council may, however, grant an extension of time to any signatory government that has not deposited an instrument of ratification by that date.

It is my hope that the Senate will give favorable consideration to the two Protocols so that, subject to the European Economic Community remaining a party to the Food Aid Convention, ratification by the United States can be effected and instruments of ratification for the Wheat Trade Convention and the Food Aid Convention can be deposited without undue delay.

RICHARD NIXON.

THE WHITE HOUSE, *May 14, 1974.*

ORDER FOR CONSIDERATION OF UNFINISHED BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized on tomorrow, without any morning business occurring at that time, the Senate proceed to the consideration of the unfinished business.

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

Mr. ROBERT C. BYRD. Now, Mr. President, is it automatic that the question at that time would be on the adoption of the amendment by Mr. GURNEY?

The PRESIDING OFFICER. That will be laid before the Senate as the pending question under the agreement.

Mr. ROBERT C. BYRD. After the two leaders or their designees have been recognized?

The PRESIDING OFFICER. The Senator is correct.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at the hour of 9 a.m. After the two leaders or their designees have been recognized under the

standing order, the Senate will resume the consideration of the unfinished business (S. 1539), at which time an amendment by Mr. GURNEY will be the pending question before the Senate.

There is a time limitation on that amendment of not to exceed 6 hours, with a final vote to occur thereon at 5 p.m. tomorrow.

It has already been ordered that Mr. BAYH and Mr. ERVIN may offer amendments to the Gurney amendment, with the understanding that the Ervin amendment would be called up at no later than the hour of 3 o'clock p.m. tomorrow.

At the hour of 11:30 a.m., the Gurney amendment will be temporarily laid aside, and the amendment by Mr. MCCLELLAN will again be before the Senate, with an amendment thereto to be proposed by Mr. BROOKE.

There is a time limitation on the amendment of the Senator from Massachusetts (Mr. BROOKE) to the amendment of the Senator from Arkansas (Mr. MCCLELLAN) of not to exceed 45 minutes, with a vote to occur on the Brooke amendment to the McClellan amendment at the hour of 12:15 p.m.

The vote will occur on the McClellan amendment, as amended if amended, immediately following the vote on the Brooke amendment.

The Senate will then resume the consideration of the Gurney amendment. With the exception of the Brooke amendment and the McClellan amendment, it was agreed some days ago that all amendments to be considered to the bill tomorrow will be so-called busing amendments.

Have I correctly stated the program for tomorrow, may I ask the Chair?

The PRESIDING OFFICER. The Senator has correctly stated the program for tomorrow, in accordance with the Chair's records.

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

Conceivably then, Mr. President, I think Senators should be alerted to the fact that rollcall votes could occur prior to the hour of 11:30 a.m., at which time the Senate will begin consideration of the Brooke amendment to the McClellan amendment. Undoubtedly two rollcall votes will occur beginning at 12:15 p.m., back to back, with one on the Brooke amendment to the McClellan amendment, to be followed by the vote on the McClellan amendment as amended, if amended.

This does not rule out, however, the possibility of rollcall votes occurring on the Bayh or Ervin amendments to the Gurney amendment prior to 11:30 a.m.

According to the program I have stated, the Senate will resume the consideration of the education bill at about 9:05 a.m. tomorrow, at which time the Gurney amendment will be before the Senate.

Mr. GRIFFIN. Mr. President, will the Senator from West Virginia yield for a question?

Mr. ROBERT C. BYRD. I am glad to yield to the Senator from Michigan.

Mr. GRIFFIN. As I understand it, the Senator from Florida (Mr. GURNEY) has been assured that there will be 6 hours of debate on his amendment.

On the other hand, there is also an agreement that there will be a vote on the Gurney amendment at 5 p.m. There has been a modification, that the Brooke and McClellan amendments will be taken up and voted on tomorrow.

I am a little concerned about whether there will be 6 hours of debate on the Gurney amendment if other amendments to the Gurney amendment can be voted on during consideration of the Gurney amendment. Is that a possibility?

Mr. ROBERT C. BYRD. Mr. President, in response to the question from the distinguished assistant Republican leader, that is a possibility, but I think the situation will work out all right. Under the agreement, it would be in order for Mr. ERVIN and Mr. BAYH to offer amendments to the Gurney amendment at any time during the day, with the proviso that Mr. ERVIN is required to offer his amendment not later than 3 p.m. But if I understand the agreement, any other amendments to the Gurney amendment—unless by unanimous consent they were allowed to come in prior to the expiration of the time, or the hour of 5 o'clock p.m., whichever is earlier—could not be offered until the hour of 5 p.m. They could then be offered but without any time for debate thereon. A vote could be gotten on such amendments to be immediately followed by a vote on the Gurney amendment, as amended.

The PRESIDING OFFICER. The Senator is correct.

Mr. GRIFFIN. Mr. President, is it not also correct that under the unanimous-consent agreement time on the bill is under the control of the majority leader and the minority leader or their designees?

The PRESIDING OFFICER. The Senator is correct.

Mr. GRIFFIN. I thank the Chair.

ADJOURNMENT TO 9 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 9 a.m. tomorrow morning.

The motion was agreed to; and at 7:24 p.m. the Senate adjourned until tomorrow, Wednesday, May 15, 1974, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 14, 1974:

COASTAL PLAINS REGIONAL COMMISSION

Russell Jackson Hawke, Jr., of North Carolina, to be Federal Cochairman of the Coastal Plains Regional Commission.

DEPARTMENT OF JUSTICE

David O. Trager, of New York, to be U.S. attorney for the eastern district of New York for the term of 4 years.

John T. Pierpont, Jr., of Missouri, to be U.S. marshal for the western district of Missouri for the term of 4 years.

(The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

HOUSE OF REPRESENTATIVES—*Tuesday, May 14, 1974*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

The Lord is my light and my salvation; whom shall I fear?—Psalms 27: 1.

Eternal God, our Father, who art our refuge and our strength in every age Thou art with us in this present hour seeking to strengthen us, endeavoring to enlighten us and striving to support us in every effort we make for a righteous, a sober, and a genuinely good nation.

Lift us all, we pray Thee, out of the depths of discouragement and disillusionment and lead us up to the endless splendor of a new and greater day when men shall repent of their sins, receive Thy forgiveness, and learn to live together in love for one another and in peace with all Thy family.

Almighty Father, who dost give
The gift of life to all who live,
Look down on all earth's sin and strife
And lift us to a nobler life.

Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 5621. An act to amend title 10, United States Code, to provide for the presentation of a flag of the United States for deceased members of the Ready Reserve.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 634. An act to declare that certain federally owned lands shall be held by the United States in trust for the Kootenai Tribe of Idaho, and for other purposes;

S. 1411. An act to authorize the Sisseton and Wahpeton Sioux Tribe of the Lake Traverse Reservation to consolidate its landholdings in North Dakota and South Dakota, and for other purposes; and

S. 3398. An act to amend title 38, United